

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

(Mark One)

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

For the quarterly period ended September 29, 2018

OR

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

Commission file number 001-04298

COHU, INC.

(Exact name of registrant as specified in its charter)

Delaware

*(State or other jurisdiction of
incorporation or organization)*

95-1934119

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

12367 Crosthwaite Circle, Poway, California

(Address of principal executive offices)

92064-6817

(Zip Code)

Registrant's telephone number, including area code (858) 848-8100

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 and posted 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 and post 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 Accelerated filer Non-accelerated filer

Smaller reporting company Emerging growth company

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

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

As of October 23, 2018 the Registrant had 40,700,448 shares of its \$1.00 par value common stock outstanding.

COHU, INC.
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FORM 10-Q
SEPTEMBER 29, 2018

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Item 1.

COHU, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except par value)

	<u>September 29, 2018</u>	<u>December 30, 2017 *</u>
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 170,695	\$ 134,286
Short-term investments	549	21,329
Accounts receivable, net	78,575	71,125
Inventories	63,824	62,085
Other current assets	8,643	8,613
Total current assets	<u>322,286</u>	<u>297,438</u>
Property, plant and equipment, net	32,922	34,172
Goodwill	64,579	65,613
Intangible assets, net	13,512	16,748
Other assets	9,707	6,486
	<u>\$ 443,006</u>	<u>\$ 420,457</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Short-term borrowings	\$ 3,080	\$ 3,108
Current installments of long-term debt	1,021	1,280
Accounts payable	39,770	37,556
Accrued compensation and benefits	17,746	20,178
Accrued warranty	4,357	4,280
Deferred profit	1,894	6,608
Income taxes payable	6,072	2,159
Other accrued liabilities	15,985	10,098
Total current liabilities	<u>89,925</u>	<u>85,267</u>
Accrued retirement benefits	18,783	18,544
Noncurrent deferred gain on sale of facility	9,140	10,233
Deferred income taxes	3,166	2,921
Noncurrent income tax liabilities	6,293	6,270
Long-term debt	3,840	4,575
Other accrued liabilities	2,852	3,556
Stockholders' equity:		
Preferred stock, \$1 par value; 1,000 shares authorized, none issued	-	-
Common stock, \$1 par value; 60,000 shares authorized, 28,901 shares issued and outstanding in 2018 and 28,489 shares in 2017	28,901	28,489
Paid-in capital	130,194	127,663
Retained earnings	171,110	150,726
Accumulated other comprehensive loss	(21,198)	(17,787)
Total stockholders' equity	<u>309,007</u>	<u>289,091</u>
	<u>\$ 443,006</u>	<u>\$ 420,457</u>

* Derived from December 30, 2017 audited financial statements

The accompanying notes are an integral part of these statements.

COHU, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(in thousands, except per share amounts)

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Net sales	\$ 86,164	\$ 93,651	\$ 281,131	\$ 268,614
Cost and expenses:				
Cost of sales	51,786	56,742	165,701	162,319
Research and development	11,088	9,609	33,914	28,851
Selling, general and administrative	16,511	16,882	50,926	47,362
	<u>79,385</u>	<u>83,233</u>	<u>250,541</u>	<u>238,532</u>
Income from operations	6,779	10,418	30,590	30,082
Interest income	326	174	880	417
Income from continuing operations before taxes	7,105	10,592	31,470	30,499
Income tax provision	2,302	1,837	6,897	4,273
Income from continuing operations	4,803	8,755	24,573	26,226
Loss from discontinued operations	-	-	-	(278)
Net income	<u>\$ 4,803</u>	<u>\$ 8,755</u>	<u>\$ 24,573</u>	<u>\$ 25,948</u>
Income per share:				
Basic:				
Income from continuing operations	\$ 0.17	\$ 0.31	\$ 0.85	\$ 0.95
Loss from discontinued operations	-	-	-	(0.01)
Net income	<u>\$ 0.17</u>	<u>\$ 0.31</u>	<u>\$ 0.85</u>	<u>\$ 0.94</u>
Diluted:				
Income from continuing operations	\$ 0.16	\$ 0.30	\$ 0.83	\$ 0.92
Loss from discontinued operations	-	-	-	(0.01)
Net income	<u>\$ 0.16</u>	<u>\$ 0.30</u>	<u>\$ 0.83</u>	<u>\$ 0.91</u>
Weighted average shares used in computing income (loss) per share:				
Basic	<u>28,948</u>	<u>28,155</u>	<u>28,814</u>	<u>27,614</u>
Diluted	<u>29,770</u>	<u>29,105</u>	<u>29,650</u>	<u>28,640</u>
Cash dividends declared per share	<u>\$ 0.06</u>	<u>\$ 0.06</u>	<u>\$ 0.18</u>	<u>\$ 0.18</u>

The accompanying notes are an integral part of these statements.

COHU, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)
(in thousands)

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Net income	\$ 4,803	\$ 8,755	\$ 24,573	\$ 25,948
Other comprehensive income (loss), net of tax:				
Foreign currency translation adjustments	(475)	2,570	(3,435)	9,975
Adjustments related to postretirement benefits	(24)	12	17	(116)
Change in unrealized gain/loss on investments	9	6	7	7
Other comprehensive income (loss), net of tax	(490)	2,588	(3,411)	9,866
Comprehensive income	<u>\$ 4,313</u>	<u>\$ 11,343</u>	<u>\$ 21,162</u>	<u>\$ 35,814</u>

The accompanying notes are an integral part of these statements.

COHU, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(in thousands)

	Nine Months Ended	
	September 29, 2018	September 30, 2017
Cash flows from operating activities:		
Net income	\$ 24,573	\$ 25,948
Adjustments to reconcile net income to net cash provided by operating activities:		
Loss on disposal of microwave communications equipment business	-	278
Depreciation and amortization	7,276	6,731
Share-based compensation expense	5,497	5,336
Amortization of inventory step-up	-	1,404
Deferred income taxes	(253)	(932)
Adjustment to contingent consideration liability	657	668
Changes in other accrued liabilities	(409)	427
Changes in other assets	(667)	572
(Gain) loss on disposal of assets	29	(22)
Changes in current assets and liabilities, excluding effects from acquisitions:		
Accounts receivable	(8,092)	(9,013)
Inventories	(2,555)	(6,701)
Accounts payable	1,037	(3,620)
Other current assets	328	1,257
Income taxes payable	3,898	1,272
Deferred profit	(3,463)	(299)
Accrued compensation, warranty and other liabilities	1,351	303
Net cash provided by operating activities	<u>29,207</u>	<u>23,609</u>
Cash flows from investing activities, excluding effects from acquisitions:		
Sales and maturities of short-term investments	59,480	39,315
Purchases of short-term investments	(38,700)	(23,665)
Cash paid for Kita, net of cash received	-	(11,716)
Purchases of property, plant and equipment	(2,472)	(4,739)
Cash received from sale of fixed assets	25	109
Net cash provided by (used in) investing activities	<u>18,333</u>	<u>(696)</u>
Cash flows from financing activities:		
Issuance (repurchases) of common stock, net	(2,553)	7,149
Cash dividends paid	(5,217)	(4,894)
Payment of contingent consideration for Kita	(823)	-
Repayments of long-term debt	(975)	(1,280)
Net cash provided by (used in) financing activities	<u>(9,568)</u>	<u>975</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(1,563)</u>	<u>2,051</u>
Net increase in cash and cash equivalents	36,409	25,939
Cash and cash equivalents at beginning of period	134,286	96,045
Cash and cash equivalents at end of period	<u>\$ 170,695</u>	<u>\$ 121,984</u>
Supplemental disclosure of cash flow information:		
Capitalized debt issuance costs included in current other accrued liabilities	\$ 1,522	\$ -
Cash paid for income taxes	\$ 3,549	\$ 3,740
Dividends declared but not yet paid	\$ 1,734	\$ 1,683
Capitalized cloud computing service costs included in accounts payable	\$ 1,044	\$ -
Inventory capitalized as property, plant and equipment	\$ 514	\$ 113
Property, plant and equipment purchases included in accounts payable	\$ 311	\$ 594

The accompanying notes are an integral part of these statements.

Cohu, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements
September 29, 2018

1. Summary of Significant Accounting Policies

Basis of Presentation

Our fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. The condensed consolidated balance sheet at December 30, 2017, has been derived from our audited financial statements at that date. The interim condensed consolidated financial statements as of September 29, 2018, (also referred to as “the third quarter of fiscal 2018” and “the first nine months of fiscal 2018”) and September 30, 2017, (also referred to as “the third quarter of fiscal 2017” and “the first nine months of fiscal 2017”) are unaudited. However, in management’s opinion, these financial statements reflect all adjustments (consisting only of normal, recurring items) necessary to provide a fair presentation of our financial position, results of operations and cash flows for the periods presented. The three- and nine-month periods ended September 29, 2018, were comprised of 13 and 39 weeks, respectively. The three- and nine-month periods ended September 30, 2017, were comprised of 14 and 39 weeks, respectively.

Our interim results are not necessarily indicative of the results that should be expected for the full year. For a better understanding of Cohu, Inc. and our financial statements, we recommend reading these interim condensed consolidated financial statements in conjunction with our audited financial statements for the year ended December 30, 2017, which are included in our 2017 Annual Report on Form 10-K, filed with the U. S. Securities and Exchange Commission (“SEC”). In the following notes to our interim condensed consolidated financial statements, Cohu, Inc. is referred to as “Cohu”, “we”, “our” and “us”.

Unless otherwise indicated all amounts presented herein pertain only to Cohu, Inc. and exclude the impact of Xcerra Corporation (“Xcerra”) which was acquired on October 1, 2018. See Note 8, “Acquisition of Xcerra”, located in Part I, Item 1 of this Form 10-Q for further information.

Concentration of Credit Risk

Financial instruments that potentially subject us to significant credit risk consist principally of cash equivalents, short-term investments and trade accounts receivable. We invest in a variety of financial instruments and, by policy, limit the amount of credit exposure with any one issuer.

Trade accounts receivable are presented net of allowance for doubtful accounts of \$0.2 million at both September 29, 2018 and December 30, 2017. Our customers include semiconductor manufacturers and semiconductor test subcontractors throughout many areas of the world. While we believe that our allowance for doubtful accounts is adequate and represents our best estimate at September 29, 2018, we will continue to monitor customer liquidity and other economic conditions, which may result in changes to our estimates regarding collectability.

Inventories

Inventories are stated at the lower of cost, determined on a first-in, first-out basis, or net realizable value. Cost includes labor, material and overhead costs. Determining market value of inventories involves numerous estimates and judgments including projecting average selling prices and sales volumes for future periods and costs to complete and dispose of inventory. As a result of these analyses, we record a charge to cost of sales in advance of the period when the inventory is sold when estimated net realizable values are below our costs.

Inventories by category were as follows (*in thousands*):

	September 29, 2018	December 30, 2017
Raw materials and purchased parts	\$ 30,770	\$ 27,918
Work in process	24,210	25,130
Finished goods	8,844	9,037
Total inventories	<u>\$ 63,824</u>	<u>\$ 62,085</u>

Cohu, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements
September 29, 2018

Property, Plant and Equipment

Depreciation and amortization of property, plant and equipment is calculated principally on the straight-line method based on estimated useful lives of thirty to forty years for buildings, five to fifteen years for building improvements and three to ten years for machinery, equipment and software. Land is not depreciated.

Property, plant and equipment, at cost, consisted of the following (*in thousands*):

	September 29, 2018	December 30, 2017
Land and land improvements	\$ 7,855	\$ 8,017
Buildings and building improvements	14,038	13,779
Machinery and equipment	46,894	45,333
	68,787	67,129
Less accumulated depreciation and amortization	(35,865)	(32,957)
Property, plant and equipment, net	<u>\$ 32,922</u>	<u>\$ 34,172</u>

Segment Information

We applied the provisions of Accounting Standards Codification (ASC) Topic 280, *Segment Reporting*, (“ASC 280”), which sets forth a management approach to segment reporting and establishes requirements to report selected segment information quarterly and to report annually entity-wide disclosures about products, major customers and the geographies in which the entity holds material assets and reports revenue. An operating segment is defined as a component that engages in business activities whose operating results are reviewed by the chief operating decision maker and for which discrete financial information is available. Based on the provisions of ASC 280, we have determined that our identified operating segments, which are Digital Test Handlers (DTH), Analog Test Handlers (ATH) and Integrated Test Solutions (ITS), qualify for aggregation under ASC 280 due to similarities in their customers, their economic characteristics, and the nature of products and services provided. As a result, we report in one segment, semiconductor equipment.

Goodwill, Other Intangible Assets and Long-lived Assets

We evaluate goodwill for impairment annually and when an event occurs or circumstances change that indicate that the carrying value may not be recoverable. We test goodwill for impairment by first comparing the book value of net assets to the fair value of the reporting units. If the fair value is determined to be less than the book value, a second step is performed to compute the amount of impairment as the difference between the estimated fair value of goodwill and the carrying value. We estimated the fair values of our reporting units primarily using the income approach valuation methodology that includes the discounted cash flow method, taking into consideration the market approach and certain market multiples as a validation of the values derived using the discounted cash flow methodology. Forecasts of future cash flows are based on our best estimate of future net sales and operating expenses, based primarily on customer forecasts, industry trade organization data and general economic conditions.

We conduct our annual impairment test as of October 1st of each year, and have determined there was no impairment as of October 1, 2017 as we determined that the estimated fair values of our reporting units exceeded their carrying values on that date. Other events and changes in circumstances may also require goodwill to be tested for impairment between annual measurement dates. As of September 29, 2018, we do not believe that circumstances have occurred that indicate impairment of our goodwill is more-likely-than-not. In the event we determine that an interim goodwill impairment review is required in a future period, the review may result in an impairment charge, which would have a negative impact on our results of operations.

Long-lived assets, other than goodwill, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets might not be recoverable. Conditions that would necessitate an impairment assessment include a significant decline in the observable market value of an asset, a significant change in the extent or manner in which an asset is used, or any other significant adverse change that would indicate that the carrying amount of an asset or group of assets may not be recoverable. For long-lived assets, impairment losses are only recorded if the asset's carrying amount is not recoverable through its undiscounted, probability-weighted future cash flows. We measure the impairment loss based on the difference between the carrying amount and estimated fair value.

Cohu, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements
September 29, 2018

Foreign Remeasurement and Currency Translation

Assets and liabilities of our wholly owned foreign subsidiaries that use the U.S. Dollar as their functional currency are re-measured using exchange rates in effect at the end of the period, except for nonmonetary assets, such as inventories and property, plant and equipment, which are re-measured using historical exchange rates. Revenues and costs are re-measured using average exchange rates for the period, except for costs related to those balance sheet items that are re-measured using historical exchange rates. Gains and losses on foreign currency transactions are recognized as incurred. During the three and nine months ended September 29, 2018, we recognized a foreign exchange loss of \$0.2 million and a gain of \$1.2 million, respectively, in our condensed consolidated statements of income. During the three and nine months ended September 30, 2017, we recognized foreign exchange losses of \$0.2 million and \$2.7 million in our condensed consolidated statements of income, respectively. Certain of our foreign subsidiaries have designated the local currency as their functional currency and, as a result, their assets and liabilities are translated at the rate of exchange at the balance sheet date, while revenue and expenses are translated using the average exchange rate for the period. Cumulative translation adjustments resulting from the translation of the financial statements are included as a separate component of stockholders' equity.

Share-Based Compensation

We measure and recognize all share-based compensation under the fair value method. Our estimate of share-based compensation expense requires a number of complex and subjective assumptions including our stock price volatility, employee exercise patterns (expected life of the options) and related tax effects. The assumptions used in calculating the fair value of share-based awards represent our best estimates, but these estimates involve inherent uncertainties and the application of management judgment. Although we believe the assumptions and estimates we have made are reasonable and appropriate, changes in assumptions could materially impact our reported financial results.

Reported share-based compensation is classified, in the condensed consolidated interim financial statements, as follows (*in thousands*):

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Cost of sales	\$ 125	\$ 123	\$ 408	\$ 327
Research and development	354	278	1,098	856
Selling, general and administrative	1,401	1,459	3,991	4,153
Total share-based compensation	1,880	1,860	5,497	5,336
Income tax benefit	(115)	(107)	(555)	(429)
Total share-based compensation, net	<u>\$ 1,765</u>	<u>\$ 1,753</u>	<u>\$ 4,942</u>	<u>\$ 4,907</u>

Income (Loss) Per Share

Basic income (loss) per common share is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during the reporting period. Diluted income (loss) per share includes the dilutive effect of common shares potentially issuable upon the exercise of stock options, vesting of outstanding restricted stock and performance stock units and issuance of stock under our employee stock purchase plan using the treasury stock method. In loss periods, potentially dilutive securities are excluded from the per share computations due to their anti-dilutive effect. For purposes of computing diluted income (loss) per share, stock options with exercise prices that exceed the average fair market value of our common stock for the period are excluded. For the three months ended September 29, 2018, no options to issue shares of common stock were excluded from the computation. For the nine months ended September 29, 2018, options to issue approximately 12,000 shares of common stock were excluded from the computation. For the three and nine months ended September 30, 2017, options to issue approximately 5,000 and 103,000 shares of common stock were excluded from the computation, respectively.

Cohu, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements
September 29, 2018

The following table reconciles the denominators used in computing basic and diluted income (loss) per share (*in thousands*):

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Weighted average common shares	28,948	28,155	28,814	27,614
Effect of dilutive securities	822	950	836	1,026
	<u>29,770</u>	<u>29,105</u>	<u>29,650</u>	<u>28,640</u>

Cohu has utilized the “control number” concept in the computation of diluted earnings per share to determine whether potential common stock instruments are dilutive. The control number used is income from continuing operations. The control number concept requires that the same number of potentially dilutive securities applied in computing diluted earnings per share from continuing operations be applied to all other categories of income or loss, regardless of their anti-dilutive effect on such categories

Adoption of New Revenue Accounting Standard

We adopted ASC Topic 606, *Revenue from Contracts with Customers* (“ASC 606”), on December 31, 2017, the first day of our 2018 fiscal year. We elected to implement the new standard using the modified retrospective method of adoption which only applies to those contracts which were not completed as of December 31, 2017. Revenues for the quarter ended September 29, 2018 and the nine months ended September 29, 2018, have been accounted for using ASC 606 and the prior year quarter ended September 30, 2017 and none months ended September 30, 2017, have not been adjusted. Upon adoption of ASC 606, we recorded a cumulative-effect adjustment to retained earnings of \$1.1 million on December 31, 2017, which represents the impact of ASC 606 on our deferred revenue.

Material changes recorded in connection with the cumulative-effect adjustment were as follows (*in thousands*):

Financial Statement Line Item	Balance at December 30, 2017	Adjustments due to adoption of ASC 606	Balance at December 31, 2017
Deferred profit	\$ 6,608	\$ (1,258)	\$ 5,350
Income taxes payable	\$ 2,159	\$ 201	\$ 2,360
Retained earnings	\$ 150,726	\$ 1,057	\$ 151,783

The adoption of ASC 606 had no impact to cash used in net operating, investing or financing activities in our condensed consolidated statements of cash flows. The following table presents the amounts by which financial statement line items included in our condensed consolidated statements of income for the three and nine months ended September 29, 2018 and our condensed consolidated balance sheet at September 29, 2018 were materially affected due to the adoption of ASC 606 (*in thousands*):

Condensed Consolidated Statements of Income	For the Three Months Ended September 29, 2018		
	As Reported	Balances without adoption of ASC 606	Effect of Change
Net sales	\$ 86,164	\$ 86,820	\$ (656)
Income tax provision	\$ 2,302	\$ 2,421	\$ (119)
Net income	\$ 4,803	\$ 5,340	\$ (537)
Income per share:			
Basic:	\$ 0.17	\$ 0.18	\$ (0.01)
Diluted:	\$ 0.16	\$ 0.18	\$ (0.02)

Cohu, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements
September 29, 2018

Condensed Consolidated Statements of Income	For the Nine Months Ended September 29, 2018		
	As Reported	Balances without adoption of ASC 606	Effect of Change
Net sales	\$ 281,131	\$ 279,038	\$ 2,093
Income tax provision	\$ 6,897	\$ 6,517	\$ 380
Net income	\$ 24,573	\$ 22,860	\$ 1,713
Income per share:			
Basic:	\$ 0.85	\$ 0.79	\$ 0.06
Diluted:	\$ 0.83	\$ 0.77	\$ 0.06

Condensed Consolidated Balance Sheets*	For the Nine Months Ended September 29, 2018		
	As Reported	Balances without adoption of ASC 606	Effect of Change
Deferred profit	\$ 1,894	\$ 5,396	\$ (3,502)
Retained earnings	\$ 171,110	\$ 168,339	\$ 2,771

* Balance sheet line items include the cumulative-effect adjustment recorded on December 31, 2017.

Under ASC 606 our revenue will continue to be recognized at a point in time when the performance obligation has been satisfied and transfer of control has occurred, typically, this occurs upon shipment of products to our customers. In certain instances, when customer payment terms provide that a minority portion of the equipment purchase price be paid only upon customer acceptance, recognition of revenue may occur sooner under ASC 606.

Revenue Recognition

Our net sales are derived from the sale of products and services and are adjusted for estimated returns and allowances, which historically have been insignificant. We recognize revenue when the obligations under the terms of a contract with our customers are satisfied; generally, this occurs with the transfer of control of our systems, non-system products or services. In circumstances where control is not transferred until destination or acceptance, we defer revenue recognition until such events occur.

Revenue for established products that have previously satisfied a customer's acceptance requirements is generally recognized upon shipment. In cases where a prior history of customer acceptance cannot be demonstrated or from sales where customer payment dates are not determinable and in the case of new products, revenue and cost of sales are deferred until customer acceptance has been received. Our post-shipment obligations typically include installation and standard warranties. The estimated fair value of installation related revenue is recognized in the period the installation is performed. Service revenue is recognized over time as we transfer control to our customer for the related contract or upon completion of the services if they are short-term in nature. Spares, contactor and kit revenue is generally recognized upon shipment.

Certain of our equipment sales have multiple performance obligations. These arrangements involve the delivery or performance of multiple performance obligations, and transfer of control of performance obligations may occur at different points in time or over different periods of time. For arrangements containing multiple performance obligations, the revenue relating to the undelivered performance obligation is deferred using the relative standalone selling price method utilizing estimated sales prices until satisfaction of the deferred performance obligation.

Unsatisfied performance obligations primarily represent contracts for products with future delivery dates and with an original expected duration of one year or less. As allowed under ASC 606, we have opted to not disclose unsatisfied performance obligations as these contracts have original expected durations of less than one year.

We generally sell our equipment with a product warranty. The product warranty provides assurance to customers that delivered products are as specified in the contract (an "assurance-type warranty"). Therefore, we account for such product warranties under ASC 460, *Guarantees* (ASC 460), and not as a separate performance obligation.

Cohu, Inc.
Notes to Unaudited Condensed Consolidated Financial Statements
September 29, 2018

The transaction price reflects our expectations about the consideration we will be entitled to receive from the customer and may include fixed or variable amounts. Fixed consideration primarily includes sales to customers that are known as of the end of the reporting period. Variable consideration includes sales in which the amount of consideration that we will receive is unknown as of the end of a reporting period. Such consideration primarily includes sales made to certain customers with cumulative tier volume discounts offered. Variable consideration arrangements are rare; however, when they occur, we estimate variable consideration as the expected value to which we expect to be entitled. Included in the transaction price estimate are amounts in which it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Variable consideration that does not meet revenue recognition criteria is deferred.

Our contracts are typically less than one year in duration and we have elected to use the practical expedient available in ASC 606 to expense cost to obtain contracts as they are incurred because they would be amortized over less than one year.

Accounts receivable represents our unconditional right to receive consideration from our customer. Payments terms do not exceed one year from the invoice date and therefore do not include a significant financing component. To date, there have been no material impairment losses on accounts receivable. There were no material contract assets or contract liabilities recorded on the condensed consolidated balance sheet in any of the periods presented.

On shipments where sales are not recognized, gross profit is generally recorded as deferred profit in our consolidated balance sheet representing the difference between the receivable recorded and the inventory shipped. At September 29, 2018, we had deferred revenue totaling approximately \$3.6 million, current deferred profit of \$1.9 million and deferred profit expected to be recognized after one year included in noncurrent other accrued liabilities of \$1.1 million. At December 30, 2017, we had deferred revenue totaling approximately \$10.4 million, current deferred profit of \$6.6 million and deferred profit expected to be recognized after one year included in noncurrent other accrued liabilities of \$0.8 million. Our balances at September 29, 2018, include a \$1.1 million beginning retained earnings adjustment as a result of our adoption of ASC 606 on the first day of fiscal 2018. The periodic change is primarily a result of increases and decreases in deferrals of revenue associated with product shipments made to our customers in accordance with our revenue recognition policy.

Net sales by type are as follows (*in thousands*):

	Three Months Ended September 29, 2018	Nine Months Ended September 29, 2018
Systems	\$ 42,278	\$ 152,846
Non-systems	43,886	128,285
Net sales	<u>\$ 86,164</u>	<u>\$ 281,131</u>

Revenue by geographic area based upon product shipment destination (*in thousands*):

	Three Months Ended September 29, 2018	Nine Months Ended September 29, 2018
China	\$ 23,628	\$ 63,011
United States	11,585	41,725
Malaysia	13,682	38,539
Philippines	11,158	31,620
Rest of the World	26,111	106,236
Net sales	<u>\$ 86,164</u>	<u>\$ 281,131</u>

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A small number of customers historically have been responsible for a significant portion of our net sales. Significant customer concentration information is as follows:

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Customers individually accounting for more than 10% of net sales	one	two	one	two
Percentage of net sales	11.2%	26.5%	10.8%	28.5%

Accumulated Other Comprehensive Loss

Our accumulated other comprehensive loss balance totaled approximately \$21.2 million and \$17.8 million at September 29, 2018 and December 30, 2017, respectively, and was attributed to all non-owner changes in stockholders' equity and consists of, on an after-tax basis where applicable, foreign currency adjustments resulting from the translation of certain of our subsidiary accounts where the functional currency is not the U.S. Dollar and adjustments related to postretirement benefits. Reclassification adjustments from accumulated other comprehensive loss during the first nine months of fiscal 2018 and 2017 were not significant.

Retiree Medical Benefits

We provide post-retirement health benefits to certain executives, directors and their eligible dependents under a noncontributory plan. The net periodic benefit cost incurred during the first nine months of fiscal 2018 and 2017 was not significant.

Discontinued Operations

In 2015, we sold all of the outstanding stock of our mobile microwave communication equipment segment, Broadcast Microwave Services (BMS), for \$4.9 million in cash and up to \$2.5 million of contingent cash consideration. Our decision to sell this non-core business resulted from management's determination that they were no longer a strategic fit within our organization.

As part of the divestiture of BMS we recorded a contingent consideration receivable that was classified as Level 3 in the fair value hierarchy. See Note 3, "Financial Instruments Measured at Fair Value" for additional information on the three-tier fair value hierarchy. The contingent consideration represented the estimated fair value of future payments we are due based on BMS achieving annual revenue targets in 2016 and 2017 as specified in the sale agreement. We determined the fair value of the contingent consideration using a Monte Carlo simulation model with changes to the fair value of the contingent consideration being recognized in discontinued operations. During 2017, BMS failed to meet the necessary revenue targets and the contingent consideration receivable was written-off.

Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2018-15, *Intangibles – Goodwill and Other – Internal-Use Software* (Subtopic 350-40), which amends ASU No. 2015-05, *Customers Accounting for Fees in a Cloud Computing Agreement*, to help entities evaluate the accounting for fees paid by a customer in a cloud computing arrangement (hosting arrangement) by providing guidance for determining when the arrangement includes a software license. The most significant change will align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software and hosting arrangements that include an internal-use software license. Accordingly, the amendments in ASU 2018-15 require an entity in a hosting arrangement that is a service contract to follow the guidance in Subtopic 350-40 to determine which implementation costs to capitalize as an asset related to the service contract and which costs to expense. The amendments in ASU 2018-15 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019, although early adoption is permitted, including adoption in any interim period and the amendments can be applied either retrospectively or prospectively. Cohu adopted ASU 2018-15 in the third quarter of 2018 prospectively for all implementation costs incurred related to our global cloud computing systems and capitalized \$1.5 million as of September 29, 2018. These amounts are recorded as other current (\$0.3 million) and non-current (\$1.2 million) assets in our condensed consolidated balance sheet.

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In March 2017, the FASB issued ASU No. 2017-07, *Compensation – Retirement Benefits (Topic 715) – Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*, which provides additional guidance on the presentation of net periodic pension and postretirement benefit costs in the income statement and on the components eligible for capitalization. The amendments in this guidance require that an employer report the service cost component of the net periodic benefit costs in the same income statement line item as other compensation costs arising from services rendered by employees during the period. The non-service-cost components of net periodic benefit costs are to be presented in the income statement separately from the service cost components and outside a subtotal of income from operations. The guidance also allows for the capitalization of the service cost components, when applicable (i.e., as a cost of internally manufactured inventory or a self-constructed asset). The guidance is effective for annual periods beginning after December 15, 2017, including interim periods within those annual periods. The amendments in this guidance are to be applied retrospectively. The adoption of ASU 2017-07 did not have a material impact on our condensed consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-01, *Clarifying the Definition of a Business*. It revises the definition of a business and provides a framework to evaluate when an input and a substantive process are present in an acquisition to be considered a business combination. This guidance is effective for annual periods beginning after December 15, 2017. The adoption of ASU 2017-01 did not have a material impact on our condensed consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, *Restricted Cash*. It requires that amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. This guidance is effective for interim and annual reporting periods beginning after December 15, 2017. The adoption of ASU 2016-18 did not have a material impact on our condensed consolidated financial statements.

In October 2016, the FASB issued ASU 2016-16, *Accounting for Income Taxes: Intra-Entity Asset Transfers of Assets Other than Inventory*. ASU 2016-16 changes the timing of income tax recognition for an intercompany sale of assets excluding inventory. ASU 2016-16 requires the seller's tax effects and the buyer's deferred taxes to be recognized immediately upon the sale instead of deferring accounting for the income tax implications until the assets are sold to a third party or recovered through use. ASU 2016-16 is effective for fiscal years beginning after December 15, 2017 including interim periods within the year of adoption. The adoption of ASU 2016-16 did not have a material impact on our condensed consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, *Classification of Certain Cash Receipts and Cash Payments*. It provides guidance on eight specific cash flow issues with the objective of reducing the existing diversity in practice in how they are classified in the statement of cash flows. This guidance is effective for interim and annual reporting periods beginning after December 15, 2017. Early adoption is permitted, provided that all of the amendments are adopted in the same period. The adoption of ASU 2016-15 did not have a material impact on our condensed consolidated financial statements.

Recently Issued Accounting Pronouncements

In August 2018, the FASB issued ASU 2018-14, *Disclosure Framework - Changes to the Disclosure Requirements for Defined Benefit Plans*, which improves defined benefit disclosure requirements by removing disclosures that are not cost beneficial, clarifying disclosures' specific requirements and adding relevant disclosure requirements. This ASU is effective for fiscal years ending after December 15, 2020 and early adoption is permitted. The amendments in this ASU are required to be applied on a retrospective basis to all periods presented. We are currently assessing and have not yet determined the impact that the adoption of ASU 2018-14 will have on the condensed consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, *Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement*, which improves fair value disclosure requirements by removing disclosures that are not cost beneficial, clarifying disclosures' specific requirements and adding relevant disclosure requirements. This ASU is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted and an entity can choose to early adopt any removed or modified disclosures upon issuance of this ASU and delay adoption of the additional disclosures until their effective date. We are currently assessing and have not yet determined the impact that the adoption of ASU 2018-13 will have on the condensed consolidated financial statements.

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In February 2018, the FASB issued ASU 2018-02, *Income Statement-Reporting Comprehensive Income* to give companies the option to reclassify the income tax effects on items within accumulated other comprehensive income resulting from U.S. tax reform to retained earnings. ASU 2018-02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those years. Early adoption is permitted. We are currently assessing and have not yet determined the impact ASU 2018-02 may have on our condensed consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Simplifying the Test for Goodwill Impairment*. It eliminates Step 2 from the goodwill impairment test and requires an entity to recognize an impairment charge for the amount by which the carrying amount of goodwill exceeds the reporting unit's fair value, not to exceed the carrying amount of goodwill. This guidance is effective for annual and any interim impairment tests in fiscal years beginning after December 15, 2019. We do not expect this guidance to have any impact on our condensed consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. This ASU requires lessees to record a right of use asset and a liability for virtually all leases. This guidance is effective for interim and annual reporting periods beginning after December 15, 2018. We have developed a transition plan and continue to evaluate the impact that the adoption of ASU 2016-02 will have on the consolidated financial statements.

During the second quarter of 2018, we started analyzing the population of leases and have identified that most of our leases fall into one of four categories: real estate, machinery, office equipment, and vehicles. Real estate agreements represent a majority of our rent expense and vary based on various factors negotiated by the landlord; machinery agreements are related to the use of factory machinery; and office equipment and vehicle leases typically utilize standard master leasing contracts that have similar terms. During the first nine months of 2018, we began the process of implementing changes to our systems and discussing changes to future processes and controls to prepare the transition accounting. Total assets and total liabilities will increase significantly in the period the ASU is adopted. In July 2018, the FASB issued ASU 2018-10, *Codification Improvements to Topic 842, Leases*. ASU 2018-10 includes certain clarifications to address potential narrow-scope implementation issues which we are incorporating into our assessment and adoption of ASU 2016-02. Additionally, in July 2018, the FASB issued ASU 2018-11, *Targeted Improvements to Topic 842, Leases*. ASU 2018-11 which provides an additional transition method to adopt ASU 2016-02 identified as comparative reporting at adoption. We expect to use this new transition approach and the comparative periods presented in our financial statements will continue to be reported in accordance with ASC 840, *Leases*. We anticipate that we will elect the package of practical expedients allowed in the standard, which among other things, allows us to carry forward our historical lease classification. We also anticipate that we will make an accounting policy election to use the practical expedient allowed in the standard to not separate lease and non-lease components when calculating the lease liability under ASU 2016-02.

2. Business Acquisitions, Goodwill and Purchased Intangible Assets

Kita

On January 4, 2017, we completed the acquisition of all the outstanding share capital of Kita Manufacturing Co., LTD. and Kita USA, Inc. (together "Kita") (the "Acquisition"). Kita, headquartered in Osaka, Japan, and with operations in Attleboro, Massachusetts and Kyoto, Japan, designs, manufactures and sells spring probe pins used in final test contactors, probe cards, PCB test boards and connectors sold to customers worldwide. The acquisition of Kita was a strategic transaction to expand our total available market, extend our market leadership and broaden our product offerings. In connection with the Acquisition we incurred acquisition related costs, which were expensed to selling, general and administrative that totaled \$1.0 million during the nine months ended September 30, 2017. No acquisition related costs were incurred during the nine months ended September 29, 2018.

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The Acquisition has been accounted for in conformity with FASB Accounting Standards Codification 805, *Business Combinations*. The purchase price for Kita was funded primarily by cash reserves and consisted of the following (*in thousands*):

Cash paid to Kita shareholders	\$ 15,000
Fair value of contingent consideration	823
Total purchase price	\$ 15,823

The contingent consideration represents the estimated fair value of future payments totaling up to \$3.0 million we would be required to make as a result of Kita achieving annual revenue and EBITDA targets in 2017 and 2018 as specified in the purchase agreement for the Acquisition. The fair value of the contingent consideration recognized on the acquisition date and at September 29, 2018 was estimated by using the Monte Carlo simulation model. Adjustments to the fair value of contingent consideration are reflected in selling, general, and administrative expense in our condensed consolidated statements of income. The contingent consideration payable has been classified as level 3 in the fair value hierarchy. See Note 3 “Financial Instruments Measured at Fair Value” for additional information on the three-tier fair value hierarchy. The fair value of the contingent consideration is recorded in our condensed consolidated balance sheets in current other accrued liabilities.

The following table presents the changes in fair value of contingent consideration during the year ended December 30, 2017, and the nine-month period ended September 29, 2018 (*in thousands*):

	Fair Value of Contingent Consideration
Balance, December 31, 2016	\$ -
Fair value of consideration at acquisition date	823
Mark-to-market adjustments charged to expense	1,423
Impact of currency exchange	7
Balance, December 30, 2017	2,253
Mark-to-market adjustments charged to expense	657
Settlement of contingent consideration	(1,500)
Impact of currency exchange	60
Balance, September 29, 2018	<u>\$ 1,470</u>

The Acquisition was nontaxable to Cohu and certain of the assets acquired, including goodwill and intangibles, will not be deductible for tax purposes. The acquired assets and liabilities of Kita were recorded at their respective fair values including an amount for goodwill which represented the difference between the Acquisition consideration and the fair value of the identifiable net assets and was allocated to our ITS operating segment.

Goodwill and Intangible Assets

Changes in the carrying value of goodwill during the year ended December 30, 2017, and the nine-month period ended September 29, 2018 were as follows (*in thousands*):

	Goodwill
Balance, December 31, 2016	\$ 58,849
Additions, net	2,654
Impact of currency exchange	4,110
Balance, December 30, 2017	65,613
Impact of currency exchange	(1,034)
Balance, September 29, 2018	<u>\$ 64,579</u>

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Purchased intangible assets, subject to amortization are as follows (*in thousands*):

	September 29, 2018			December 30, 2017	
	Gross Carrying Amount	Accum. Amort.	Remaining Weighted Average Amort Period (in years)	Gross Carrying Amount	Accum. Amort.
Developed technology	\$ 20,632	\$ 14,468	2.7	\$ 20,780	\$ 12,623
Customer relationships	7,877	5,572	2.3	7,934	4,838
Trade names	6,088	1,301	11.5	6,185	972
Covenant not-to-compete	310	54	8.3	313	31
Total intangible assets	\$ 34,907	\$ 21,395		\$ 35,212	\$ 18,464

Amortization expense related to intangible assets was approximately \$1.0 million in the third quarter of fiscal 2018 and \$3.1 million in the first nine months of fiscal 2018. Amortization expense related to intangible assets was approximately \$1.1 million in the third quarter of fiscal 2017 and \$3.2 million in the first nine months of fiscal 2017. Changes in the carrying values of these intangible assets are a result of the impact of fluctuations in currency exchange rates.

3. Financial Instruments Measured at Fair Value

Our cash, cash equivalents, and short-term investments consisted primarily of cash and other investment grade securities. We do not hold investment securities for trading purposes. All short-term investments are classified as available-for-sale and recorded at fair value. Investment securities are exposed to market risk due to changes in interest rates and credit risk and we monitor credit risk and attempt to mitigate exposure by making high-quality investments and through investment diversification.

Gains and losses on investments are calculated using the specific-identification method and are recognized during the period in which the investment is sold or when an investment experiences an other-than-temporary decline in value. Factors that could indicate an impairment exists include, but are not limited to: earnings performance, changes in credit rating or adverse changes in the regulatory or economic environment of the asset. Gross realized gains and losses on sales of short-term investments are included in interest income. Realized gains and losses for the periods presented were not significant.

Investments that we have classified as short-term, by security type, are as follows (*in thousands*):

	September 29, 2018			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses ⁽¹⁾	Estimated Fair Value
Foreign government security	\$ 549	\$ -	\$ -	\$ 549

	December 30, 2017			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses ⁽¹⁾	Estimated Fair Value
Corporate debt securities ⁽²⁾	\$ 12,784	\$ 1	\$ 6	\$ 12,779
U.S. treasury securities	7,935	-	4	7,931
Foreign government security	619	-	-	619
	\$ 21,338	\$ 1	\$ 10	\$ 21,329

(1) As of September 29, 2018, there were no investments in our portfolio in a loss position. As of December 30, 2017, the cost and fair value of investments with loss positions were approximately \$13.2 million. We evaluated the nature of these investments, credit worthiness of the issuer and the duration of these impairments to determine if an other-than-temporary decline in fair value had occurred and concluded that these losses were temporary and we have the ability and intent to hold these investments to maturity.

(2) Corporate debt securities include investments in financial and other corporate institutions. No single issuer represents a significant portion of the total corporate debt securities portfolio.

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Effective maturities of short-term investments are as follows (*in thousands*):

	September 29, 2018		December 30, 2017	
	Amortized Cost	Estimated Fair Value	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ -	\$ -	\$ 21,338	\$ 21,329
Due after one year through three years	549	549	-	-
	<u>\$ 549</u>	<u>\$ 549</u>	<u>\$ 21,338</u>	<u>\$ 21,329</u>

Accounting standards pertaining to fair value measurements establish a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. When available, we use quoted market prices to determine the fair value of our investments, and they are included in Level 1. When quoted market prices are unobservable, we use quotes from independent pricing vendors based on recent trading activity and other relevant information, and they are included in Level 2.

The following table summarizes, by major security type, our financial instruments that are measured at fair value on a recurring basis and are categorized using the fair value hierarchy (*in thousands*):

	Fair value measurements at September 29, 2018 using:			
	Level 1	Level 2	Level 3	Total estimated fair value
Cash	\$ 141,075	\$ -	\$ -	\$ 141,075
Money market funds	-	29,620	-	29,620
Foreign government security	-	549	-	549
	<u>\$ 141,075</u>	<u>\$ 30,169</u>	<u>\$ -</u>	<u>\$ 171,244</u>

	Fair value measurements at December 30, 2017 using:			
	Level 1	Level 2	Level 3	Total estimated fair value
Cash	\$ 100,850	\$ -	\$ -	\$ 100,850
Corporate debt securities	-	22,014	-	22,014
U.S. treasury securities	-	8,431	-	8,431
Government-sponsored enterprise securities	-	1,496	-	1,496
Money market funds	-	22,205	-	22,205
Foreign government security	-	619	-	619
	<u>\$ 100,850</u>	<u>\$ 54,765</u>	<u>\$ -</u>	<u>\$ 155,615</u>

4. Employee Stock Benefit Plans

Our 2005 Equity Incentive Plan (the "2005 Plan") is a broad-based, long-term retention program intended to attract, motivate, and retain talented employees as well as align stockholder and employee interests. Awards that may be granted under the program include, but are not limited to, non-qualified and incentive stock options, restricted stock units, and performance stock units. We settle employee stock option exercises, employee stock purchase plan purchases, and the vesting of restricted stock units, and performance stock units with newly issued common shares. At September 29, 2018, there were 1,204,761 shares available for future equity grants under the 2005 Equity Incentive Plan.

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Stock Options

Stock options may be granted to employees, consultants and non-employee directors to purchase a fixed number of shares of our common stock. The exercise prices of options granted are at least equal to the fair market value of our common stock on the dates of grant and options vest and become exercisable in annual increments that range from one to four years from the date of grant. Stock options granted under the 2015 Plan have a maximum contractual term of ten years. In the first nine months of fiscal 2018 we did not grant any stock options and we issued 64,300 shares of our common stock on the exercise of options that were granted previously.

At September 29, 2018, we had 407,926 stock options exercisable and outstanding. These options had a weighted-average exercise price of \$10.24 per share, an aggregate intrinsic value of approximately \$6.1 million and the weighted average remaining contractual term was approximately 3.9 years.

Restricted Stock Units

We grant restricted stock units (“RSUs”) to certain employees, consultants and directors. RSUs vest in annual increments that range from one to four years from the date of grant. Prior to vesting, RSUs do not have dividend equivalent rights, do not have voting rights and the shares underlying the RSUs are not considered issued and outstanding. New shares of our common stock will be issued on the date the RSUs vest net of the minimum statutory tax withholding requirements to be paid by us on behalf of our employees. As a result, the actual number of shares issued will be fewer than the actual number of RSUs outstanding at September 29, 2018.

In the first nine months of fiscal 2018 we awarded 286,709 RSUs and we issued 432,031 shares of our common stock on vesting of previously granted awards. At September 29, 2018, we had 800,865 RSUs outstanding with an aggregate intrinsic value of approximately \$20.1 million and the weighted average remaining vesting period was approximately 1.3 years.

Performance Stock Units

We also grant performance stock units (“PSUs”) to senior executives as a part of our long-term equity compensation program. The number of shares of common stock that will ultimately be issued to settle PSUs granted in 2018, 2017 and 2016 ranges from 25% to 200% of the number granted and is determined based on certain performance criteria over a three-year measurement period. For PSUs granted in 2015, the number of shares of common stock issued to settle PSUs granted is determined based on a two-year measurement period. The performance criteria for the PSUs are based on a combination of our annualized Total Shareholder Return (“TSR”) for the performance period and the relative performance of our TSR compared with the annualized TSR of certain peer companies for the performance period. PSUs granted in 2018, 2017 and 2016 vest 100% on the third anniversary of their grant and PSUs granted in 2015 vest 50% on the second and third anniversary of their grant, respectively.

We estimated the fair value of the PSUs using a Monte Carlo simulation model on the date of grant. Compensation expense is recognized ratably over the derived service period. New shares of our common stock will be issued on the date the PSUs vest net of the minimum statutory tax withholding requirements to be paid by us on behalf of our employees. As a result, the actual number of shares issued will be fewer than the actual number outstanding at September 29, 2018.

In the first nine months of fiscal 2018, we awarded 88,418 PSUs and we issued 40,640 shares of our common stock on vesting of previously granted awards. At September 29, 2018, we had 339,771 PSUs outstanding with an aggregate intrinsic value of approximately \$8.5 million and the weighted average remaining vesting period was approximately 1.3 years.

Employee Stock Purchase Plan

The Cohu, Inc. 1997 Employee Stock Purchase Plan (“the Plan”) provides for the issuance of shares of our common stock. Under the Plan, eligible employees may purchase shares of Cohu common stock through payroll deductions at a price equal to 85 percent of the lower of the fair market value of Cohu common stock at the beginning or end of each 6-month purchase period, subject to certain limits. During the first nine months of fiscal 2018, 41,694 shares of our common stock were sold to our employees under the Plan leaving 559,646 shares available for future issuance.

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5. Income Taxes

For the three and nine months ended September 29, 2018, we used the estimated effective tax rate (“ETR”) expected to be applicable for the full fiscal year in computing our tax provision. The ETR on income from continuing operations for the three months ended September 29, 2018 and September 30, 2017, was 32.4% and 17.3%, respectively, and 21.9% and 14.0% for the nine months ended September 29, 2018 and September 30, 2017, respectively. Our ETR for the three and nine months ended September 29, 2018 was impacted by approximately \$0.6 million of foreign withholding tax that we accrued in the event we repatriate funds from certain of our foreign subsidiaries. The tax provision on income from continuing operations in 2018 and 2017 differs from the U.S. federal statutory rate primarily due to the lack of a benefit on our domestic losses as a result of our valuation allowance on deferred tax assets, foreign income taxed at different rates, changes in our deferred tax asset valuation allowance, state taxes and interest related to unrecognized tax benefits.

We have not adjusted our provisional tax estimates related to the U.S. Tax Cuts and Jobs Act (“Tax Act”) that we recorded in the fourth quarter of 2017. Our accounting remains incomplete as of September 29, 2018 and will be refined and, if necessary, adjusted throughout 2018 as required by SEC Staff Accounting Bulletin No. 118 (“SAB 118”) based on our ongoing analysis of data and tax positions along with new guidance from regulators and interpretations of the law.

Due to the complexity of the Tax Act’s global intangible low-taxed income (“GILTI”) tax rules, we are continuing to evaluate this provision and the application of ASC Topic 740, Income Taxes, (“ASC 740”). Under GAAP, we are allowed to make an accounting policy election to either (i) treat taxes due on future U.S. inclusions in taxable income related to GILTI as a current-period expense when incurred or (ii) factor such amounts into a company’s measurement of its deferred taxes. We have not yet decided on an accounting policy with respect to the new GILTI tax rules. Our net tax provision for the quarter and nine months ended September 29, 2018 did not include any incremental amount of GILTI tax as we expect to utilize existing net operating losses and tax credits, that have a full valuation allowance, to offset the impact of the GILTI inclusion.

Our German subsidiaries income tax returns for 2012 to 2016 are currently under routine examination by tax authorities in Germany. We believe our financial statement accruals for income taxes are appropriate.

Other than for foreign currency exchange rate changes and the Kita acquisition, there was no material change to our unrecognized tax benefits and related accrued interest and penalties during the three- and nine-month periods ended September 29, 2018 and September 30, 2017.

6. Contingencies

From time-to-time we are involved in various legal proceedings, examinations by various tax authorities and claims that have arisen in the ordinary course of our business. The outcome of any litigation is inherently uncertain. While there can be no assurance, we do not believe at the present time that the resolution of these matters will have a material adverse effect on our assets, financial position or results of operations.

7. Guarantees and Other Obligations

Product Warranty

Our products are generally sold with warranty periods that range from 12 to 36 months following sale or acceptance. The product warranty promises customers that delivered products are as specified in the contract (an “assurance-type warranty”). Therefore, we account for such product warranties under ASC 460, and not as a separate performance obligation. Parts and labor are covered under the terms of the warranty agreement. The warranty provision is based on historical and projected experience by product and configuration.

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Changes in accrued warranty were as follows (*in thousands*):

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Balance at beginning of period	\$ 4,948	\$ 5,070	\$ 4,848	\$ 4,350
Warranty expense accruals	1,600	1,720	4,988	5,446
Warranty payments	(1,946)	(1,773)	(5,234)	(4,829)
Warranty liability assumed	-	-	-	50
Balance at end of period	<u>\$ 4,602</u>	<u>\$ 5,017</u>	<u>\$ 4,602</u>	<u>\$ 5,017</u>

Accrued warranty amounts expected to be incurred after one year are included in noncurrent other accrued liabilities in the condensed consolidated balance sheet. These amounts total \$0.2 million at September 29, 2018, and \$0.6 million at December 30, 2017.

Borrowings

Revolving Lines of Credit

We have credit agreements with multiple financial institutions in Japan under which they administer lines of credit on behalf of our wholly owned Kita subsidiary. The credit facilities renew monthly and provide Kita with access to working capital totaling up to \$6.2 million and at September 29, 2018, total borrowings outstanding under the revolving lines of credit were \$3.1 million. As these credit facility agreements renew monthly, they have been included in short-term borrowings in our condensed consolidated balance sheet. The revolving lines of credit are denominated in Japanese Yen and, as a result, amounts disclosed herein will fluctuate because of changes in currency exchange rates.

Term Loans

We have long-term term loans from a series of Japanese financial institutions related to the expansion of Kita's facility in Osaka, Japan. The loans are collateralized by the facility and land, carry interest rates ranging from 0.05% to 0.45%, and expire at various dates through 2034. At September 29, 2018 the aggregate amount outstanding was \$4.8 million and \$1.0 million of the term loans have been included in current installments of long-term debt in our condensed consolidated balance sheet. The fair value of our debt approximates the carrying value at September 29, 2018. The term loans are denominated in Japanese Yen and, as a result, amounts disclosed herein will fluctuate because of changes in currency exchange rates.

Lines of Credit

We have one available line of credit, which provides one of our wholly owned subsidiaries with borrowings up to 2.0 million Swiss Francs. At September 29, 2018 and December 30, 2017, no amounts were outstanding under the line of credit.

8. Acquisition of Xcerra

Completion of the Acquisition of Xcerra

Pursuant to an Agreement and Plan of Merger (the "Merger Agreement") dated as of May 7, 2018 among Cohu, Inc., a Delaware corporation ("Cohu"), Xcerra Corporation, a Massachusetts corporation ("Xcerra"), and Xavier Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Cohu ("Merger Sub"), Merger Sub merged with and into Xcerra (the "Merger"), with Xcerra surviving such merger as a wholly owned subsidiary of Cohu. The Merger was effective on October 1, 2018 (the "Effective Time"). As described above, as a result of the Merger, Xcerra became a wholly owned subsidiary of Cohu. The Merger is a taxable transaction for U.S. federal income tax purposes. Cohu incurred \$5.2 million of acquisition related costs for the Xcerra transaction in the first nine months of 2018.

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At the Effective Time, each share of Xcerra's common stock, par value \$0.05 per share ("Xcerra Common Stock"), issued and outstanding immediately prior to the Effective Time other than dissenting shares and shares held by Cohu, Merger Sub, Xcerra or any direct or indirect wholly owned subsidiary of Cohu or Xcerra was converted into the right to receive (i) \$9.00 in cash, without interest, (the "Cash Consideration") and (ii) 0.2109 of a validly issued, fully paid and nonassessable share of common stock of Cohu, par value \$1.00 per share ("Cohu Common Stock"), (the "Stock Consideration" and, together with the Cash Consideration, the "Merger Consideration"). No fractional shares of Cohu Common Stock were issued in the Merger, and Xcerra's former stockholders received an amount of cash in lieu of fractional shares, if any, of Cohu Common Stock calculated in accordance with Section 2.11 of the Merger Agreement. The sources of cash funds used in connection with the Merger included cash and cash equivalents on hand with Cohu and Xcerra and the proceeds from the Credit Facility, as defined below.

On October 1, 2018, approximately \$70.5 million of Cohu's cash and short-term investments were used to fund the Merger with Xcerra.

Consideration Transferred

On October 1, 2018, the total consideration transferred to former Xcerra shareholders consisted of 11,776,315 shares of Cohu common stock and \$502.5 million in cash. Additionally, unvested RSUs held by employees of Xcerra were assumed and converted into approximately 530,000 Cohu RSUs that were awarded as replacement awards as a result of the completed Merger. At the Effective Time, Xcerra shares ceased to be traded on the NASDAQ Global Market effective, October 1, 2018.

Secured Term Loan Facility

To provide the majority of the Cash Consideration for the Merger, on October 1, 2018, Cohu entered into a Credit and Guaranty Agreement (the "Credit Agreement") with Cohu, as borrower, certain of its subsidiaries as guarantor subsidiaries, the financial institutions party thereto from time to time as lenders, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent, providing for a \$350.0 million secured term loan facility (the "Credit Facility"). Cohu's obligations under the Credit Facility are (and will be) guaranteed by certain of its existing and subsequently acquired or formed material wholly-owned domestic subsidiaries, (subject to certain exceptions and exclusions) under the Credit Facility (the "Guarantors"). The Credit Facility is secured by a security interest in substantially all existing and after-acquired assets and property (subject to certain exceptions and exclusions) of Cohu and the Guarantors.

On October 1, 2018, Cohu borrowed the entire amount of the Credit Facility. The proceeds of the Credit Facility were used, along with cash and cash equivalents on hand of Cohu and Xcerra, to pay the Cash Consideration and to pay certain fees and expenses related to the Merger and the Credit Agreement.

Loans under the Credit Facility amortize in equal quarterly installments equal to 0.25% of the original principal amount thereof, with the balance payable at maturity. Subject to certain exceptions and thresholds, the Credit Facility will also require mandatory prepayments in connection with (i) excess cash flow, (ii) non-ordinary course asset sales and other dispositions and (iii) the issuance of certain debt obligations, among other things. Cohu has the right to prepay loans under the Credit Agreement in whole or in part at any time, without premium or penalty other than a 1.00% prepayment fee in connection with certain "repricing" transactions on or before the sixth month anniversary of the closing date of the Credit Agreement. Amounts repaid in respect of loans under the Credit Facility may not be reborrowed. All outstanding principal and interest in respect of the Credit Facility must be repaid on or before October 1, 2025.

Loans under the Credit Facility bear interest at a floating annual rate equal to the LIBOR plus a margin of 3.00%. While a payment or bankruptcy event of default exists, Cohu is obligated to pay a per annum default rate of interest of 2.00% in excess of the interest rate otherwise payable with respect to the overdue principal amount of any loans outstanding and overdue interest payments and other overdue fees and amounts.

The Credit Agreement has incremental facility capacity in an aggregate amount of the greater of \$145 million and 100% of consolidated EBITDA, with an additional \$35 million available for revolving facilities, subject to certain conditions. Once Cohu's first lien net leverage ratio is below a certain threshold, incremental facilities may be utilized in an unlimited amount.

The Credit Agreement contains certain customary affirmative and negative covenants, including covenants that limit the ability of Cohu and its subsidiaries to, among other things, grant liens, incur debt, dispose of assets, make loans and investments, make acquisitions, make certain restricted payments, merge or consolidate or change their business, in each case subject to customary exceptions for a credit facility of this size and type.

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The Credit Agreement includes customary events of default that include, among other things, non-payment of principal, interest or fees, inaccuracy of representations and warranties, breach of covenants, cross-default to certain material indebtedness, bankruptcy and insolvency and change of control. Upon the occurrence and during the continuance of an event of default, the lenders may declare all outstanding principal and accrued but unpaid interest under the Credit Agreement immediately due and payable and may exercise the other rights and remedies provided under the Credit Agreement and related loan documents.

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

This Form 10-Q contains certain forward-looking statements including expectations of market conditions, challenges and plans, within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and is subject to the Safe Harbor provisions created by that statute. Such forward-looking statements are based on management's current expectations and beliefs, including estimates and projections about our business and include, but are not limited to, statements concerning financial position, business strategy, and plans or objectives for future operations. Forward-looking statements are not guarantees of future performance, and are subject to certain risks, uncertainties, and assumptions that are difficult to predict and may cause actual results to differ materially from management's current expectations. Such risks and uncertainties include those set forth in this Quarterly Report on Form 10-Q and our 2017 Annual Report on Form 10-K under the heading "Item 1A. Risk Factors". The forward-looking statements in this report speak only as of the time they are made, and do not necessarily reflect management's outlook at any other point in time. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events, or for any other reason, however, readers should carefully review the risk factors set forth in other reports or documents we file from time to time with the SEC after the date of this Quarterly Report.

OVERVIEW

Cohu is a leading supplier of semiconductor test and inspection handlers, micro-electro mechanical system (MEMS) test modules, test contactors and thermal subsystems used by global semiconductor manufacturers and test subcontractors. Our business is significantly dependent on capital expenditures by semiconductor manufacturers and test subcontractors, which in turn is dependent on the current and anticipated market demand for semiconductors that is subject to seasonal trends. We expect that the semiconductor equipment industry will continue to be seasonal in part because consumer electronics, automotive and mobility, the principal end markets for integrated circuits, are highly dynamic industries and demand has traditionally fluctuated with global consumer spending. In light of these conditions, our results can vary significantly year-over-year.

During the first nine months of 2018, our net sales increased 4.7% from the corresponding period of 2017. This increase has been driven by improved conditions in automotive, industrial and IoT (Internet of Things) semiconductor markets and capturing new customers for semiconductor test handlers and test contactors, along with growth in sales of semiconductor inspection equipment. Cohu's sales in the third quarter of 2018 decreased 13.6% from the second quarter of 2018 as a result of softening in the broader market for semiconductors primarily those used in mobility applications. We continue to see momentum in the automotive and industrial semiconductor markets and are optimistic about the prospects for our business due to the increasing ubiquity of semiconductors, the diminishing impact of parallel test, increasing semiconductor complexity and increasing quality demands from semiconductor customers. We are continuing our investment in new products and are focused on growing sales in our semiconductor test handling and test contactor businesses and expanding into the semiconductor inspection market.

Xcerra Acquisition

On October 1, 2018, Cohu completed the acquisition of Xcerra Corporation, and Xcerra became a wholly owned subsidiary of Cohu (the "Merger"). In connection with the Merger, Cohu and certain of its subsidiaries entered into a Credit and Guaranty Agreement with Deutsche Bank AG New York Branch, and other lenders that may from time to time be a party to the Credit and Guaranty Agreement. Pursuant to the Credit and Guaranty Agreement, the lenders have provided Cohu with a senior secured term loan facility of \$350 million to finance a portion of the cash used to complete the acquisition and to pay related costs and expenses. See Note 8, "Acquisition of Xcerra", located in Part I, Item 1 of this Form 10-Q for further information.

Unless otherwise indicated all amounts presented herein pertain only to Cohu, Inc. and exclude the impact of Xcerra.

Application of Critical Accounting Estimates and Policies

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. We base our estimates on historical experience, forecasts and on various other assumptions that are believed to be reasonable under the circumstances, however actual results may differ from those estimates under different assumptions or conditions. The methods, estimates and judgments we use in applying our accounting policies have a significant impact on the results we report in our financial statements. Some of our accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain.

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Our critical accounting estimates that we believe are the most important to an investor's understanding of our financial results and condition and that require complex management judgment include:

- revenue recognition, including the deferral of revenue on sales to customers, which impacts our results of operations;
- estimation of valuation allowances and accrued liabilities, specifically product warranty, inventory reserves and allowance for bad debts, which impact gross margin or operating expenses;
- the recognition and measurement of current and deferred income tax assets and liabilities, unrecognized tax benefits and the valuation allowance on deferred tax assets, which impact our tax provision;
- the assessment of recoverability of long-lived assets including goodwill and other intangible assets, which primarily impacts gross margin or operating expenses if we are required to record impairments of assets or accelerate their depreciation or amortization; and
- the valuation and recognition of share-based compensation, which impacts gross margin, research and development expense, and selling, general and administrative expense.

Below, we discuss these policies further, as well as the estimates and judgments involved. We also have other policies that we consider key accounting policies; however, these policies typically do not require us to make estimates or judgments that are difficult or subjective.

Revenue Recognition: Our net sales are derived from the sale of products and services and are adjusted for estimated returns and allowances, which historically have been insignificant. We recognize revenue when the obligations under the terms of a contract with our customers are satisfied; generally, this occurs with the transfer of control of our systems, non-system products or services. In circumstances where control is not transferred until destination or acceptance, we defer revenue recognition until such events occur. Revenue for established products that have previously satisfied a customer's acceptance requirements is generally recognized upon shipment. In cases where a prior history of customer acceptance cannot be demonstrated or from sales where customer payment dates are not determinable and in the case of new products, revenue and cost of sales are deferred until customer acceptance has been received. Our post-shipment obligations typically include installation and standard warranties. The estimated fair value of installation related revenue is recognized in the period the installation is performed. Service revenue is recognized over time as the transfer of control is completed for the related contract or upon completion of the services if they are short-term in nature. Spares, contactor and kit revenue is generally recognized upon shipment. Certain of our equipment sales have multiple performance obligations. These arrangements involve the delivery or performance of multiple performance obligations, and transfer of control of performance obligations may occur at different points in time or over different periods of time. For arrangements containing multiple performance obligations, the revenue relating to the undelivered performance obligation is deferred using the relative standalone selling price method utilizing estimated sales prices until satisfaction of the deferred performance obligation. Unsatisfied performance obligations primarily represent contracts for products with future delivery dates and with an original expected duration of one year or less. As allowed under ASC 606, we have opted to not disclose unsatisfied performance obligations as these contracts have original expected durations of less than one year. We generally sell our equipment with a product warranty. The product warranty provides assurance to customers that delivered products are as specified in the contract (an "assurance-type warranty"). Therefore, we account for such product warranties under ASC 460, Guarantees (ASC 460), and not as a separate performance obligation. The transaction price reflects our expectations about the consideration we will be entitled to receive from the customer and may include fixed or variable amounts. Fixed consideration primarily includes sales to customers that are known as of the end of the reporting period. Variable consideration includes sales in which the amount of consideration that we will receive is unknown as of the end of a reporting period. Such consideration primarily includes sales made to certain customers with cumulative tier volume discounts offered. Variable consideration arrangements are rare; however, when they occur, we estimate variable consideration as the expected value to which we expect to be entitled. Included in the transaction price estimate are amounts in which it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. The estimate is based on information available for projected future sales. Variable consideration that does not meet revenue recognition criteria is deferred. Accounts receivable represents our unconditional right to receive consideration from our customer. Payments terms do not exceed one year from the invoice date and therefore do not include a significant financing component. To date, there have been no material impairment losses on accounts receivable. There were no material contract assets or contract liabilities recorded on the condensed consolidated balance sheet in any of the periods presented. On shipments where sales are not recognized, gross profit is generally recorded as deferred profit in our consolidated balance sheet representing the difference between the receivable recorded and the inventory shipped.

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Accounts Receivable: We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of our customers deteriorates, resulting in an impairment of their ability to make payments, additional allowances may be required.

Inventory: The valuation of inventory requires us to estimate obsolete or excess inventory as well as inventory that is not of saleable quality. The determination of obsolete or excess inventory requires us to estimate the future demand for our products. The demand forecast is a direct input in the development of our short-term manufacturing plans. We record valuation reserves on our inventory for estimated excess and obsolete inventory and lower of cost or net realizable value concerns equal to the difference between the cost of inventory and the estimated realizable value based upon assumptions about future product demand, market conditions and product selling prices. If future product demand, market conditions or product selling prices are less than those projected by management or if continued modifications to products are required to meet specifications or other customer requirements, increases to inventory reserves may be required which would have a negative impact on our gross margin.

Income Taxes: The Tax Cuts and Jobs Act ("Tax Act") was enacted on December 22, 2017. Due to the timing of the enactment and the complexity involved in applying the provisions of the Tax Act, we have made reasonable estimates of the effects and recorded provisional amounts in our financial statements for the year ended December 30, 2017, and the three and nine months ended September 29, 2018, as provided for in SAB 118. As we collect and prepare necessary data, and interpret any additional guidance issued by the U.S. Treasury Department, the IRS or other standard-setting bodies, we may make adjustments to the provisional amounts. Those adjustments may materially impact the provision for income taxes and the effective tax rate in the period in which the adjustments are made. The accounting for the tax effects of the enactment of the Tax Act will be completed in 2018.

We estimate our liability for income taxes based on the various jurisdictions where we conduct business. This requires us to estimate our (i) current taxes; (ii) temporary differences that result from differing treatment of certain items for tax and accounting purposes and (iii) unrecognized tax benefits. Temporary differences result in deferred tax assets and liabilities that are reflected in the consolidated balance sheet. The deferred tax assets are reduced by a valuation allowance if, based upon all available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized. Establishing, reducing or increasing a valuation allowance in an accounting period generally results in an increase or decrease in tax expense in the statement of operations. We must make significant judgments to determine the provision for income taxes, deferred tax assets and liabilities, unrecognized tax benefits and any valuation allowance to be recorded against deferred tax assets. Our gross deferred tax asset balance as of September 29, 2018, was approximately \$31.6 million, with a valuation allowance of approximately \$25.1 million. Our deferred tax assets consist primarily of reserves and accruals that are not yet deductible for tax and tax credit and net operating loss carry-forwards.

Segment Information: We applied the provisions of ASC Topic 280, *Segment Reporting*, ("ASC 280"), which sets forth a management approach to segment reporting and establishes requirements to report selected segment information quarterly and to report annually entity-wide disclosures about products, major customers and the geographies in which the entity holds material assets and reports revenue. An operating segment is defined as a component that engages in business activities whose operating results are reviewed by the chief operating decision maker and for which discrete financial information is available. Based on the provisions of ASC 280, we have determined that our identified operating segments qualify for aggregation under ASC 280 due to similarities in their customers, their economic characteristics, and the nature of products and services provided. As a result, we report in one segment, semiconductor equipment.

Goodwill, Other Intangible Assets and Long-lived Assets: We evaluate goodwill for impairment annually and when an event occurs or circumstances change that indicate that the carrying value may not be recoverable. We test goodwill for impairment by first comparing the book value of net assets to the fair value of the reporting units. If the fair value is determined to be less than the book value, a second step is performed to compute the amount of impairment as the difference between the estimated fair value of goodwill and the carrying value. We estimated the fair values of our reporting units primarily using the income approach valuation methodology that includes the discounted cash flow method, taking into consideration the market approach and certain market multiples as a validation of the values derived using the discounted cash flow methodology. Forecasts of future cash flows are based on our best estimate of future net sales and operating expenses, based primarily on customer forecasts, industry trade organization data and general economic conditions.

We conduct our annual impairment test as of October 1st of each year, and have determined there was no impairment as of October 1, 2017, as we determined that the estimated fair values of our reporting units exceeded their carrying values on that date. Other events and changes in circumstances may also require goodwill to be tested for impairment between annual measurement dates. As of September 29, 2018, we do not believe that circumstances have occurred that indicate impairment of our goodwill is more-likely-than-not. In the event we determine that an interim goodwill impairment review is required, in a future period, the review may result in an impairment charge, which would have a negative impact on our results of operations.

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Long-lived assets, other than goodwill, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets might not be recoverable. Conditions that would necessitate an impairment assessment include a significant decline in the observable market value of an asset, a significant change in the extent or manner in which an asset is used, or any other significant adverse change that would indicate that the carrying amount of an asset or group of assets may not be recoverable. For long-lived assets, impairment losses are only recorded if the asset's carrying amount is not recoverable through its undiscounted, probability-weighted future cash flows. We measure the impairment loss based on the difference between the carrying amount and estimated fair value.

Warranty: We provide for the estimated costs of product warranties in the period sales are recognized. Our warranty obligation estimates are affected by historical product shipment levels, product performance and material and labor costs incurred in correcting product performance problems. Should product performance, material usage or labor repair costs differ from our estimates, revisions to the estimated warranty liability would be required.

Contingencies: We are subject to certain contingencies that arise in the ordinary course of our businesses which require us to assess the likelihood that future events will confirm the existence of a loss or an impairment of an asset. If a loss or asset impairment is probable and the amount of the loss or impairment is reasonably estimable, we accrue a charge to operations in the period such conditions become known.

Share-based Compensation: Share-based compensation expense related to restricted stock unit awards is calculated based on the market price of our common stock on the grant date, reduced by the present value of dividends expected to be paid on our common stock prior to vesting of the restricted stock unit. Share-based compensation on performance stock units with market-based goals is calculated using a Monte Carlo simulation model on the date of the grant. Share-based compensation expense related to stock options is recorded based on the fair value of the award on its grant date, which we estimate using the Black-Scholes valuation model.

Recent Accounting Pronouncements

For a description of accounting changes and recent accounting pronouncements, including the expected dates of adoption and estimated effects, if any, on our consolidated financial statements, see "Recent Accounting Pronouncements", in Note 1 located in Part I, Item 1 of this Form 10-Q.

RESULTS OF OPERATIONS

The following table summarizes certain operating data as a percentage of net sales:

	Three Months Ended		Nine Months Ended	
	September 29, 2018	September 30, 2017	September 29, 2018	September 30, 2017
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	(60.1)	(60.6)	(58.9)	(60.4)
Gross margin	39.9	39.4	41.1	39.6
Research and development	(12.9)	(10.3)	(12.1)	(10.7)
Selling, general and administrative	(19.2)	(18.0)	(18.1)	(17.6)
Income from operations	7.8%	11.1%	10.9%	11.3%

Third Quarter of Fiscal 2018 Compared to Third Quarter of Fiscal 2017

Net Sales

Our consolidated net sales decreased 8.0% to \$86.2 million in 2018, compared to \$93.7 million in 2017. The decrease in sales in the third quarter of 2018 was primarily a result of a softening in the broader market for semiconductors primarily those used in mobility and IoT (Internet of Things) applications.

Gross Margin

Gross margin consists of net sales less cost of sales. Cost of sales consists primarily of the materials, assembly and test labor and overhead from operations. Our gross margin can fluctuate due to a number of factors, including, but not limited to, the mix and volume of products sold, product support costs, increases to inventory reserves or the sale of previously reserved inventory and utilization of manufacturing capacity. Our gross margin, as a percentage of net sales, was 39.9% in 2018 and 39.4% in 2017. Gross margin in the third quarter of 2017 included a \$0.6 million charge related to the amortization of purchase accounting inventory step-up adjustment recorded in connection with our acquisition of Kita. No amounts were expensed in 2018 as all inventory step-up amounts were amortized in 2017.

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Our gross margin can be impacted by charges to cost of sales related to excess, obsolete and lower of cost or net realizable value inventory issues. We compute the majority of our excess and obsolete inventory reserve requirements using a one-year inventory usage forecast. In both the third quarter of 2018 and 2017, we recorded charges to cost of sales of \$0.7 million for excess and obsolete inventory. While we believe our reserves for excess and obsolete inventory and lower of cost or net realizable value concerns are adequate to cover known exposures at September 29, 2018, reductions in customer forecasts or continued modifications to products, as a result of our failure to meet specifications or other customer requirements, may result in additional charges to operations that could negatively impact our gross margin in future periods.

Research and Development Expense ("R&D Expense")

R&D expense consists primarily of salaries and related costs of employees engaged in ongoing research, product design and development activities, costs of engineering materials and supplies and professional consulting expenses. R&D expense was \$11.1 million in 2018 and \$9.6 million in 2017 representing 12.9% and 10.3% of net sales, respectively. During the third quarter of 2018 new product development programs resulted in increased R&D spending on labor and materials. In the third quarter of 2017, we received \$0.7 million of cost reimbursements under a cost-sharing arrangement that reduced R&D expense. No cost reimbursements were received in 2018.

Selling, General and Administrative Expense ("SG&A Expense")

SG&A expense consists primarily of salaries and benefit costs of employees, commission expense for independent sales representatives, product promotion and costs of professional services. SG&A expense was \$16.5 million or 19.2% of net sales in 2018, compared to \$16.9 million or 18.0% in 2017. Our SG&A expense continues to be impacted by fluctuations in the Swiss Franc and Euro against the U.S. Dollar. During both the third quarter of 2018 and 2017 the U.S. Dollar slightly weakened which resulted in the recognition of foreign currency transaction loss of \$0.2 million. Our SG&A expense has fluctuated due to costs incurred related to acquisitions. In the third quarter of 2018 we incurred \$1.0 million of costs related to our pending acquisition of Xcerra. Costs incurred in the third quarter of 2017 associated with the acquisition of Kita totaled \$0.1 million. We recorded a mark-to-market adjustment charge, related to the change in the fair value of the Kita contingent consideration liability, totaling \$0.2 million and \$0.7 million in the third quarter of 2018 and 2017 respectively.

Income Taxes

For the three months ended September 29, 2018, we used the estimated effective tax rate ("ETR") expected to be applicable for the full fiscal year in computing our tax provision. The ETR on income from continuing operations for the three months ended September 29, 2018 and September 30, 2017, was 32.4% and 17.3%, respectively. Our ETR for the three months ended September 29, 2018 was impacted by approximately \$0.6 million of foreign withholding tax that we accrued in the event we repatriate funds from certain of our foreign subsidiaries. The tax provision on income from continuing operations in 2018 and 2017 differs from the U.S. federal statutory rate primarily due to the lack of a benefit on our domestic losses as a result of our valuation allowance on deferred tax assets, foreign income taxed at different rates, changes in our deferred tax asset valuation allowance, state taxes and interest related to unrecognized tax benefits.

Other than for foreign currency exchange rate changes and the Kita Acquisition, there was no material change to our unrecognized tax benefits and related accrued interest and penalties during the three-month periods ended September 29, 2018 and September 30, 2017.

Income from Continuing Operations and Net Income

As a result of the factors set forth above, our income from continuing operations and net income was \$4.8 million in 2018, compared to \$8.8 million in 2017.

First Nine Months of Fiscal 2018 Compared to First Nine Months of Fiscal 2017

Net Sales

Our consolidated net sales increased 4.7% to \$281.1 million in 2018, compared to \$268.6 million in 2017. Increased sales in the first nine months of 2018 resulted from improved conditions in automotive, industrial and IoT(Internet of Things) semiconductor markets as compared to conditions in the first nine months of 2017, and from capturing new customers for semiconductor test handlers and test contactors, along with growth in sales of semiconductor inspection equipment.

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Gross Margin

Our gross margin, as a percentage of net sales, increased to 41.1% in 2018 from 39.6% in 2017. As compared to the prior year, gross margin in the first nine months of 2018 benefitted from the increase in business volume which enabled us to better leverage our fixed costs as well as favorable product mix. Gross margin in the first nine months of 2018 benefitted from the acceptance of our new Eclipse XTA as certain costs had been previously expensed to R&D during product development. During 2017, gross margin was negatively impacted by a purchase accounting inventory step-up adjustment as our cost of sales included \$1.4 million of amortization recorded in connection with our acquisition of Kita. No amounts were expensed in 2018 as all inventory step-up amounts were amortized in 2017.

In the first nine months of fiscal 2018 and 2017 we recorded charges to cost of sales of approximately \$1.3 million and \$0.5 million for excess and obsolete inventory, respectively.

R&D Expense

R&D expense was \$33.9 million or 12.1% of net sales in 2018, compared to \$28.9 million or 10.7% in 2017. New product development programs resulted in higher R&D labor and material expense in the first nine months of 2018. Additionally, during 2017 R&D expense benefitted from \$1.0 million of cost reimbursements received under a cost-sharing arrangement that we entered with a customer in the first quarter of 2016.

SG&A Expense

SG&A expense was \$50.9 million or 18.1% of net sales in 2018, compared to \$47.4 million or 17.6% in 2017. Increased business volume in the first nine months of 2018 drove higher costs. Our SG&A expense also continues to be impacted by fluctuations in the Swiss Franc and Euro against the U.S. Dollar. During the first nine months of 2018 the U.S. Dollar strengthened which resulted in the recognition of foreign currency transaction gains of \$1.2 million. Conversely, in 2017 the U.S. Dollar weakened and, as a result, we recognized a loss of \$2.7 million. Our SG&A expense has fluctuated due to costs incurred related to acquisitions. Costs incurred specifically related to our pending Xcerra acquisition in the first nine months of 2018 totaled \$5.2 million and during 2017 we recorded \$0.3 million of costs related to the acquisition of Kita. During the first nine months of 2018 and 2017 mark-to-market adjustments related to the fair value of the Kita contingent consideration liability resulted in the expense of \$0.7 million.

Income Taxes

The ETR on income from continuing operations for the nine months ended September 29, 2018 and September 30, 2017, was 21.9% and 14.0%, respectively. Our ETR for the nine months ended September 29, 2018 was impacted by approximately \$0.6 million of foreign withholding tax that we accrued in the event we repatriate funds from certain of our foreign subsidiaries. The tax provision on income from continuing operations in 2018 and 2017 differs from the U.S. federal statutory rate primarily due to the lack of a benefit on our domestic losses as a result of our valuation allowance on deferred tax assets, foreign income taxed at different rates, changes in our deferred tax asset valuation allowance, state taxes and interest related to unrecognized tax benefits.

Other than foreign currency exchange rate changes and the Kita Acquisition, there was no material change to our unrecognized tax benefits and related accrued interest and penalties during the nine-month periods ended September 29, 2018 and September 30, 2017.

Income from Continuing Operations and Net Income

As a result of the factors set forth above, our income from continuing operations and net income was \$24.6 million in 2018 as compared to income from continuing operations of \$26.2 million in 2017. Including the impact of the disposal of our discontinued mobile microwave communication equipment business, which included a loss of \$0.3 million due to the write-off of the contingent consideration, our net income in the first nine months of 2017 was \$25.9 million.

LIQUIDITY AND CAPITAL RESOURCES

Our primary business is dependent on capital expenditures by semiconductor manufacturers and test subcontractors that are, in turn, dependent on the current and anticipated market demand for semiconductors. The seasonal and volatile nature of demand for semiconductor equipment, our primary industry, makes estimates of future revenues, results of operations and net cash flows difficult.

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Our primary historical source of liquidity and capital resources has been cash flow generated by our operations and we manage our business to maximize operating cash flows as our primary source of liquidity. We use cash to fund growth in our operating assets and to fund new products and product enhancements primarily through research and development. As of September 29, 2018, \$40.0 million of our cash and cash equivalents was held by our foreign subsidiaries. If these funds are needed for our operations in the U.S., we may be required to make additional accruals and pay foreign or U.S. taxes if we repatriate these funds.

Liquidity

Working Capital: The following summarizes our cash, cash equivalents, short-term investments and working capital:

<i>(in thousands)</i>	September 29, 2018	December 30, 2017	Increase	Percentage Change
Cash, cash equivalents and short-term investments	\$ 171,244	\$ 155,615	\$ 15,629	10.0%
Working capital	\$ 232,361	\$ 212,171	\$ 20,190	9.5%

On October 1, 2018, approximately \$70.5 million of Cohu's cash and short term investments were used to fund the Merger with Xcerra.

Cash Flows

Operating Activities: Operating cash flows for the first nine months of fiscal 2018 consisted of our net income, adjusted for non-cash expenses and changes in operating assets and liabilities. These adjustments include depreciation expense on property, plant and equipment, share-based compensation expense, amortization of intangible assets deferred income taxes and a mark-to-market adjustment on the Kita contingent consideration. Our net cash provided by operating activities in the first nine months of fiscal 2018 totaled \$29.2 million. Net cash provided by operating activities was impacted by changes in current assets and liabilities and included increases in accounts receivable of \$8.1 million, inventories of \$2.6 million, accrued compensation, warranty and other liabilities of \$1.4 million and income tax payable of \$3.9 million and a decrease in deferred profit of \$3.5 million. The increase in accounts receivable resulted from a sequential increase in product shipments and the timing of the resulting cash conversion cycle. The increase in inventory is a result of purchases made in anticipation of shipments scheduled to occur in the fourth quarter of 2018. The increase in accrued compensation, warranty and other liabilities was driven by increased legal and other professional services accruals related to the acquisition of Xcerra. The increase in income taxes payable is a result of income generated in the current year. Deferred profit decreased due to the recognition of sales that had been previously deferred in accordance with our revenue recognition policy.

Investing Activities: Investing cash flows consist primarily of cash used for capital expenditures in support of our businesses, proceeds from investment maturities, asset disposals and cash used for purchases of investments and business acquisitions. Net cash provided by investing activities in the first nine months of fiscal 2018 totaled \$18.3 million. Investing activities in the first nine months of fiscal 2018 were impacted by \$59.5 million in net proceeds from sales and maturities of short-term investments offset, in part, by \$38.7 million in cash used for purchases of short-term investments. We invest our excess cash, in an attempt to seek the highest available return while preserving capital, in short-term investments since excess cash is only temporarily available and may be required for a business related purpose. Additions to property, plant and equipment of \$2.5 million were made to support the operating and development activities of our business.

Financing Activities: Cash flows from financing activities consist primarily of net proceeds from the issuance of common stock under our stock option and employee stock purchase plans and cash used to pay dividends to our stockholders. We issue restricted stock units and stock options and maintain an employee stock purchase plan as components of our overall employee compensation. In the first nine months of fiscal 2018, cash used to settle the minimum statutory tax withholding requirements on behalf of our employees upon vesting of restricted and performance stock awards, net of proceeds from the exercise of employee stock options was \$2.6 million. We paid dividends totaling \$5.2 million, or \$0.18 per common share and on October 30, 2018, Cohu's Board of Directors approved a quarterly cash dividend of \$0.06 per share payable on January 2, 2019, to shareholders of record on November 16, 2018. Future quarterly dividends are subject to our cash liquidity, capital availability and periodic determinations by our Board of Directors that cash dividends are in the best interests of our stockholders. Furthermore, future quarterly dividends may be reduced from historical levels, or suspended, as a result of the Merger. Total repayments of short-term borrowings and long-term debt during the first nine months of fiscal 2018 totaled \$1.0 million, additionally we made payments of \$0.8 million to settle contingent consideration liabilities related to the acquisition of Kita in 2017.

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Capital Resources

We have credit agreements with multiple financial institutions in Japan under which they administer lines of credit on behalf of our wholly owned Kita subsidiary. The credit facilities renew monthly and provide Kita with access to working capital totaling up to \$6.2 million. At September 29, 2018 total borrowings outstanding under the revolving lines of credit were \$3.1 million. As these credit facility agreements renew monthly, they have been included in short-term borrowings in our condensed consolidated balance sheet. We also have long-term term loans from a series of Japanese financial institutions totaling \$4.8 million primarily related to the expansion of Kita's facility in Osaka, Japan. The loans are collateralized by the facility and land. The loans carry interest rates ranging from 0.05% to 0.45% and expire at various dates through 2034. At September 29, 2018, \$1.0 million of the term loans have been included in current installments of long-term debt in our condensed consolidated balance sheet. The revolving lines of credit and term loans are denominated in Japanese Yen and, as a result, amounts will fluctuate as a result of changes in currency exchange rates.

We also have a credit agreement with a financial institution under which it administers a line of credit on behalf of our wholly owned Ismeca subsidiary. The agreement provides Ismeca with 2.0 million Swiss Francs of available credit and at September 29, 2018, no amounts were outstanding. We expect that we will continue to make capital expenditures to support our business and we anticipate that present working capital will be sufficient to meet our operating requirements for at least the next twelve months.

We have a secured letter of credit facility (the "Secured Facility") under which Bank of America, N.A., has agreed to administer the issuance of letters of credit on our behalf. The Secured Facility requires us to maintain deposits of cash or other approved investments, which serve as collateral, in amounts that approximate our outstanding letters of credit and contains customary restrictive covenants. As of September 29, 2018, no amounts were outstanding under standby letters of credit under the Secured Facility.

Xcerra Acquisition

On October 1, 2018 Cohu completed its acquisition of Xcerra Corporation and entered into a Credit Agreement with Cohu, as borrower, certain of its subsidiaries as guarantor subsidiaries, the financial institutions party thereto from time to time as lenders, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent, providing for a \$350.0 million Credit Facility.

On October 1, 2018, Cohu borrowed the entire amount of the Credit Facility. The proceeds of the Credit Facility were used, along with cash and cash equivalents on hand of Cohu and Xcerra, to pay the Cash Consideration (as defined below) and to pay certain fees and expenses related to the Merger and the Credit Agreement.

See "Acquisition of Xcerra", in Note 8 located in Part I, Item 1 of this Form 10-Q for further information.

Contractual Obligations and Off-Balance Sheet Arrangements

Contractual Obligations: Our significant contractual obligations consist of liabilities for debt, operating leases, unrecognized tax benefits, pensions, post-retirement benefits and warranties. These obligations as of September 29, 2018 have not changed materially from those disclosed in our Annual Report on Form 10-K for the year ended December 30, 2017.

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Secured Term Loan Facility- Xcerra Acquisition

To provide the majority of the Cash Consideration as part of the Merger, on October 1, 2018, Cohu entered into a Credit and Guaranty Agreement (the "Credit Agreement") with Cohu, as borrower, certain of its subsidiaries as guarantor subsidiaries, the financial institutions party thereto from time to time as lenders, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent, providing for a \$350.0 million secured term loan facility (the "Credit Facility"). Cohu's obligations under the Credit Facility are (and will be) guaranteed by certain of its existing and subsequently acquired or formed material wholly-owned domestic subsidiaries, (subject to certain exceptions and exclusions) under the Credit Facility (the "Guarantors"). The Credit Facility is secured by a security interest in substantially all existing and after-acquired assets and property (subject to certain exceptions and exclusions) of Cohu and the Guarantors.

On October 1, 2018, Cohu borrowed the entire amount of the Credit Facility. The proceeds of the Credit Facility were used, along with cash and cash equivalents on hand of Cohu and Xcerra, to pay the Cash Consideration and to pay certain fees and expenses related to the Merger and the Credit Agreement.

Loans under the Credit Facility amortize in equal quarterly installments equal to 0.25% of the original principal amount thereof, with the balance payable at maturity. Subject to certain exceptions and thresholds, the Credit Facility will also require mandatory prepayments in connection with (i) excess cash flow, (ii) non-ordinary course asset sales and other dispositions and (iii) the issuance of certain debt obligations, among other things. Cohu has the right to prepay loans under the Credit Agreement in whole or in part at any time, without premium or penalty other than a 1.00% prepayment fee in connection with certain "repricing" transactions on or before the sixth month anniversary of the closing date of the Credit Agreement. Amounts repaid in respect of loans under the Credit Facility may not be reborrowed. All outstanding principal and interest in respect of the Credit Facility must be repaid on or before October 1, 2025.

Loans under the Credit Facility bear interest at a floating annual rate equal to the LIBOR plus a margin of 3.00%. While a payment or bankruptcy event of default exists, Cohu is obligated to pay a per annum default rate of interest of 2.00% in excess of the interest rate otherwise payable with respect to the overdue principal amount of any loans outstanding and overdue interest payments and other overdue fees and amounts.

The Credit Agreement has incremental facility capacity in an aggregate amount of the greater of \$145 million and 100% of consolidated EBITDA, with an additional \$35 million available for revolving facilities, subject to certain conditions. Once Cohu's first lien net leverage ratio is below a certain threshold, incremental facilities may be utilized in an unlimited amount.

The Credit Agreement contains certain customary affirmative and negative covenants, including covenants that limit the ability of Cohu and its subsidiaries to, among other things, grant liens, incur debt, dispose of assets, make loans and investments, make acquisitions, make certain restricted payments, pay dividends, merge or consolidate or change their business, in each case subject to customary exceptions for a credit facility of this size and type.

The Credit Agreement includes customary events of default that include, among other things, non-payment of principal, interest or fees, inaccuracy of representations and warranties, breach of covenants, cross-default to certain material indebtedness, bankruptcy and insolvency and change of control. Upon the occurrence and during the continuance of an event of default, the lenders may declare all outstanding principal and accrued but unpaid interest under the Credit Agreement immediately due and payable and may exercise the other rights and remedies provided under the Credit Agreement and related loan documents.

Purchase Commitments: From time to time, we enter into commitments with our vendors and outsourcing partners to purchase inventory at fixed prices or in guaranteed quantities. We are not able to determine the aggregate amount of such purchase orders that represent contractual obligations, as purchase orders may represent authorizations to purchase rather than binding agreements. Our purchase orders are based on our current manufacturing needs and are fulfilled by our vendors within relatively short time horizons. We typically do not have significant agreements for the purchase of raw materials or other goods specifying minimum quantities or set prices that exceed our expected requirements for the next three months.

Off-Balance Sheet Arrangements: During the ordinary course of business, we provide standby letters of credit instruments to certain parties as required. As of September 29, 2018, no amounts were outstanding under standby letters of credit.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Investment and Interest Rate Risk.

At September 29, 2018, our investment portfolio included short-term fixed-income investment securities with a fair value of approximately \$0.5 million. These securities are subject to interest rate risk and will likely decline in value if interest rates increase. Our future investment income may fall short of expectations due to changes in interest rates or we may suffer losses in principal if we are forced to sell securities that decline in market value due to changes in interest rates. As we classify our short-term securities as available-for-sale, no gains or losses are recognized due to changes in interest rates unless such securities are sold prior to maturity or declines in fair value are determined to be other-than-temporary. Due to the relatively short duration of our investment portfolio, an immediate ten percent change in interest rates would have no material impact on our financial condition or results of operations.

We evaluate our investments periodically for possible other-than-temporary impairment by reviewing factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and our ability and intent to hold the investment for a period of time sufficient for anticipated recovery of market value. As of September 29, 2018, we held no investments with loss positions.

Foreign Currency Exchange Risk.

We have operations in several foreign countries and conduct business in the local currency in these countries. As a result, we have risk associated with currency fluctuations as the value of foreign currencies fluctuate against the U.S. dollar, in particular the Swiss Franc, Euro, Malaysian Ringgit, Chinese Yuan, Philippine Peso and Japanese Yen. These fluctuations can impact our reported earnings.

Fluctuations in currency exchange rates also impact the U.S. Dollar amount of our net investment in foreign operations. The assets and liabilities of our foreign subsidiaries are translated into U.S. Dollars at the exchange rates in effect at the fiscal year-end balance sheet date. Income and expense accounts are translated at an average exchange rate during the year which approximates the rates in effect at the transaction dates. The resulting translation adjustments are recorded in stockholders' equity as a component of accumulated other comprehensive loss. As a result of fluctuations in certain foreign currency exchange rates in relation to the U.S. Dollar as of September 29, 2018, compared to December 30, 2017, our stockholders' equity decreased by \$3.4 million.

Based upon the current levels of net foreign assets, a hypothetical 10% devaluation of the U.S. Dollar as compared to these currencies as of September 29, 2018 would result in an approximate \$12.3 million positive translation adjustment recorded in other comprehensive income within stockholders' equity. Conversely, a hypothetical 10% appreciation of the U.S. Dollar as compared to these currencies as of September 29, 2018 would result in an approximate \$12.3 million negative translation adjustment recorded in other comprehensive income within stockholders' equity.

Item 4. Controls and Procedures.

(a) Evaluation of Disclosure Controls and Procedures. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we evaluated the effectiveness of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this quarterly report.

It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system are met. In addition, the design of any control system is based in part upon certain assumptions about the likelihood of future events. Because of these and other inherent limitations of control systems, there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives and our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

(b) Changes in Internal Control over Financial Reporting. There have been no changes in our internal control over financial reporting that occurred during the period covered by this quarterly report 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.

The information set forth above under Note 6 contained in the "Notes to Unaudited Condensed Consolidated Financial Statements" of this Form 10-Q is incorporated herein by reference.

Item 1A. Risk Factors.

The risks described below may not be the only risks we face. Additional risks that we are unaware of, or that we currently believe are not material, may also impair our business operations. The risk factors set forth below with an asterisk () next to the title contain changes to the description of the risk factors associated with our business as previously disclosed in Item 1A to our 2017 Annual Report on Form 10-K. If any of the events or circumstances described in the following risks occur, our business, financial condition, results of operations or cash flows could suffer, and the trading price of our common stock and our market capitalization could decline.*

*** We may fail to realize all of the anticipated benefits of the Merger or those benefits may take longer to realize than expected.**

Pursuant to an Agreement and Plan of Merger (the "Merger Agreement") dated as of May 7, 2018 among Cohu, Inc., a Delaware corporation ("Cohu"), Xcerra Corporation, a Massachusetts corporation ("Xcerra"), and Xavier Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Cohu ("Merger Sub"), Merger Sub merged with and into Xcerra (the "Merger"), with Xcerra surviving such merger as a wholly owned subsidiary of Cohu. The Merger was effective on October 1, 2018.

Our ability to realize the anticipated benefits of the Merger will depend, to a large extent, on our ability to integrate Xcerra, which is expected to be a complex, costly and time-consuming process. The integration process may disrupt our business and, if implemented ineffectively, could restrict the realization of the full expected benefits. The failure to meet the challenges involved in the integration process and to realize the anticipated benefits of the Merger could cause an interruption of, or a loss of momentum in, our operations and could adversely affect our business, financial condition and results of operations.

In addition, the integration of Xcerra may result in material unanticipated problems, expenses, liabilities, competitive responses, and loss of customers, suppliers and other business relationships. Additional integration challenges include:

- difficulties entering new markets or manufacturing in new geographies where Cohu has no or limited direct prior experience;
- such a new market for Cohu, the automated test equipment market, is intensely competitive with entrenched large competitors who are much larger than Cohu
- successfully managing relationships with Cohu and Xcerra's combined supplier and customer base;
- coordinating and integrating independent research and development and engineering teams across technologies and product platforms to enhance product development while reducing costs;
- coordinating sales and marketing efforts to effectively position the combined company's capabilities and the direction of product development;
- difficulties and significant costs in integrating the systems and processes of two companies with complex operations including multiple manufacturing sites;
- the increased scale and complexity of Cohu's operations resulting from the Merger;
- Cohu's ability to achieve the cost synergies contemplated by the proposed transaction within the expected time frame, and significant costs of integration and restructuring;
- retaining key employees of Cohu and Xcerra;
- obligations that Cohu will have to counterparties of Xcerra that arise as a result of the change in control of Xcerra;
- the impact of litigation and potential liabilities we may be inheriting from Xcerra; and
- diversion of management's attention to integration matters.

Many of these factors will be outside of our control and any one of them could result in increased costs, decreases in the amount of expected revenues, and diversion of management's time and energy, which could adversely affect our business, financial condition, and results of operations and result in us becoming subject to litigation. In addition, even if Xcerra is integrated successfully, the full anticipated benefits of the Merger may not be realized, including the synergies, cost savings or sales or growth opportunities that are anticipated. These benefits may not be achieved within the anticipated time frame, or at all. Further, additional unanticipated costs may be incurred in the integration process. All of these factors could cause reductions in our earnings per share and decrease or delay the expected accretive effect of the Merger. As a result, it cannot be assured that the Merger will result in the realization of the full or any anticipated benefits.

**** We have incurred and will continue to incur significant transaction costs in connection with the Merger that could adversely affect our results of operations.***

Although we have completed the Merger, we have incurred, and will continue to incur, significant transaction costs in connection with the Merger, including restructuring expenses and the payment of certain fees and expenses incurred in connection with the Merger and related financing transactions. Additional unanticipated costs may be incurred in the integration process. These could adversely affect our results of operations in the period in which such expenses are recorded or our cash flow in the period in which any related costs are actually paid. Furthermore, we expect to incur material restructuring and integration charges in connection with the Merger, which may adversely affect our operating results in the period in which such expenses are recorded or our cash flow in the period in which any related costs are actually paid. Cohu incurred \$5.2 million of acquisition related costs for the Xcerra transaction in the first nine months of 2018.

**** Xcerra may underperform relative to our expectations.***

The business and financial performance of Xcerra are subject to certain risks and uncertainties. We may not be able to maintain the growth rate, levels of revenue, earnings, or operating efficiency that we and Xcerra have achieved or might achieve separately. Any underperformance could have a material adverse effect on our financial condition and results of operations.

**** Cohu's ability to utilize Xcerra's net operating loss and credit carryforwards may be severely limited.***

As a result of the Merger an ownership change has occurred at Xcerra and as a consequence Cohu's ability to utilize Xcerra's net operating loss and credit carryforwards, that were already limited due to a prior acquisition, will be subject to annual limitations as provided for in Internal Revenue Code Sections 382 and 383. These annual limitations, which are currently unknown and subject to further analysis, may result in the inability of Cohu to utilize a substantial portion of these carryforwards. In addition, Cohu must assess whether its operating loss and credit carryforwards are similarly limited as a result of the Merger.

**** Uncertainties underlie Cohu's expectation that, relative to Cohu on a stand-alone basis, the Merger will be accretive to Cohu's earnings per share.***

Cohu believes that, relative to Cohu on a stand-alone basis, the Merger will actually be accretive to Cohu's earnings per share. However, Cohu cannot give any assurance that the Merger will be accretive to Cohu's earnings per share. In addition to the uncertainties that underlie any financial forecast, Cohu will account for the Merger as an acquisition under Accounting Standards Codification Topic 805, "Business Combinations," or "ASC 805". The total cost of the Merger will be allocated to the underlying identifiable net tangible and intangible assets and liabilities based on their respective estimated fair values. Until these allocations are completed, Cohu can only estimate the allocation of the acquisition price to the net assets acquired and the effect of the allocation on future results. That estimate could materially change.

**** The use of cash and incurrence of substantial indebtedness in connection with the financing of the Merger may have an adverse impact on Cohu's liquidity, limit Cohu's flexibility in responding to other business opportunities and increase Cohu's vulnerability to adverse economic and industry conditions.***

The Merger was financed in part by using Cohu's and Xcerra's cash on hand and the incurrence of indebtedness. In connection with the Merger, Cohu entered into a term loan facility, with an aggregate principal amount of \$350.0 million (the "Debt Financing"). Cohu used approximately \$178 million of Cohu's and Xcerra's cash on hand to complete the Merger. After completing the Merger and paying acquisition related costs, Cohu's (including Xcerra's) estimated cash, cash equivalents and short-term investments as of October 1, 2018 were approximately \$147.5 million. The use of cash on hand and indebtedness to finance the acquisition has reduced Cohu's liquidity and could cause Cohu to place more reliance on cash generated from operations to pay principal and interest on Cohu's debt, thereby reducing the availability of Cohu's cash flow for working capital, dividend and capital expenditure needs or to pursue other potential strategic plans. The Debt Financing agreements contain certain negative covenants, including limitations on Cohu's ability to incur additional liens and indebtedness or to pay dividends and make certain investments. Cohu's ability to comply with these negative covenants may be affected by events beyond its control. The indebtedness and these negative covenants also has the effect, among other things, of limiting Cohu's ability to obtain additional financing, if needed, limiting its flexibility in the conduct of its business and making Cohu more vulnerable to economic downturns and adverse competitive and industry conditions. In addition, a breach of the negative covenants could result in an event of default with respect to the indebtedness, which, if not cured or waived, could result in the indebtedness becoming immediately due and payable and could have a material adverse effect on Cohu's business, financial condition or operating results.

**** Because of high debt levels, Cohu may not be able to service its debt obligations in accordance with their terms; the Tax Cuts and Jobs Act severely limits the deductibility of interest expense.***

Cohu's ability to meet its expense and debt service obligations contained in the Debt Financing agreements will depend on Cohu's future performance, which will be affected by financial, business, economic and other factors, including potential changes in industry conditions, industry supply and demand balance, customer preferences, the success of Cohu's products and pressure from competitors. In addition, Cohu is subject to interest rate risks, and continuing increases in interest rates will increase Cohu's debt service obligations. Should Cohu's revenues decline after the Merger, Cohu may not be able to generate sufficient cash flow to pay its debt service obligations when due. If Cohu is unable to meet its debt service obligations after the Merger or should Cohu fail to comply with the covenants contained in the agreements governing its indebtedness, Cohu may be required to refinance all or part of its debt, sell important strategic assets at unfavorable prices, incur additional indebtedness or issue Cohu Common Stock or other equity securities. Cohu may not be able to, at any given time, refinance its debt, sell assets, incur additional indebtedness or issue equity securities on terms acceptable to Cohu, in amounts sufficient to meet Cohu's needs or at all. If Cohu is able to raise additional funds through the issuance of equity securities, such issuance would also result in dilution to Cohu's stockholders. Cohu's inability to service its debt obligations or refinance its debt could have a material adverse effect on its business, financial conditions or operating results after the Merger. In addition, Cohu's debt obligations may limit its ability to make required investments in capacity, technology or other areas of its business, which could have a material adverse effect on its business, financial conditions or operating results. Furthermore, the Tax Cuts and Jobs Act limits the deductibility of interest expense in a given year to 30% of adjusted taxable income, as defined. This may result in the inability of Cohu to utilize a substantial portion of its interest expense deductions. However, the Act permits indefinite carryforward of any disallowed business interest, subject to Internal Revenue Code section 382 limitations on utilization.

*** The issuance of shares of our common stock in connection with the Merger, and any future offerings of securities by us, will dilute our shareholders' ownership interest in the company.**

The Merger was financed in part by the issuance of additional shares of our common stock to shareholders of Xcerra, comprised approximately 11.8 million shares of common stock, or approximately 29% of our issued and outstanding shares of common stock immediately after completing the Merger. These issuances of additional shares of our common stock have diluted shareholders' ownership interest in our company, and shareholders now have a proportionately reduced ownership and voting interest in our company as a result of completion of the Merger.

*** Cohu cannot provide assurance that it will be able to continue paying dividends at the current rate.**

Cohu stockholders may not receive the same dividends in the future for various reasons, including the following:

- as a result of the Merger and the issuance of shares of Cohu Common Stock in connection with the Merger, the total amount of cash required for Cohu to pay dividends at its current rate will increase;
- Cohu's credit agreement restricts payments of dividends under certain circumstances;
- Cohu may not have enough cash to pay such dividends due to Cohu's cash requirements, capital spending plans, cash flow or financial position;
- decisions on whether, when and in which amounts to make any future distributions will remain at all times entirely at the discretion of the Cohu Board, which reserves the right to change Cohu's dividend practices at any time;
- rising interest rates, which increase Cohu's debt service obligations;
- Cohu may desire to retain cash to maintain or improve its credit ratings; and
- the amount of dividends that Cohu's subsidiaries may distribute to Cohu may be subject to restrictions imposed by state or foreign law, restrictions that may be imposed by state or foreign regulators, and restrictions imposed by the terms of any current or future indebtedness that these subsidiaries may incur.

*** The Merger has resulted in changes to the Cohu Board that may affect the strategy and operations of the combined company as compared to that of Cohu and Xcerra as they existed prior to the Merger.**

Upon completion of the Merger, the Cohu Board added two new members selected from members of the Xcerra Board. There can be no assurance that the newly constituted Cohu Board will function effectively as a team and that there will not be any adverse effect on the combined company's business as a result.

*** We have elected to terminate Xcerra's agreement with Spirox Corporation as a distributor in China and Taiwan. If we are unable to adequately replace Spirox, or if its performance deteriorates during the transition period, it may adversely impact our business.**

The Xcerra division has relied on Spirox Corporation ("Spirox") as its primary distribution channel for sales and service in China and Taiwan for its Semiconductor Test Solutions products, a region that represents a material portion of Xcerra's revenues. Spirox has direct contact with Xcerra's customers, and Spirox is obligated to satisfy all installation and service obligations for the Semiconductor Test Solutions products. After a thorough review of this arrangement, on October 12, 2018, we notified Spirox of our intention to terminate the Spirox distribution agreement, effective October 12, 2019. Our business and financial performance within the China and Taiwan region can be negatively impacted by many factors relating to Spirox, including if Spirox, for any reason, does not satisfy its obligations to customers in China and Taiwan or to us during the transition, Spirox is ineffective in its sales or service efforts or incurs difficulties in staffing and or training, if the distributor relationship between Xcerra and Spirox deteriorates during the transition, or if Cohu is delayed and otherwise fails to timely and adequately staff and fund sales and service resources in the region to replace those resources being provided by Spirox.

We are exposed to other risks associated with other acquisitions, investments and divestitures.

As part of our business strategy, we regularly evaluate investments in, or acquisitions of, complementary businesses, joint ventures, services and technologies, and we expect that periodically we will continue to make such investments and acquisitions in the future, such as our acquisition of Kita, which was completed on January 4, 2017. Acquisitions and investments involve numerous risks, including, but not limited to:

- difficulties and increased costs in connection with integration of the personnel, operations, technologies and products of acquired businesses;
- increasing the scope, geographic diversity and complexity of our business;
- the cost and risk of having to potentially develop new and unfamiliar sales channels for acquired businesses;
- diversion of management's attention from other operational matters;
- the potential loss of key employees, customers or suppliers of Cohu or acquired businesses;
- lack of synergy, or the inability to realize expected synergies, resulting from the acquisition;
- potential unknown liabilities associated with the acquired businesses;
- failure to commercialize purchased technology;
- the impairment of acquired intangible assets and goodwill that could result in significant charges to operating results in future periods; and
- challenges caused by distance, language and cultural differences.

We may decide to finance future acquisitions and investments through a combination of borrowings, proceeds from equity or debt offerings and the use of cash, cash equivalents and short-term investments. If we finance acquisitions by issuing convertible debt or equity securities, our existing stockholders may be diluted which could affect the market price of our stock.

Mergers, acquisitions and investments are inherently risky and the inability to effectively manage these risks could materially and adversely affect our business, financial condition and results of operations. At September 29, 2018, we had goodwill and net purchased intangible assets balances of \$64.6 million and \$13.5 million, respectively.

We are making investments in new products to enter new markets, which may adversely affect our operating results; these investments may not be successful.

Given the highly competitive and rapidly evolving technology environment in which we operate, we believe it is important to develop new product offerings to meet strategic opportunities as they evolve. This includes developing products that we believe are necessary to meet the future needs of the marketplace. We are currently investing in new product development programs to enable us to compete in the test contactor and wafer level package (WLP) probe and inspection markets, which includes an ongoing investment in our PANTHER platform, while also investing in next generation test handlers and automated test equipment. We expect to continue to make investments and we may at any time, based on product need or marketplace demand, decide to significantly increase our product development expenditures in these or other products. The cost of investments in new product offerings can have a negative impact on our operating results and PANTHER, for example, has not generated any material revenues for us. There can be no assurance that any new products we develop will be accepted in the marketplace or generate material revenues for us.

We are exposed to the risks of operating a global business.

We are a global corporation with offices and subsidiaries in certain foreign locations to manufacture our products, support our sales and services to the global semiconductor industry and, as such, we face risks in doing business abroad. Certain aspects inherent in transacting business internationally could negatively impact our operating results, including:

- costs and difficulties in staffing and managing international operations;
- legislative or regulatory requirements and potential changes in or interpretations of requirements in the United States and in the countries in which we manufacture or sell our products;
- trade restrictions, including treaty changes, sanctions and the suspension of export licenses;
- compliance with and changes in import/export tariffs and regulations;
- difficulties in enforcing contractual and intellectual property rights;
- longer payment cycles;
- local political and economic conditions;
- potentially adverse tax consequences, including restrictions on repatriating earnings and the threat of “double taxation”; and
- fluctuations in foreign currency exchange rates against the U.S. Dollar, which can affect demand for our products and increase our costs.

Additionally, managing geographically dispersed operations presents difficult challenges associated with organizational alignment and infrastructure, communications and information technology, inventory control, customer relationship management, terrorist threats and related security matters and cultural diversities. If we are unsuccessful in managing such operations effectively, our business and results of operations will be adversely affected.

**** We have manufacturing operations in Asia. Any failure to effectively manage multiple manufacturing sites and to secure raw materials meeting our quality, cost and other requirements, or failures by our suppliers to perform, could harm our sales, service levels and reputation.***

Our reliance on overseas manufacturers exposes us to significant risks including complex management, foreign currency, legal, tax and economic risks, which we may not be able to address quickly and adequately. In addition, it is time consuming and costly to qualify overseas supplier relationships. If we should fail to effectively manage overseas manufacturing operations, or if one or more of them should experience delays, disruptions or quality control problems, or if we had to change or add additional manufacturing sites, our ability to ship products to our customers could be delayed. Also, the addition of overseas manufacturing locations increases the demands on our administrative and operations infrastructure and the complexity of our supply chain management. If our overseas manufacturing locations are unable to meet our manufacturing requirements in a timely manner, our ability to ship products and to realize the related revenues when anticipated could be materially affected.

Our suppliers are subject to the fluctuations in general economic cycles, and global economic conditions may impact their ability to operate their business. They may also be impacted by possible import, export, tariff and other trade barriers, increasing costs of raw materials, labor and distribution, resulting in demands for less attractive contract terms or an inability for them to meet our requirements or conduct their own businesses. The performance and financial condition of a supplier may cause us to alter our business terms or to cease doing business with a particular supplier, or change our sourcing practices generally, which could in turn adversely affect our own business and financial condition.

Failure of critical suppliers to deliver sufficient quantities of parts in a timely and cost-effective manner could adversely impact our operations.

We use numerous vendors to supply parts, components and subassemblies for the manufacture of our products. It is not always possible to maintain multiple qualified suppliers for all of our parts, components and subassemblies. As a result, certain key parts may be available only from a single supplier (“sole source”) or a limited number of suppliers. In addition, suppliers may significantly raise prices or cease manufacturing certain components (with or without advance notice to us) that are difficult to replace without significant reengineering of our products. On occasion, we have experienced problems in obtaining adequate and reliable quantities of various parts and components from certain key or sole source suppliers. Our results of operations may be materially and adversely impacted if we do not receive sufficient parts to meet our requirements in a timely and cost-effective manner.

The semiconductor industry we serve is seasonal, volatile and unpredictable.

Visibility into our markets is limited. The semiconductor equipment business is highly dependent on the overall strength of the semiconductor industry. Historically, the semiconductor industry has been seasonal with recurring periods of oversupply and excess capacity, which often have had a significant effect on the semiconductor industry’s demand for capital equipment, including equipment of the type we manufacture and market. We anticipate that the markets for newer generations of semiconductors and semiconductor equipment will also be subject to similar cycles and severe downturns. Any significant reductions in capital equipment investment by semiconductor integrated device manufacturers and test subcontractors will materially and adversely affect our business, financial position and results of operations. In addition, the seasonal, volatile and unpredictable nature of semiconductor equipment demand has in the past and may in the future expose us to significant excess and obsolete and lower of cost or net realizable value inventory write-offs and reserve requirements. In 2017, 2016 and 2015, we recorded pre-tax inventory-related charges of approximately \$1.1 million, \$1.1 million, and \$2.4 million, respectively, primarily because of changes in customer forecasts. More recently, in third quarter 2018, we saw slowness in the mobility market segment, which adversely impacted our third quarter 2018 sales, and fourth quarter 2018 sales guidance.

Due to the nature of our business, we need continued access to capital, which if not available to us or if not available on favorable terms, could harm our ability to operate or expand our business.

Our business requires capital to finance accounts receivable and product inventory that is not financed by trade creditors when our business is expanding. If cash from available sources is insufficient or cash is used for unanticipated needs, we may require additional capital sooner than anticipated.

We believe that our existing sources of liquidity, including cash resources and cash provided by operating activities will provide sufficient resources to meet our working capital and cash requirements for at least the next twelve months. In the event we are required, or elect, to raise additional funds, we may be unable to do so on favorable terms, or at all, and may incur expenses in raising the additional funds and increase our interest rate exposure, and any future indebtedness could adversely affect our operating results and severely limit our ability to plan for, or react to, changes in our business or industry. We could also be limited by financial and other restrictive covenants in credit arrangements, including limitations on our borrowing of additional funds and issuing dividends. If we choose to issue new equity securities, existing stockholders may experience dilution, or the new equity securities may have rights, preferences or privileges senior to those of existing holders of common stock. If we cannot raise funds on acceptable terms, we may not be able to take advantage of future opportunities or respond to competitive pressures or unanticipated requirements. Any inability to raise additional capital when required could have an adverse effect on our business and operating results.

The semiconductor equipment industry is intensely competitive.

The semiconductor test handler industry is intensely competitive and we face substantial competition from numerous companies throughout the world. The test handler industry, while relatively small in terms of worldwide market size compared to other segments of the semiconductor equipment industry, has several participants resulting in intense competitive pricing pressures. Future competition may include companies that do not currently supply test handlers. Some of our competitors are part of larger corporations that have substantially greater financial, engineering, manufacturing and customer support capabilities and provide more extensive product offerings. In addition, there are emerging semiconductor equipment companies that provide or may provide innovative technology incorporated in products that may compete successfully against our products. We expect our competitors to continue to improve the design and performance of their current products and introduce new products with improved performance capabilities. Our failure to introduce new products in a timely manner, the introduction by our competitors of products with perceived or actual advantages, or disputes over rights to use certain intellectual property or technology could result in a loss of our competitive position and reduced sales of, or margins on our existing products. Intense competition has adversely impacted our product average selling prices and gross margins on certain products. If we are unable to reduce the cost of our existing products and successfully introduce new lower cost products, then we expect that these competitive conditions would negatively impact our gross margin and operating results in the foreseeable future.

In addition, with the acquisition of Kita in 2017, we increased our investments in our test contactor business, and announced significant growth targets for the business over the next several years. The test contactor market is fragmented, with many entrenched regional players, and subject to intense price competition and high customer support requirements. We believe that customer support and responsiveness and an ability to consistently meet tight deadlines is critical to our success. If we are unable to reduce the cost of our test contactor products, while also meeting customer support requirements and deadlines, then we expect that these competitive conditions would negatively impact our gross margin and operating results in the foreseeable future.

Semiconductor equipment is subject to rapid technological change, product introductions and transitions which may result in inventory write-offs, and our new product development involves numerous risks and uncertainties.

Semiconductor equipment and processes are subject to rapid technological change. We believe that our future success will depend in part on our ability to enhance existing products and develop new products with improved performance capabilities. We expect to continue to invest heavily in research and development and must manage product transitions successfully, as introductions of new products, including the products obtained in our acquisitions, may adversely impact sales and/or margins of existing products. In addition, the introduction of new products by us or by our competitors, the concentration of our revenues in a limited number of large customers, the migration to new semiconductor testing methodologies and the custom nature of our inventory parts increases the risk that our established products and related inventory may become obsolete, resulting in significant excess and obsolete inventory exposure. This exposure resulted in charges to operations during each of the years in the three-year period ended December 30, 2017. Future inventory write-offs and increased inventory reserve requirements could have a material adverse impact on our results of operations and financial condition.

The design, development, commercial introduction and manufacture of new semiconductor equipment is an inherently complex process that involves a number of risks and uncertainties. These risks include potential problems in meeting customer acceptance and performance requirements, integration of the equipment with other suppliers' equipment and the customers' manufacturing processes, transitioning from product development to volume manufacturing and the ability of the equipment to satisfy the semiconductor industry's constantly evolving needs and achieve commercial acceptance at prices that produce satisfactory profit margins. The design and development of new semiconductor equipment is heavily influenced by changes in integrated circuit assembly, test and final manufacturing processes and integrated circuit package design changes. We believe that the rate of change in such processes and integrated circuit packages is accelerating. As a result of these changes and other factors, assessing the market potential and commercial viability of handling, MEMS, system-level and burn-in test equipment and test contactors is extremely difficult and subject to a great deal of risk. In addition, not all integrated circuit manufacturers employ the same manufacturing processes. Differences in such processes make it difficult to design standard test products that can achieve broad market acceptance. As a result, we might not accurately assess the semiconductor industry's future equipment requirements and fail to design and develop products that meet such requirements and achieve market acceptance. Failure to accurately assess customer requirements and market trends for new semiconductor test products may have a material adverse impact on our operations, financial condition and results of operations.

The transition from product development to the manufacture of new semiconductor equipment is a difficult process and delays in product introductions and problems in manufacturing such equipment are common. We have in the past and may in the future experience difficulties in manufacturing and volume production of our new equipment. In addition, as is common with semiconductor equipment, after sale support and warranty costs have typically been significantly higher with new products than with our established products. Future technologies, processes and product developments may render our current or future product offerings obsolete and we might not be able to develop, introduce and successfully manufacture new products or make enhancements to our existing products in a timely manner to satisfy customer requirements or achieve market acceptance. Furthermore, we might not realize acceptable profit margins on such products.

**** Global economic conditions may have an impact on our business and financial condition in ways that we currently cannot predict.***

Our operations and financial results depend on worldwide economic conditions and their impact on levels of business spending. Continued uncertainties may reduce future sales of our products and services. While we believe we have a strong customer base and have experienced strong collections in the past, if the current market conditions deteriorate, we may experience increased collection times and greater write-offs, either of which could have a material adverse effect on our cash flow.

In addition, the tightening of credit markets and concerns regarding the availability of credit may make it more difficult for our customers to raise capital, whether debt or equity, to finance their purchases of capital equipment, including the products we sell. Delays in our customers' ability to obtain such financing, or the unavailability of such financing would adversely affect our product sales and revenues and therefore harm our business and operating results. Possible import, export, tariff and other trade barriers, which could be imposed by Asia, the United States, other countries or the European Union might also have a material adverse effect on our operating results. We cannot predict the timing, duration of or effect on our business of an economic slowdown or the timing or strength of a subsequent recovery.

A limited number of customers account for a substantial percentage of our net sales.

A small number of customers have been responsible for a significant portion of our net sales. During the past five years, the percentage of our sales derived from these significant customers has varied greatly. Such variations are due to changes in the customers' business, consolidation within the semiconductor industry and their purchase of products from our competitors. It is common in the semiconductor test handler industry for customers to purchase equipment from more than one equipment supplier, increasing the risk that our competitive position with a specific customer may deteriorate. No assurance can be given that we will continue to maintain our competitive position with these or other significant customers. Furthermore, we expect the percentage of our revenues derived from significant customers will vary greatly in future periods. The loss of, or a significant reduction in, orders by these or other significant customers as a result of competitive products, market conditions including end market demand for our customers' products, outsourcing final semiconductor test to test subcontractors that are not our customers or other factors, would have a material adverse impact on our business, financial condition and results of operations. Furthermore, the concentration of our revenues in a limited number of large customers is likely to cause significant fluctuations in our future annual and quarterly operating results.

If we cannot continue to develop, manufacture and market products and services that meet customer requirements for innovation and quality, our revenue and gross margin may suffer.

The process of developing new high technology products and services and enhancing existing products and services is complex, costly and uncertain, and any failure by us to anticipate customers' changing needs and emerging technological trends accurately could significantly harm our sales and results of operations. In addition, in the course of conducting our business, we must adequately address quality issues associated with our products and services, including defects in our engineering, design and manufacturing processes, as well as defects in third-party components included in our products. To address quality issues, we work extensively with our customers and suppliers and engage in product testing to determine the cause of quality problems and appropriate solutions. Finding solutions to quality issues can be expensive and may result in additional warranty, replacement and other costs, adversely affecting our profits. In addition, quality issues can impair our relationships with new or existing customers and adversely affect our reputation, which could lead to a material adverse effect on our operating results.

The seasonal nature of the semiconductor equipment industry places enormous demands on our employees, operations and infrastructure.

The semiconductor equipment industry is characterized by dramatic and sometimes rapid changes in demand for its products. These are generally dictated by introduction of new consumer products, launch of new model vehicles, implementation of new communications infrastructure, or in response to an increase in industrial equipment and machinery that utilizes semiconductors. A number of other factors including changes in integrated circuit design and packaging may affect demand for our products. Sudden changes in demand for semiconductor equipment commonly occur, and have a significant impact on our operations. We have in the past and may in the future experience difficulties, particularly in manufacturing, in training and recruiting the large number of additions to our workforce. The volatility in headcount and business levels, combined with the seasonal nature of the semiconductor industry, may require that we invest substantial amounts in new operational and financial systems, procedures and controls. We may not be able to successfully adjust our systems, facilities and production capacity to meet our customers' changing requirements. The inability to meet such requirements will have an adverse impact on our business, financial position and results of operations.

The loss of key personnel could adversely impact our business.

Certain key personnel are critical to our business. Our future operating results depend substantially upon the continued service of our key personnel, many of whom are not bound by employment or non-competition agreements. Our future operating results also depend in significant part upon our ability to attract and retain qualified management, manufacturing, technical, engineering, marketing, sales and support personnel. Competition for qualified personnel, particularly those with technical skills, is intense, and we cannot ensure success in attracting or retaining qualified personnel. In addition, the cost of living in the San Diego and Bay Area, California, Boston, Massachusetts, Rosenheim and Kolbermoor, Germany, La Chaux-de-Fonds, Switzerland and Osaka, Japan areas, where the majority of our engineering personnel are located, is high and we have had difficulty in recruiting prospective employees from other locations. There may be only a limited number of persons with the requisite skills and relevant industry experience to serve in these positions and it may become increasingly difficult for us to hire personnel over time. Our business, financial condition and results of operations could be materially adversely affected by the loss of any of our key employees, by the failure of any key employee to perform in his or her current position, or by our inability to attract and retain skilled employees.

Third parties may violate our proprietary rights or accuse us of infringing upon their proprietary rights.

We rely on patent, copyright, trademark and trade secret laws to establish and maintain proprietary rights in our technology and products. Any of our proprietary rights may expire due to patent life, or be challenged, invalidated or circumvented. In addition, from time-to-time, we receive notices from third parties regarding patent or copyright claims. Any such claims, with or without merit, could be time-consuming to defend, result in costly litigation, divert management's attention and resources and cause us to incur significant expenses. In the event of a successful claim of infringement against us and our failure or inability to license the infringed technology or to substitute similar non-infringing technology, our business, financial condition and results of operations could be adversely affected.

A majority of our revenues are generated from exports to foreign countries, primarily in Asia, that are subject to economic and political instability and we compete against a number of Asian test handling equipment suppliers.

The majority of our export sales are made to destinations in Asia. Political or economic instability, particularly in Asia, may adversely impact the demand for capital equipment, including equipment of the type we manufacture and market. In addition, we face intense competition from a number of Asian suppliers that have certain advantages over United States ("U.S.") suppliers, including us. These advantages include, among other things, proximity to customers, lower cost structures, favorable tariffs and affiliation with significantly larger organizations. In addition, changes in the amount or price of semiconductors produced in Asia could impact the profitability or capital equipment spending programs of our foreign and domestic customers.

**** Unanticipated changes in our tax provisions, enactment of new tax laws, or exposure to additional income tax liabilities could affect our profitability.***

We are subject to income and other taxes in the U.S. and numerous foreign jurisdictions. Our tax liabilities are affected by, among other things, the amounts our affiliated entities charge each other for intercompany transactions. Our German subsidiaries income tax returns for 2012 to 2016 are currently under routine examination by tax authorities in Germany. We may be subject to ongoing tax examinations in various jurisdictions. Tax authorities may disagree with our intercompany charges or other matters and assess additional taxes. While we regularly assess the likely outcomes of these examinations to determine the appropriateness of our tax provision, tax audits are inherently uncertain and an unfavorable outcome could occur. An unanticipated, unfavorable outcome in any specific period could harm our operating results for that period or future periods. The financial cost and management attention and time devoted to defending income tax positions may divert resources from our business operations, which could harm our business and profitability. Tax examinations may also impact the timing and/or amount of our refund claims. In addition, our effective tax rate in the future could be adversely affected by changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of our deferred tax assets and liabilities, changes in tax laws and the discovery of new information in the course of our tax return preparation process. In particular, the carrying value of our deferred tax assets and the utilization of our net operating loss and credit carryforwards are dependent on our ability to generate future taxable income in the U.S. and other countries. Furthermore, these carryforwards may be subject to annual limitations as a result of changes in Cohu's ownership.

On December 22, 2017, the Tax Cuts and Jobs Act ("Tax Act") was signed into law in the United States. The changes in the Tax Act are broad and complex and we continue to examine the impact the Tax Act may have on our business and financial results. Among its many provisions, the Tax Act imposed a mandatory one-time transition tax on undistributed foreign earnings regardless of whether they are repatriated, reduced the U.S. corporate income tax rate from 35% to 21%, imposed limitations on the deductibility of interest and certain other corporate deductions, moved from a "worldwide" system of taxation that generally allows deferral of U.S. tax on foreign earnings until repatriated to a "territorial"/dividend exemption system with a minimum tax that will subject foreign earnings to U.S. Tax when earned and created new taxes on certain foreign-sourced earnings and related-party payments, which are referred to as the global intangible low-taxed income tax and the base erosion and anti-abuse tax, respectively. In accordance with applicable SEC guidance (SAB 118), we recorded a provisional net tax benefit in the fourth quarter of 2017 however, this provisional tax benefit is subject to change in 2018, possibly materially, due to, among other things, changes in estimates, interpretations and assumptions we have made, changes in Internal Revenue Service (IRS) interpretations, the issuance of new guidance, legislative actions, changes in accounting standards or related interpretations in response to the Tax Act and future actions by states within the United States that have not currently adopted the Tax Act. For further information regarding the potential impact of the Tax Act see Note 5 to our consolidated financial statements.

Compliance with regulations may impact sales to foreign customers and impose costs.

Certain products and services that we offer require compliance with U.S. and other foreign country export and other regulations. Compliance with complex U.S. and other foreign country laws and regulations that apply to our international sales activities increases our cost of doing business in international jurisdictions and could expose us or our employees to fines and penalties. These laws and regulations include import and export requirements, the U.S. State Department International Traffic in Arms Regulations ("ITAR") and U.S. and other foreign country laws such as the Foreign Corrupt Practices Act ("FCPA"), and local laws prohibiting corrupt payments to governmental officials. Violations of these laws and regulations could result in fines, criminal sanctions against us, our officers or our employees, prohibitions on the conduct of our business and damage to our reputation. Although we have implemented policies and procedures designed to ensure compliance with these laws, there can be no assurance that our employees, contractors or agents will not violate our policies, or that our policies will be effective in preventing all potential violations. Any such violations could include prohibitions on our ability to offer our products and services to one or more countries, and could also materially damage our reputation, our brand, our international expansion efforts, our ability to attract and retain employees, our business and our operating results. Further, defending against claims of violations of these laws and regulations, even if we are successful, could be time-consuming, result in costly litigation, divert management's attention and resources and cause us to incur significant expenses.

In addition to government regulations regarding sale and export, we are subject to other regulations regarding our products. For example, the U.S. Securities and Exchange Commission has adopted disclosure rules for companies that use conflict minerals in their products, with substantial supply chain verification requirements if the materials come from, or could have come from, the Democratic Republic of the Congo or adjoining countries. These new rules and verification requirements will impose additional costs on us and on our suppliers, and may limit the sources or increase the cost of materials used in our products. Further, if we are unable to certify that our products are conflict free, we may face challenges with our customers that could place us at a competitive disadvantage, and our reputation may be harmed.

**** There may be changes in, and uncertainty with respect to, legislation, regulation and governmental policy in the United States.***

The change in administration in the United States has resulted and may continue to result in significant changes in, and uncertainty with respect to, legislation, regulation and government policy. While it is not possible to predict whether and when any such additional changes will occur, changes at the local, state or federal level could impact fuel cell market adoption in the U.S. and the alternative energy technologies sector in the U.S., generally. Specific legislative and regulatory proposals that could have a material impact on us include, but are not limited to, infrastructure renewal programs; and modifications to international trade policy, such as approvals by the Committee on Foreign Investment in the United States; increased duties, tariffs or other restrictions; public company reporting requirements; environmental regulation and antitrust enforcement.

**** Global economic and political conditions, including trade tariffs and restrictions, may have an impact on our business and financial condition in ways that we currently cannot predict.***

Recent public policy changes and new trade tariffs and restrictions between the United States and China may, in our view, create an uncertain business environment. In particular, if tariffs or restrictions are imposed on our products or the products of our customers, there could be a negative impact on our operations and financial performance. For example, in June, August and September, 2018, the Office of the United States Trade Representative (the “USTR”) published a list of products covering more than 6,000 separate U.S. tariff lines valued at approximately \$250 billion in 2018 trade values, imposing an additional duty of 10% or 25% on the listed product lines. The list generally focuses on products from industrial sectors that contribute to or benefit from the “Made in China 2025” industrial policy, which include industries such as aerospace, information and communications technology, robotics, industrial machinery, new materials, and automobiles. We are continuing to evaluate the impact of the announced and other proposed tariffs on products that we import from China, and we may experience a material increase in the cost of our products, which may result in our products becoming less attractive relative to products offered by our competitors. In addition, future actions, retaliation or escalations by either the United States or China that affect trade relations may also impact our business, or that of our suppliers or customers, and we cannot provide any assurances as to whether such actions will occur or the form that they may take. To the extent that our sales or profitability are negatively affected by any such tariffs or other trade actions, our business and results of operations may be materially adversely affected.

Our business and operations could suffer in the event of cybersecurity breaches.

Attempts by others to gain unauthorized access to information technology systems are becoming more sophisticated and are sometimes successful. These attempts, which might be related to industrial or other espionage, include covertly introducing malware to our computers and networks and impersonating authorized users, among others. We seek to detect and investigate all cybersecurity incidents and to prevent their recurrence, but in some cases, we might be unaware of an incident or its magnitude and effects. The theft, unauthorized use or publication of our intellectual property and/or confidential business information could harm our competitive position, reduce the value of our investment in research and development and other strategic initiatives or otherwise adversely affect our business. To the extent that any security breach results in inappropriate disclosure of our customers' or licensees' confidential information, we may incur liability as a result. In addition, we may be required to devote additional resources to the security of our information technology systems.

*** Our global Enterprise Resource Management (“ERP”) upgrade may adversely affect our business and results of operations or the effectiveness of internal controls over financial reporting.**

We are in development stage for the global replacement of our existing ERP solution. The new solution is being developed as an enterprise solution in partnership with a leading provider of ERP tools. Additional investments in enterprise tools that focus on product life-cycle management, our customer experience, and supply chain management are in process to support our growing business. These implementations are extremely complex and time-consuming projects that involve substantial expenditures on software and implementation activities. If we do not effectively implement the system or if the system does not operate as intended, it could result in the loss or corruption of data, delayed order processing and shipments and increased costs. It could also adversely affect our financial reporting systems and our ability to produce financial reports and process transactions, the effectiveness of internal controls over financial reporting, and our business, financial condition, results of operations and cash flows.

The occurrence of natural disasters and geopolitical instability caused by terrorist attacks and other threats may adversely impact our operations and sales.

Our corporate headquarters is located in San Diego, California, our Asian sales and service headquarters is located in Singapore and the majority of our sales are made to destinations in Asia. In addition, we have manufacturing plants in Malaysia, Philippines and Japan. These regions are known for being vulnerable to natural disasters and other risks, such as earthquakes, tsunamis, fires and floods, and geopolitical risks, which at times have disrupted the local economies. For example, a significant earthquake or tsunami could materially affect operating results. We are not insured for most losses and business interruptions of this kind, or for geopolitical or terrorism impacts, and presently have limited redundant, multiple site capacity in the event of a disaster. In the event of such disaster, our business would materially suffer.

Our financial and operating results may vary and fall below analysts’ estimates, which may cause the price of our common stock to decline.

Our operating results may fluctuate from quarter to quarter due to a variety of factors including, but not limited to:

- seasonal, volatile and unpredictable nature of the semiconductor equipment industry;
- timing and amount of orders from customers and shipments to customers;
- customer decisions to cancel orders or push out deliveries;
- inability to recognize revenue due to accounting requirements;
- inventory writedowns;
- unexpected expenses or cost overruns in the introduction and support of products;
- inability to deliver solutions as expected by our customers; and
- intangible and deferred tax asset writedowns.

Due to these factors or other unanticipated events, quarter-to-quarter comparisons of our operating results may not be reliable indicators of our future performance. In addition, from time-to-time our quarterly financial results may fall below the expectations of the securities and industry analysts who publish reports on our company or of investors in general. This could cause the market price of our stock to decline, perhaps significantly.

We have experienced significant volatility in our stock price.

A variety of factors may cause the price of our stock to be volatile. The stock market in general, and the market for shares of high-technology companies in particular, including ours, have experienced extreme price fluctuations, which have often been unrelated to the operating performance of affected companies. During the three-year period ended September 29, 2018 the price of our common stock has ranged from \$27.83 to \$9.38. The price of our stock may be more volatile than the stock of other companies due to, among other factors, the unpredictable, volatile and seasonal nature of the semiconductor industry, our significant customer concentration, intense competition in the test handler industry, our limited backlog and our relatively low daily stock trading volume. The market price of our common stock is likely to continue to fluctuate significantly in the future, including fluctuations related and unrelated to our performance.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information.

None.

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Item 6. Exhibits.

2.1	<u>Agreement and Plan of Merger by and among Cohu, Inc., Xavier Acquisition Corporation, and Xcerra Corporation, dated as of May 7, 2018, incorporated herein by reference to Exhibit 2.1 from the Cohu, Inc. Form 8-K filed with the Securities and Exchange Commission on May 8, 2018</u>
3.1	<u>Amended and Restated Certificate of Incorporation of Cohu, Inc. incorporated herein by reference to Exhibit 3.1 from the Cohu, Inc. Form 8-K filed with the Securities and Exchange Commission on May 17, 2018</u>
3.2	<u>Amended and Restated Bylaws of Cohu, Inc. incorporated herein by reference to Exhibit 3.2 from the Cohu, Inc. Form 8-K filed with the Securities and Exchange Commission on May 17, 2018</u>
10.1	<u>Credit and Guaranty Agreement dated as of October 1, 2018, by and among Cohu, Inc., Certain Subsidiaries of Cohu, Inc. and Deutsche Bank AG New York Branch</u>
10.2	<u>Pledge and Security Agreement dated as of October 1, 2018, by and among Cohu, Inc., Certain Subsidiaries of Cohu, Inc. and Deutsche Bank AG New York Branch</u>
31.1	<u>Certification pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002</u>
31.2	<u>Certification pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002</u>
32.1	<u>Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>
32.2	<u>Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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.

COHU, INC.

(Registrant)

Date: November 7, 2018

/s/ Luis A. Müller

Luis A. Müller

President & Chief Executive Officer

Date: November 7, 2018

/s/ Jeffrey D. Jones

Jeffrey D. Jones

Vice President, Finance & Chief Financial Officer

(Principal Financial & Accounting Officer)

\$350,000,000

CREDIT AND GUARANTY AGREEMENT

dated as of October 1, 2018

by and among

COHU, INC.,
as Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER
FROM TIME TO TIME PARTY HERETO,
as Guarantor Subsidiaries,

The Lenders From Time to Time Party Hereto,

and

DEUTSCHE BANK AG NEW YORK BRANCH,
as Administrative Agent and Collateral Agent,

DEUTSCHE BANK SECURITIES INC.,
as Lead Arranger and Lead Book Running Manager

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CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of October 1, 2018 (this “**Agreement**”), is entered into by and among **COHU, INC.**, a Delaware corporation (the “**Borrower**”), certain Subsidiaries of the Borrower from time to time party hereto, as Guarantor Subsidiaries, the Lenders from time to time party hereto, and **DEUTSCHE BANK AG NEW YORK BRANCH**, as administrative agent (together with its permitted successors in such capacity, the “**Administrative Agent**”) and as collateral agent (together with its permitted successors in such capacity, the “**Collateral Agent**”).

RECITALS:

WHEREAS, capitalized terms used in these recitals will have the respective meanings set forth for such terms in Section 1.1;

WHEREAS, pursuant to the transactions undertaken in connection with that certain Agreement and Plan of Merger, dated as of May 7, 2018, by and among the Borrower, Xavier Acquisition Corporation, a Delaware corporation (“**Merger Sub**”), and Xcerra Corporation, a Massachusetts corporation (the “**Closing Date Target**” and, together with its subsidiaries, the “**Acquired Business**”) (such agreement, including all exhibits, schedules and disclosure schedules thereto, as amended, restated, supplemented or otherwise modified prior to the Closing Date, the “**Merger Agreement**”), pursuant to which the Borrower will acquire 100% of the Capital Stock of the Closing Date Target by way of a merger of Merger Sub within and into the Closing Date Target, with the Closing Date Target continuing as the surviving entity of such merger and a wholly-owned subsidiary of the Borrower (the “**Acquisition**”);

WHEREAS, the Lenders have agreed to extend certain credit facilities to the Borrower, in an aggregate principal amount of \$350,000,000, consisting of (a) \$350,000,000 in aggregate principal amount of Initial Term B Loans and (b) up to \$100,000,000 in aggregate principal amount of Term C Loans (or such lesser principal amount as the Borrower may elect by notice to the Administrative Agent prior to the Closing Date);

WHEREAS, the proceeds of the Initial Term B Loans and the Term C Loans, if any, will be used on the Closing Date, together with unrestricted cash on hand of the Borrower and the Acquired Business, to (A) consummate the Acquisition and the other Transactions, and (B) pay the Transaction Costs;

WHEREAS, the Borrower has agreed to secure all of its Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien on substantially all of its assets subject to certain exceptions set forth herein and in the Pledge and Security Agreement; and

WHEREAS, the Guarantor Subsidiaries have agreed to guarantee the obligations of the Borrower hereunder and to secure their respective Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien on substantially all of their respective assets subject to certain exceptions as set forth herein and in the Pledge and Security Agreement;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, will have the following meanings:

“**Acceptable Discount Price**” as defined in Section 2.25(b).

“**Acquired Business**” as defined in the recitals hereto.

“**Acquisition**” as defined in the recitals hereto.

“**Additional Incremental RCF Basket Amount**” means, as of any date of measurement, the sum of (a) \$35,000,000 *minus* (b) the aggregate principal amount of Incremental Revolving Facilities previously incurred in reliance on this definition, *plus* (c) the aggregate principal amount of voluntary permanent reductions of Incremental Revolving Credit Commitments previously incurred in reliance on this definition (solely to the extent not funded with the proceeds of Funded Debt).

“**Additional Lender**” means, at any time, any bank, other financial institution or institutional investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Loan in accordance with Section 2.24 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.26; *provided* that each Additional Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) will be subject to the approval of the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed), to the extent any such consent would be required from the Administrative Agent under Section 10.6(c) for an assignment of Loans to such Additional Lender.

“**Administrative Agent**” as defined in the preamble hereto.

“**Adverse Proceeding**” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Borrower or any Subsidiary) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Executive Officer of the Borrower, threatened against or affecting the Borrower or any Subsidiary or any property of the Borrower or any Subsidiary.

“**Affected Lender**” as defined in Section 2.18(c).

“**Affected Loans**” as defined in Section 2.18(c).

“**Affiliate**” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For the avoidance of doubt, none of the Agents or their respective lender affiliates shall be deemed to be an Affiliate of the Borrower, any Subsidiary or any Unrestricted Subsidiary.

“**Agency Fee Letter**” means that certain Fee Letter, dated May 7, 2018, by and among the Borrower, DBNY and DBSI.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent, the Bookrunner and the Lead Arranger.

“**Aggregate Amounts Due**” as defined in Section 2.17.

“**Aggregate Payments**” as defined in Section 7.2.

“**Agreement**” as defined in the preamble hereto.

“**All-In Yield**” means, as to any Indebtedness or Term Loans of any Class, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, a Eurodollar Rate floor or Base Rate floor to the extent greater than 0.00% per annum or 1.00% per annum, respectively (with such increased amount being equated to interest margins for purposes of determining any increase to the Applicable Margin); *provided* that (i) original issue discount and upfront fees will be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness); (ii) that “All-In Yield” will not include arrangement fees, structuring fees, underwriting fees, commitment fees, ticking fees, amendment fees, closing fees or any other similar fees payable to the Lead Arranger in connection with the Initial Term B Loans or to one or more arrangers or lenders (or their respective affiliates) in connection with any other applicable Indebtedness or commitments in respect thereof (regardless of how such fees are computed); and (iii) if a Eurodollar Rate floor or Base Rate floor for the applicable Indebtedness or commitments in respect thereof being incurred is greater than the Eurodollar Rate floor or Base Rate floor, respectively, for the Initial Term B Loans, the difference between such floor for such applicable new Indebtedness or commitments and the Initial Term B Loans will be equated to an increase in the Applicable Margin, and in such case the interest rate floor (expressed in the definition of Eurodollar Rate or Base Rate), but not the Applicable Margin, as applicable to the Initial Term B Loans will be increased to the extent of such differential between interest rate floors.

“**Annual Budget**” as defined in Section 5.1(c).

“**Anti-Corruption Laws**” means Laws relating to anti-bribery or anti-corruption (governmental or commercial) which apply to the Credit Parties, their Subsidiaries or their Unrestricted Subsidiaries, including Laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any Government Official, any foreign government employee or commercial entity in order to obtain an improper business advantage; including the FCPA, the United Kingdom Bribery Act of 2010, and all national and international Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

“**Anti-Money Laundering Laws**” means any of the Laws relating to money laundering, including, but not limited to, (i) the PATRIOT Act, and (ii) the Laws comprising or implementing the Bank Secrecy Act.

“**Applicable Discount Price**” as defined in Section 2.25(b).

“**Applicable Margin**” means:

(a) with respect to Initial Term B Loans, a percentage per annum equal to (i) for Eurodollar Rate Loans, 3.00% and (ii) for Base Rate Loans, 2.00%;

(b) with respect to Term C Loans, if any, a percentage per annum equal to (i) for Eurodollar Rate Loans, 2.00% and (ii) for Base Rate Loans, 1.00%; and

(c) with respect any Term Loans (other than Initial Term B Loans and Term C Loans), as specified in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

“**Approved Electronic Communications**” means any notice, demand, communication, information, document or other material that any Credit Party provides to the Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent or to the Lenders by means of electronic communications pursuant to Section 10.1(d).

“**Approved Fund**” means (a) any investment company, fund, securitization vehicle, trust or conduit that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) any Person (other than a Natural Person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that in the case of each of the preceding clauses (a) and (b) with respect to any Lender, is administered or managed by (i) such Lender, (ii) an Affiliate of such Lender or (iii) an entity or an Affiliate of an entity that administers or manages such Lender.

“**Asset Sale**” means a sale, lease or sub-lease (as lessor or sublessor), sale and lease-back, assignment, conveyance, exclusive license (as licensor or sublicensor), transfer or other disposition (including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division) to, or any exchange of property with (each, a “**disposition**”), any Person in one transaction or a series of related transactions, of all or any part of the Borrower’s or any Subsidiary’s assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Capital Stock of any Subsidiary, other than:

- (a) dispositions of inventory and goods in the ordinary course of business;
- (b) dispositions of worn-out, obsolete, used or surplus property and property no longer used or useful in the Business;
- (c) dispositions of assets that are made subject to a Capital Lease or Purchase Money Indebtedness within 270 days after the acquisition, construction, lease or improvement of the asset financed;
- (d) any disposition of property that constitutes a Casualty Event;
- (e) dispositions of cash or Cash Equivalents (or Investments that were cash or Cash Equivalents when made);
- (f) dispositions of equipment or Real Estate Assets to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) any portion of the net cash proceeds of such disposition that are applied within 270 days of the receipt thereof to the purchase price of replacement property;
- (g) dispositions, discounts or forgiveness by the Borrower or any Subsidiary of accounts, receivables or notes receivable in connection with the collection or compromise thereof, including supplier financing arrangements without recourse to the Borrower or any Subsidiary that accelerate collection of receivables from clients or customers;

(h) (i) licenses or sub-licenses of Intellectual Property granted in the ordinary course of business and (ii) the expiration, lapse, abandonment, sale, transfer or other disposition of Intellectual Property that is in the reasonable good faith judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Credit Parties taken as a whole;

(i) leases, subleases, licenses or sub-licenses of real property or personal property (other than Intellectual Property) in the ordinary course of business;

(j) dispositions of any business, asset or property between or among the Borrower and the Subsidiaries; *provided* that any such disposition outside the ordinary course of business (A) by any Subsidiary that is not a Guarantor Subsidiary to the Borrower or to another Guarantor Subsidiary or (B) by the Borrower or any Guarantor Subsidiary to a Subsidiary that is not a Guarantor Subsidiary is, in each case, on terms that are, taken as a whole, at least as favorable to the Borrower or such Guarantor Subsidiary, as the case may be, as the terms of an arm's length disposition of such business, asset or property, taken as a whole, between unaffiliated Persons; *provided, further*, that any such disposition as described in clause (B) shall not be permitted unless treated as an Investment that is permitted by Section 6.6;

(k) dispositions of other assets for aggregate consideration not to exceed (i) \$2,500,000 in the case of any single transaction or series of related transactions or (ii) \$10,000,000 in the aggregate during any Fiscal Year;

(l) dispositions of non-core assets acquired in a Permitted Acquisition or other Investment permitted under Section 6.6 disposed of within eighteen (18) months following the consummation of such Permitted Acquisition or other Investment and in the aggregate amount not to exceed 25% of the cash purchase consideration paid in respect of such Permitted Acquisition or other Investment;

(m) dispositions of real property and related assets in connection with relocation of Executive Officers or employees of the Borrower or any Subsidiary;

(n) unwinding of Rate Contracts;

(o) issuance of Capital Stock by a Subsidiary to the Borrower or any other Subsidiary;

(p) to the extent constituting dispositions, Liens permitted by Section 6.2, Restricted Junior Payments permitted by Section 6.4 and Investments permitted by Section 6.6;

(q) dispositions of Capital Stock held in any Unrestricted Subsidiary;

(r) dispositions of Capital Stock in Joint Ventures and Joint Venture Subsidiaries pursuant to buy/sell arrangements set forth in joint venture agreements and similar binding agreements; and

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law.

"Asset Sale Sweep Percentage" as defined in Section 2.14(a).

"Assignment Agreement" means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by the Administrative Agent.

“**Assignment Effective Date**” as defined in Section 10.6(b).

“**Authorized Officer**” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, chief operating officer, chief financial officer, president, vice president, treasurer and any other officer having substantially the same authority and responsibility as any of the foregoing.

“**Available Amount**” means, as at any date of determination, an amount equal to:

(a) the sum (and, in the case of clauses (ii) through (vii) below, received or retained, as applicable, after the Closing Date and prior to such date of determination), without duplication, of:

(i) the greater of (x) \$35,000,000 and (y) 25% of LTM Consolidated Adjusted EBITDA;

(ii) 50.0% of the Consolidated Net Income of the Borrower for the period (taken as one accounting period) beginning from the first day of the first full Fiscal Quarter of the Borrower commencing after the Closing Date to the end of the Borrower’s most recently ended Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.1(a) or (b) at such time, or, in the case such Consolidated Net Income for such period is a deficit, *minus* 100.0% of such deficit (which amount shall not be less than zero);

(iii) the net cash proceeds received by the Borrower after the Closing Date (and prior to such date of determination) from issuances or sales of its Capital Stock (that is not Disqualified Capital Stock), other than to the extent such proceeds have been previously utilized in accordance with the terms of this Agreement;

(iv) the amount of any Waivable Mandatory Prepayment retained by the Borrower (and not otherwise utilized) in accordance with the terms of this Agreement;

(v) the net cash proceeds received by the Borrower or any Subsidiary in connection with the sale, transfer or other disposition of any Investment (including its ownership interest in any Joint Ventures or Unrestricted Subsidiaries) during the period from and including the Business Day immediately following the Closing Date through and including the date of determination, in each case, to the extent that the original Investments were made in reliance on the Available Amount;

(vi) the Investments of the Borrower or any Subsidiary made in reliance on the Available Amount in any Unrestricted Subsidiary that has been re-designated as a Subsidiary or that has been merged or consolidated with or into the Borrower or any Subsidiary (up to the lesser of (A) the fair market value (as determined in good faith by the Borrower) of the investments of the Borrower or any Subsidiary in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation and (B) the fair market value (as determined in good faith by the Borrower) of the original investments by the Borrower or any Subsidiary in such Unrestricted Subsidiary); and

(vii) the returns (including repayments of principal and payments of interest), profits, distributions, returns of capital and similar amounts received in cash or Cash Equivalents by the Borrower or any Subsidiary on Investments made by the Borrower or any Subsidiary in reliance on the Available Amount pursuant to Section 6.6(l) (including as a result of any termination or unwinding of such Investments) to the extent not included in the calculation of Consolidated Adjusted EBITDA;

minus

(b) the sum, without duplication, of:

(i) the aggregate amount of Restricted Junior Payments made after the Closing Date (and prior to such date of determination) pursuant to Section 6.4(g); and

(ii) the aggregate amount of Investments made after the Closing Date (and prior to such date of determination) pursuant to Section 6.6(l), with each such Investment measured as of the date made and without giving effect to subsequent changes in value.

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

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Bank Product Agreement**” means any agreement evidencing Bank Product Obligations.

“**Bank Product Obligations**” means all obligations of every nature of the Borrower or any Subsidiary from time to time owed to any Bank Product Provider in connection with any Bank Product, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower or such Subsidiary, would have accrued on any Bank Product Obligation, whether or not a claim is allowed against the Borrower or such Subsidiary for such interest in the related bankruptcy proceeding), reimbursement, fees, expenses, indemnification or otherwise.

“**Bank Product Provider**” means a Lender or Agent, or any Affiliate of a Lender or Agent, in its capacity as such, in each case that provides Bank Products to the Borrower or any Subsidiary (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Bank Product Agreement), whether or not such Person subsequently ceases to be a Lender, an Agent or an Affiliate of a Lender or Agent, in the case of any such Affiliate, that has executed and delivered to the Administrative Agent a letter agreement in form and substance reasonably acceptable to the Administrative Agent pursuant to which such Affiliate of such Lender or Agent appoints the Administrative Agent and the Collateral Agent as agents under the applicable Credit Documents.

“**Bank Products**” means all facilities or services related to (a) cash management and related services, including automated clearinghouse of funds, treasury, depository, overdraft, electronic funds transfer, cash pooling, controlled disbursements and other cash management arrangements, (b) commercial credit card and merchant card services, credit or debit cards, stored value cards and purchase cards and the processing of related sales or receipts and (c) E-payables and comparable services.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Bankruptcy Proceeding**” means any voluntary or involuntary proceeding commenced under the Bankruptcy Code.

“**Base Rate**” means, for any day, a rate per annum equal to the highest of (a) the rate of interest last announced or established by the Administrative Agent as the “prime” rate in the United States for Dollar loans or, if the Administrative Agent ceases to announce or establish such rate, the highest per annum interest rate published by the Board of Governors in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board of Governors (as determined by the Administrative Agent), (b) the sum of 0.50% per annum and the Federal Funds Rate, and (c) the sum of (i) the Eurodollar Rate calculated for each such day based on an Interest Period of one month determined two (2) Business Days prior to such day, *plus* (ii) 1.00%; *provided* that the Base Rate shall never be less than zero percent (0.00%). Any change in the Base Rate due to a change in any of the foregoing will be effective on the effective date of such change in the “prime” rate, the Federal Funds Rate or Eurodollar Rate for an Interest Period of one month.

“**Base Rate Loan**” means a Loan bearing interest at a rate determined by reference to the Base Rate.

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

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

“**Big Boy Letter**” as defined Section 2.25.

“**Blocked Person**” means any Person: (a) listed in the annex to, or otherwise subject to the provisions of, Executive Order No. 13224; (b) listed in any sanctions-related list of designated Persons maintained by the United States (including, but not limited to, OFAC Lists), the United Nations Security Council, the European Union or any of its member states, or Her Majesty’s Treasury of the United Kingdom, or any relevant sanctions authority of a jurisdiction where the Borrower and the Subsidiaries operate the Business; (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Sanctions; or (d) that is the government of a Sanctioned Country; or (e) with which dealings are otherwise restricted or prohibited pursuant to any Sanctions, including by reason of ownership, control, or agency with any person described in (a), (b), (c), or (d).

“**Board of Governors**” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Bookrunner**” means DBSI, in its capacity as joint book running manager.

“**Borrower**” as defined in the preamble hereto.

“**Business**” means, at any time, a collective reference to (a) the business activities engaged in or proposed to be engaged in by the Borrower and the Subsidiaries on the Closing Date, after giving effect to the Transactions, (b) all business activities that are similar, ancillary, incidental, complementary or related to the business activities identified in clause (a), and (c) all business activities that are a natural outgrowth or a reasonable or logical extension, expansion or development of the business activities identified in clauses (a) and (b).

“**Business Day**” means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (b) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, the term “**Business Day**” means any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“**Cap**” means, with respect to any provision of this Agreement as of any date of determination, any limitation based on a fixed Dollar amount or percentage of LTM Consolidated Adjusted EBITDA (or if both apply to such provision, whichever is higher determined as of such date); *provided* that, for the avoidance of doubt, Cap shall not include any limitation based on a ratio.

“**Capital Lease**” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP as in effect on the Closing Date, is or should be accounted for as a capital lease on the balance sheet of that Person; *provided* that for all purposes hereunder the amount of obligations under any Capital Lease shall be the amount thereof accounted for as a liability in accordance with Accounting Standards Codification 840 (regardless of whether or not then in effect) and without giving effect to Accounting Standards Codification 842 requiring operating leases to be recharacterized or treated as capital leases.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing; *provided* that no Indebtedness of the Borrower will constitute Capital Stock by virtue of being convertible or exchangeable into Capital Stock prior to such conversion or exchange.

“**Cash Equivalents**” means, as at any date of determination:

(a) Dollars, Canadian Dollars, Euros and Pounds Sterling;

(b) local currencies held by the Borrower or any Subsidiary from time to time in the ordinary course of business or consistent with past practice and not for speculation;

(c) marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the United States Government or EEA Member Country or (ii) issued by any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date;

(d) marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision of any such state, commonwealth or territory or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s;

(e) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(f) certificates of deposit, time deposits or bankers’ acceptances maturing within one year after such date and issued or accepted (x) by any Lender or (y) by any commercial bank organized under the laws of the United States, any State or Commonwealth thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$250,000,000;

(g) marketable short-term money market and similar highly liquid funds having a rating of at least P-1 or A-1 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency); and

(h) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (g) above.

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

“**Casualty Event**” means any event that gives rise to the receipt by the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property.

“**CFC**” as defined in the definition of “Excluded Foreign Subsidiary”.

“**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 Exchange Act, but excluding any employee benefit plan of such Person or its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “**option right**”)), directly or indirectly, of forty percent (40%) 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 24 consecutive month period, occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed or approved by the directors so nominated.

“**Class**” means (a) with respect to the Lenders, each of the following classes of the Lenders: (i) the Lenders having Term Loan Exposure arising from the Initial Term B Loans, (ii) the Lenders having Term Loan Exposure arising from the Term C Loans, (iii) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Incremental Term Loans, (iv) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Refinancing Term Loans, (v) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Extended Term Loans and (vi) the Lenders having Incremental Revolving Loan Exposure arising from any separately identifiable tranche of Incremental Revolving Credit Commitments, and (b) with respect to Loans, each of the following classes of Loans: (i) Initial Term B Loans, (ii) Term C Loans, (iii) any separately identifiable tranche of Incremental Term Loans, (iv) any separately identifiable tranche of Refinancing Term Loans, (v) any separately identifiable tranche of Extended Term Loans and (vi) any separately identifiable tranche of Incremental Revolving Loans and/or Incremental Revolving Credit Commitments .

“**Closing Date**” means October 1, 2018.

“**Closing Date Certificate**” means a Closing Date Certificate substantially in the form of Exhibit G.

“**Closing Date Target**” as defined in the recitals hereto.

“**Collateral**” means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted or purported to be granted pursuant to the Collateral Documents as collateral security for the Obligations; *provided* that Collateral shall not include any Excluded Assets (as defined in the Pledge and Security Agreement) or any other property or assets specifically excluded from the scope of any granting clause under any other Collateral Document unless (as to any Credit Party) such Credit Party hereafter agrees in writing that any such Excluded Asset, asset or property shall constitute Collateral hereunder.

“**Collateral Agent**” as defined in the preamble hereto.

“**Collateral Documents**” means the Pledge and Security Agreement, the Mortgages and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to the Collateral Agent, for the benefit of the Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

“**Commitment**” means any Initial Term B Loan Commitment, any Term C Loan Commitment, any Incremental Term Loan Commitment and any Incremental Revolving Credit Commitment.

“**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.

“**Company Material Adverse Effect**” as defined in the Merger Agreement (as in effect on May 7, 2018).

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

“**Consolidated Adjusted EBITDA**” means, for any Test Period, an amount determined for the Borrower and the Subsidiaries on a consolidated basis and without duplication equal to:

(a) Consolidated Net Income for such period, *plus*

(b) the sum of, in each case (other than subclauses (x) and (xviii) below) to the extent deducted (and not added back or excluded) in the calculation of Consolidated Net Income, but without duplication:

(i) Consolidated Interest Expense for such Test Period;

(ii) consolidated tax expense for such Test Period based on income, profits or capital, including state, franchise, capital and similar taxes and withholding taxes paid or accrued during such period;

(iii) amounts attributable to depreciation and amortization expense for such Test Period (including amortization of customer contracts, non-compete agreements or other intangible assets);

(iv) non-cash charges or expenses reducing Consolidated Net Income for such Test Period (*provided*, in connection with any non-cash charge or expense that is an accrual of a reserve for a cash expenditure or payment required to be made, or anticipated to be made, in a future period, (1) the Borrower may determine not to add back such non-cash charge or expense in the current Test Period and (2) to the extent the Borrower decides to add back such non-cash charge or expense, the cash payment in respect thereof in such future period will be subtracted from Consolidated Adjusted EBITDA to such extent);

(v) costs, fees and expenses associated with the Transactions;

(vi) costs, fees, charges, accruals and expenses arising in connection with the Acquisition and any transaction that is or would be a Permitted Acquisition, permitted Investment, disposition, incurrence or repayment of Indebtedness (including a refinancing, amendment or other modification thereof) and/or equity offering, in each case whether or not consummated and any amendment or modification to the terms of any such transactions (including such costs, fees, charges and expenses reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions);

(vii) restructuring, integration or similar charges, expenses or reserves, whether or not classified as restructuring charges or expenses under GAAP (including restructuring costs related to acquisitions and closure or consolidation of branches, facilities or locations, any lease termination settlements (or remaining rental expense until the end of the applicable lease term), and any expense related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate use);

(viii) changes in reserves for earnouts and similar obligations during such period;

(ix) extraordinary, unusual or non-recurring costs, fees, charges and other expenses, including severance costs and expenses (including such fees, charges and expenses incurred by the Borrower or any Subsidiary that are reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions);

(x) expenses, losses (including lost revenues) or charges incurred during such period in connection with Casualty Events to the extent that any such amount is covered by business interruption or other insurance and which either has been reimbursed or as to which the Borrower has made a determination that there exists reasonable evidence that such amount will be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable insurance carrier in writing and (b) in fact reimbursed within 365 days of the date of such determination (with a deduction for any amount so added back to the extent not so reimbursed within 365 days);

(xi) expenses, charges and losses due to the effects of purchase accounting, as set forth in the Statement of Financial Accounting Standards 141(R), Business Combinations;

(xii) the amount of any expenses paid on behalf of any member of the board of directors or reimbursable to such member of the board of directors;

(xiii) costs or expenses incurred by the Borrower or any Subsidiary pursuant to an equity-based compensation plan, profits interest or stock option plan or any other management or employee benefit plan or arrangement or any stock subscription or shareholder plan and any payments of taxes on behalf of employees or option holders in connection with equity-based compensation plans;

(xiv) any minority interest expense;

(xv) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated Adjusted EBITDA pursuant to clause (c)(ii) of this definition for any previous period;

(xvi) in connection with acquisitions of Foreign Subsidiaries, expenses recognized on conversion from IFRS to GAAP for items capitalized under IFRS but expensed under GAAP;

(xvii) costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the status of the Borrower as a reporting company, including costs, fees and expenses relating to compliance with provisions of the Securities Act and the Exchange Act and the rules of national securities exchange companies with listed equity securities;

(xviii) the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from (A) actions taken, (B) actions relating to any acquisition, disposition or operational change committed to be taken or expected to be taken no later than 24 months after such acquisition, disposition or operational change and (C) actions relating to the Transactions and acquisitions that occurred prior to the Closing Date reasonably expected to be taken no later than 24 months after the Closing Date, in each case, which cost savings, operating expense reductions and synergies will be determined by the Borrower in good faith and calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined;

(xix) any other add-backs and adjustments set forth in the bank model delivered to the Administrative Agent and the Lead Arranger, dated April 28, 2018;

(xx) expenses, charges and losses in the form of earn-out obligations and contingent consideration obligations (including to the extent accounted for as performance and retention bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case paid in connection with Permitted Acquisitions or other permitted Investments or acquisitions;

(xxi) retention, recruiting, relocation and signing bonuses and expenses; and

(xxii) any net loss from abandoned or discontinued operations, *minus*

(c) the sum of, in each case to the extent included in the calculation of Consolidated Net Income, but without duplication:

(i) extraordinary, unusual or non-recurring cash gains of such Person for such Test Period increasing Consolidated Net Income;

(ii) all non-cash items of such Person for such Test Period increasing Consolidated Net Income, including gains on cancellation of debt purchased at less than par (in each case of or by the Borrower and the Subsidiaries for such period), other than the accrual of revenue in the ordinary course and excluding any such items which represent the reversal in such Test Period of any accrual of, or cash reserve for, anticipated cash charges in any prior period to the extent such amount was deducted in determining Consolidated Adjusted EBITDA for such prior period; and

(iii) any net gain from abandoned or discontinued operations.

To the extent the determination of Consolidated Adjusted EBITDA of any other Person is required in connection with any Specified Transaction or Pro Forma calculations with respect thereto, the Borrower shall determine the Consolidated Adjusted EBITDA of such Person in a manner consistent with this definition but substituting such other Person and its Subsidiaries therein.

“**Consolidated Current Assets**” means, as at any date of determination, the total assets of the Borrower and the Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, deferred taxes, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated acquisition.

“**Consolidated Current Liabilities**” means, as at any date of determination, the total liabilities of the Borrower and the Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of long term debt and deferred taxes, (B) the current portion of interest, (C) accruals of any costs or expenses related to restructuring reserves, (D) deferred revenue arising from cash receipts that are earmarked for specific projects, (E) liabilities in respect of unpaid earn-outs or letters of credit and (F) the current portion of any other long-term liabilities, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated acquisition.

“**Consolidated Excess Cash Flow**” means for any Fiscal Year, with respect to the Borrower and the Subsidiaries on a consolidated basis, an amount, equal to:

(a) the sum, without duplication, of:

(i) the sum of (x) Consolidated Adjusted EBITDA for such Fiscal Year (for the avoidance of doubt, calculated on an actual and not on a Pro Forma Basis), minus (y) the aggregate cash component of all fees, costs, expenses, charges, proceeds or other amounts included in the calculation of Consolidated Adjusted EBITDA (pursuant to clause (b) of the definition thereof) for such Fiscal Year; plus

(ii) all cash extraordinary, unusual and non-recurring gains excluded in the calculation of Consolidated Adjusted EBITDA (pursuant to clause (c)(i) of the definition thereof) for such Fiscal Year; plus

(iii) decreases in the Consolidated Working Capital Adjustment for such Fiscal Year (other than any such decreases arising from acquisitions or dispositions by the Borrower and the Subsidiaries completed during such period or the application of purchase accounting);

minus

(b) the sum, without duplication (and without duplication of amounts deducted pursuant to clause (a)(i)(y) above), of:

(i) consolidated capital expenditures in accordance with GAAP or acquisitions of Intellectual Property accrued or paid in cash by the Borrower and the Subsidiaries during such period or thereafter and prior to the ECF Payment Date or committed to be paid in cash thereafter and prior to the ECF Payment Date, in each case to the extent funded with Internally Generated Cash; plus

(ii) the amounts for such Fiscal Year of all repayments, repurchases, redemptions, retirements, defeasances or other discharges of Consolidated Total Debt funded with Internally Generated Cash (excluding (w) Term C Loans, (x) any such payments made in reliance on any basket calculated by reference to the Available Amount, (y) repayments of revolving Indebtedness unless accompanied by a permanent reduction in the commitments thereunder and (z) purchases, prepayments and repayments of Term Loans (other than Term C Loans) and other Pari Passu Lien Indebtedness, to the extent the same reduce the amount of mandatory prepayments of Term Loans (other than Term C Loans) from Consolidated Excess Cash Flow pursuant to Sections 2.14(d)(ii) and/or 2.14(d)(iii)), in each case paid in cash during such period; plus

(iii) the amount of Restricted Equity Payments pursuant to Sections 6.4(a) and (c) made during such period or thereafter and prior to the ECF Payment Date to the extent funded with Internally Generated Cash; plus

(iv) the aggregate consideration paid in cash during such period or thereafter and prior to the ECF Payment Date or committed to be paid in cash thereafter and prior to the ECF Payment Date in connection with Permitted Acquisitions or other Investments permitted under Section 6.6 to the extent funded with Internally Generated Cash (excluding any intercompany Investments by and among the Borrower and its Subsidiaries, Investments pursuant to Section 6.6(a) and any such payments made in reliance on any basket calculated by reference to the Available Amount); plus

(v) the amount of any payments in respect of purchase price adjustments, earn-outs or long-term liabilities of the Borrower and its Subsidiaries (A) made in cash by the Borrower or any Subsidiary after the Closing Date (1) during such period or (2) thereafter and prior to the ECF Payment Date or (B) committed to be made in cash within one year after the end of such period (only to the extent made with Internally Generated Cash and excluding any such payments made in reliance on any basket calculated by reference to the Available Amount); plus

(vi) increases in the Consolidated Working Capital Adjustment for such Fiscal Year (other than any such increases arising from acquisitions or dispositions by the Borrower and the Subsidiaries completed during such Fiscal Year or the application of purchase accounting); plus

(vii) all non-cash expenses, charges and adjustments for such Fiscal Year added to Consolidated Adjusted EBITDA pursuant to clause (b) of the definition thereof; plus

(viii) an amount equal to the aggregate net non-cash gain on dispositions of property by the Borrower and its Subsidiaries during such Fiscal Year (other than dispositions of property in the ordinary course of business) to the extent included in arriving at such Consolidated Adjusted EBITDA and the net cash loss on dispositions to the extent otherwise added to arrive at Consolidated Adjusted EBITDA; plus

(ix) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and its Subsidiaries during such Fiscal Year that are made in connection with any prepayment of any principal of Indebtedness to the extent (x) such prepayment of principal reduced Consolidated Excess Cash Flow pursuant to clause (b)(ii) above or reduced the mandatory prepayment required by Section 2.14(d) and (y) such payment is made with Internally Generated Cash; plus

(x) the amount of cash Taxes paid or Tax reserves set aside or payable (without duplication) in or with respect to such Fiscal Year; plus

(xi) without duplication of amounts deducted from Consolidated Excess Cash Flow in prior periods, at the option of the Borrower, the aggregate consideration required to be paid in cash by the Borrower or any Subsidiary pursuant to binding contracts (the “**Contract Consideration**”) entered into prior to or during such period relating to Investments permitted by Section 6.6 (including Permitted Acquisitions) or any planned capital expenditures or other expenditures for research and development to be consummated or made during the period of four consecutive Fiscal Quarters following the end of such period to the extent intended to be financed with Internally Generated Cash; *provided*, that to the extent the aggregate amount utilized to consummate such transaction during such period of four consecutive Fiscal Quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Consolidated Excess Cash Flow at the end of such period of four consecutive Fiscal Quarters; *plus*

(xii) the aggregate amount of expenditures actually made by the Borrower and its Subsidiaries in cash during such period to the extent such expenditures are not expensed during such period to the extent such expenditures were funded with Internally Generated Cash;

provided that, in the case of clauses (b)(i), (b)(iv), (b)(v) and (b)(xi) above, (A) any amount committed to be paid or made within such time period that reduces Consolidated Excess Cash Flow in such Fiscal Year pursuant to such clause will not be deducted again in the calculation of Consolidated Excess Cash Flow for any subsequent Fiscal Year and (B) to the extent any such amount committed to be paid or made after the end of such Fiscal Year is not actually paid or made in cash within such time period, such unpaid amount will, to the extent applicable, be added to the calculation of Consolidated Excess Cash Flow for the immediately succeeding Fiscal Year.

For purposes of Section 2.14(d), “Consolidated Excess Cash Flow” will be deemed to be \$0 if the calculation above results in a negative number.

“**Consolidated Interest Expense**” means, with respect to the Borrower and the Subsidiaries for any Test Period, the total consolidated interest expense for such Test Period determined on a consolidated basis in accordance with GAAP, *plus*, without duplication:

- (a) imputed interest on Capital Leases for such Test Period;
- (b) commissions, discounts and other fees, charges and expenses owed with respect to letters of credit securing financial obligations and bankers’ acceptance financing for such Test Period;
- (c) amortization of debt issuance costs, debt discount, or premium and other debt or equity financing fees and expenses incurred for such Test Period including net costs under Rate Contracts or other derivative instruments entered into for the purpose of hedging interest rate risk and any commitment fees payable thereunder;
- (d) cash contributions to any employee stock ownership plan or similar trust made to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Borrower or any wholly-owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such Test Period;
- (e) the interest portion of any deferred payment obligations for such Test Period; and
- (f) all interest on any Indebtedness that is (i) Indebtedness of others secured by any Lien on property owned or acquired by the Borrower or any Subsidiary, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property or (ii) contingent obligations in respect of Indebtedness of the Borrower or any Subsidiary;

less, interest income for such period;

provided that Consolidated Interest Expense shall be calculated after giving effect to Rate Contracts related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Rate Contracts; *provided, further*, that when determining Consolidated Interest Expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period. For purposes of this definition, interest on Capital Leases will be deemed to accrue at the interest rate reasonably determined by an Authorized Officer of the Borrower to be the rate of interest implicit in such Capital Lease in accordance with GAAP as in effect on the Closing Date.

To the extent the determination of Consolidated Interest Expense of any other Person is required in connection with any Specified Transaction or Pro Forma calculations with respect thereto, the Borrower shall determine the Consolidated Interest Expense of such Person in a manner consistent with this definition but substituting such other Person and its Subsidiaries therein.

“Consolidated Net Income” means, for any Test Period, an amount determined for the Borrower and the Subsidiaries on a consolidated basis and without duplication equal to:

(a) the net income (or loss) of the Borrower and the Subsidiaries on a consolidated basis for such Test Period taken as a single accounting period determined in conformity with GAAP, plus

(b) the income (or loss) of any Joint Venture or Unrestricted Subsidiary of the Borrower or any Subsidiary, solely, in the case of any income, to the extent of the amount of dividends or other distributions actually paid in cash to the Borrower or any Subsidiary by such Joint Venture or Unrestricted Subsidiary during such Test Period, minus

(c) to the extent included in clause (a) above, an amount equal to the sum of (without duplication):

(i) with respect to any Person that is not a wholly-owned Subsidiary of the Borrower but whose net income is consolidated in whole or in part with the net income of the Borrower, the income (or loss) of such Person solely to the extent attributable to that portion of the Capital Stock in such Person that is not owned, directly or indirectly, by the Borrower during such Test Period; *provided*, the Borrower’s equity in the net income in such Person will be included in Consolidated Net Income up to the amount of dividends, distributions or other payments in respect of such equity that are paid in cash (or to the extent converted into cash) by such Person to the Borrower or any Subsidiary (and the Borrower’s equity in the net loss of such Person shall be included to the extent of the aggregate Investment of the Borrower or any Subsidiary in such Person);

(ii) with respect to any Person that is not a wholly-owned Subsidiary of the Borrower but whose net income is consolidated in whole or in part with the net income of the Borrower, the income of such Person solely to the extent that the declaration or payment of dividends or similar distributions by such Person of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument or requirement of Law applicable to such Person during such Test Period; *provided* that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid by such Person to the Borrower or any Subsidiary in respect of such Test Period;

(iii) the income (or loss) of any Person (other than the Acquired Business in connection with the Acquisition) accrued prior to the date (x) such Person becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any Subsidiary or (y) such Person's assets are acquired by the Borrower or any Subsidiary;

(iv) any after-tax gains or losses attributable to non-ordinary course dispositions of property;

(v) earnings (or losses), including any non-cash impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;

(vi) (A) unrealized gains and losses with respect to Rate Contracts for such Test Period and the application of Accounting Standards Codification 815 (Derivatives and Hedging) and (B) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (x) Indebtedness, (y) obligations under any Rate Contracts or (z) other derivative instruments;

(vii) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period;

(viii) the effects of adjustments (including the effects of such adjustments pushed down to such Person and its Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other Investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period; and

(ix) solely with respect to the calculation of "Consolidated Net Income" used in determining the "Available Amount", the income of any Subsidiary (other than a Guarantor) solely to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument or requirement of Law applicable to such Person at such date of determination (other than restrictions that have been waived or otherwise released); *provided* that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid by such Person to the Borrower or any Subsidiary in respect of such Test Period or the amount that could have been paid without violating any such restriction or requiring any such approval, to such Person or a Subsidiary thereof in respect of such Test Period, to the extent not already included therein;

provided however that:

I. any net after-Tax effect of costs, fees, charges, accruals and expenses arising in connection with the Acquisition and any transaction that is or would be a Permitted Acquisition, permitted Investment, disposition, incurrence or repayment of Indebtedness (including a refinancing, amendment or other modification thereof) and/or equity offering, in each case whether or not consummated and any amendment or modification to the terms of any such transactions (including such costs, fees, charges and expenses reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions) shall be excluded;

II. any net after-Tax effect of expenses, charges and losses due to the effects of purchase accounting, as set forth in the Statement of Financial Accounting Standards 141(R), Business Combinations shall be excluded; and

III. any net after-Tax effect of costs or expenses incurred by the Borrower or any Subsidiary pursuant to an equity-based compensation plan, profits interest or stock option plan or any other management or employee benefit plan or arrangement or any stock subscription or shareholder plan shall be excluded.

To the extent the determination of Consolidated Net Income of any other Person is required in connection with any Specified Transaction or Pro Forma calculations with respect thereto, the Borrower shall determine the Consolidated Net Income of such Person in a manner consistent with this definition but substituting such other Person and its Subsidiaries therein.

“**Consolidated Total Debt**” means, as at any date of determination, the aggregate principal amount of all Indebtedness of the Borrower and the Subsidiaries referred to in the following clauses of the definition of “Indebtedness”: clauses (a) (including, for the avoidance of doubt, any Purchase Money Indebtedness), (b), (c), (e) (but only to the extent that any letter of credit has been drawn and not reimbursed) and (h) (solely to the extent relating to Indebtedness of the type described in clauses (a), (b), (c), and (e) of the definition thereof), in each case determined on a consolidated basis in accordance with GAAP; *provided* that Consolidated Total Debt shall not include Indebtedness in respect of obligations under Rate Contracts.

“**Consolidated Working Capital**” means, as at any date of determination, Consolidated Current Assets *minus* Consolidated Current Liabilities.

“**Consolidated Working Capital Adjustment**” means, for any Fiscal Year on a consolidated basis, the amount equal to Consolidated Working Capital as of the beginning of such Fiscal Year, *minus* Consolidated Working Capital as of the end of such Fiscal Year (which amount may be positive or negative); *provided* that, for purposes of this definition, Consolidated Working Capital as of the beginning of the Fiscal Year shall be adjusted to give effect to any working capital arising from acquisitions or dispositions by the Borrower and the Subsidiaries completed during such Fiscal Year (including the impact of any post-closing working capital adjustment).

“**Contractual Obligation**” means, as applied to any Person, any provision of any of the Securities issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“**Contributing Guarantors**” as defined in Section 7.2.

“**Controlled Entity**” means, as to any Person, any other Person that is in control of, or is controlled by, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“**Conversion/Continuation Date**” means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

“**Conversion/Continuation Notice**” means a conversion/continuation notice substantially in the form of Exhibit A-2.

“**Counterpart Agreement**” means a counterpart agreement substantially in the form of Exhibit H.

“**Credit Agreement Refinancing Indebtedness**” means secured or unsecured Indebtedness of the Borrower in the form of (i) Refinancing Term Commitments or Refinancing Term Loans or (ii) other term loans or notes or revolving commitments governed by definitive documentation other than this Agreement; *provided that*:

- (a) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or part, any Class of Term Loans (other than Term C Loans) (“**Refinanced Indebtedness**”);
- (b) such Indebtedness is in an original aggregate principal amount not greater than the Maximum Refinancing Amount;
- (c) any such Indebtedness will not mature prior to the final maturity date of the Refinanced Indebtedness, or have a shorter Weighted Average Life to Maturity than (without giving effect to any amortization or prepayments on the outstanding Term Loans) the Refinanced Indebtedness and, in the case of Indebtedness in the form of notes, have mandatory prepayment provisions (other than relating to customary asset sale and change of control or events of default) that could result in prepayments of such notes prior to the Refinanced Indebtedness;
- (d) any mandatory prepayments (and, with respect to any Credit Agreement Refinancing Indebtedness comprising revolving loans, to the extent commitments thereunder are permanently reduced or terminated) of:
 - (i) any Credit Agreement Refinancing Indebtedness that comprises junior lien or unsecured notes or loans, or Pari Passu Lien Indebtedness governed by documentation other than this Agreement, may not be made except to the extent that prepayments are (A) permitted hereunder and (B) to the extent required hereunder or pursuant to the terms of any Pari Passu Lien Indebtedness, first made or offered to the Term Loans and any such Pari Passu Lien Indebtedness; and
 - (ii) any Credit Agreement Refinancing Indebtedness constituting Pari Passu Lien Indebtedness may participate on a *pro rata* basis, less than *pro rata* basis or greater than *pro rata* basis (but not greater than a *pro rata* basis as compared to any Class of Term Loans constituting Pari Passu Lien Indebtedness with an earlier or equivalent maturity date (other than pursuant to a permitted refinancing with the proceeds such of Credit Agreement Refinancing Indebtedness)) with the then-outstanding Term Loans (other than Term C Loans) in any mandatory prepayments hereunder;
- (e) such Indebtedness is not incurred or guaranteed by any Person other than a Guarantor Subsidiary;
- (f) if such Indebtedness is secured:
 - (i) such Indebtedness is not secured by any assets or property of the Borrower or any Subsidiary that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender);
 - (ii) the security agreements relating to such Indebtedness are substantially similar to or the same as the Collateral Documents (as determined in good faith by the Borrower);

(iii) if such Indebtedness constitutes Pari Passu Lien Indebtedness, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Lien Intercreditor Agreement; and

(iv) if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement; and

(g) the other terms applicable to such Indebtedness are substantially identical to, or (taken as a whole as reasonably determined by the Borrower in good faith) no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Indebtedness; *provided* that this clause (g) will not apply to (1) terms addressed in the preceding clauses (a) through (f), (2) interest rates, rate floors, fees, funding discounts and other pricing terms, (3) redemption, prepayment or other premiums, (4) optional prepayment terms (subject to clause (d) above) and (5) covenants and other terms that are (i) applied to the Initial Term B Loans and Term Loan Commitments existing at the time of incurrence of such Credit Agreement Refinancing Indebtedness (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness; *provided, further*, a certificate of the Borrower delivered to the Administrative Agent stating that the Borrower has reasonably determined in good faith that the terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement; *provided, further*, that “Credit Agreement Refinancing Indebtedness” may be incurred in the form of a bridge or other interim credit facility intended to be refinanced with (or which converts into or is exchanged for) long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (c) of this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (c) above) and in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other interim credit facility, clauses (d) and (g) of this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

“**Credit Date**” means the date of a Credit Extension.

“**Credit Document**” means any of (i) this Agreement, (ii) any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement, (iii) (other than for purposes of Section 10.5) the Term Loan Notes, if any, (iv) the Collateral Documents, (v) the Agency Fee Letter, (vi) any third party subordination and intercreditor agreement entered into pursuant to the terms hereof and (vii) any Incremental Amendment, Refinancing Amendment or Extension Amendment, or any amendment entered into in connection with any Replacement Term Loans.

“**Credit Extension**” means the making of a Loan.

“**Credit Party**” means the Borrower and each Guarantor Subsidiary.

“**DBNY**” means Deutsche Bank AG New York Branch.

“**DBSI**” means Deutsche Bank Securities Inc.

“**Debt Representative**” means, with respect to any series of Pari Passu Lien Indebtedness, Junior Lien Indebtedness or other Indebtedness secured by a Lien permitted under Section 6.1, administrative agent, trustee, collateral agent, security agent or similar agent under the credit agreement, indenture, note purchase agreement or similar agreement or instrument pursuant to which such Indebtedness is incurred, issued or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Default**” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

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

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

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

“**Designated Non-Cash Consideration**” means the fair market value of non-cash consideration received by the Borrower or any Subsidiary in connection with an Asset Sale pursuant to Section 6.8(e) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one hundred eighty (180) days following the consummation of the applicable Asset Sale).

“**Discount Price Range**” as defined in Section 2.25(b).

“**Discounted Prepayment**” as defined in Section 2.25(a).

“**Discounted Prepayment Amount**” as defined in Section 2.25(b).

“**Discounted Prepayment Notice**” as defined in Section 2.25(b).

“**Discounted Prepayment Offeror**” as defined in Section 2.25(a).

“**Discounted Prepayment Response Date**” as defined in Section 2.25(b).

“**Disqualified Capital Stock**” means any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely in exchange for Capital Stock that is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely in exchange for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part, (c) provides for the scheduled payment of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the Latest Term Loan Maturity Date, except, in the case of clauses (a) and (b), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full in cash of all Obligations and the termination of the Commitments; *provided*, if such Capital Stock is issued pursuant to a plan for the benefit of future, current or former employees, directors or officers of the Borrower or any Subsidiary or by any such plan to such employees, directors or officers, such Capital Stock will not constitute Disqualified Capital Stock solely because the Borrower or any Subsidiary may be required to repurchase such Capital Stock in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s, director’s or officer’s termination, death or disability.

“Disqualified Lender” means (a) the bona fide competitors of the Borrower, its Subsidiaries and the Acquired Business identified in writing by the Borrower by name to the Lead Arranger on or prior to the Closing Date, or from time to time after the Closing Date to the Administrative Agent, (b) those particular banks, financial institutions and other institutional lenders identified in writing by the Borrower by name to the Lead Arranger on or prior to May 7, 2018, and (c) any clearly identifiable (on the basis of its name or as identified in writing by the Borrower) affiliate of the entities described in the preceding clauses (a) and (b) or Persons that are identified as affiliates in writing by the Borrower to the Administrative Agent from time to time (other than any affiliates that are banks, financial institutions, bona fide debt funds or investment vehicles that are engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course and a Person described in clause (a) or (b) does not have the power to direct the investment policies of such entity (other than a limited number of senior employees in connection with such person’s internal legal, compliance and risk management and credit committee members) with respect to decisions involving any investment in debt of the Borrower or any of its Subsidiaries), *provided*, any Person that is a Lender and subsequently becomes a Disqualified Lender (but was not a Disqualified Lender on or prior to May 7, 2018, or at the time it became a Lender) will be deemed to not be a Disqualified Lender hereunder.

“Dollars” and the sign “\$” mean the lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States, any State or Commonwealth thereof or the District of Columbia.

“E-Fax” means any system used to receive or transmit faxes electronically.

“E-Signature” means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

“E-System” means any electronic system approved by the Administrative Agent, including IntraLinks® and ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“ECF Payment Date” as defined in Section 2.14(d).

“ECF Percentage” as defined in Section 2.14(d).

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

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

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

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System.

“Eligible Assignee” means, in each case, subject to the proviso at the end of this definition, (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), (b) any Person (other than a Natural Person) in compliance with Section 10.6(c)(ii) or (c) any Approved Fund; *provided* that in no event will a Disqualified Lender be an Eligible Assignee without the Borrower’s consent.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, the Borrower, any Subsidiary or any of their respective ERISA Affiliates, or with respect to any Pension Plan or Multiemployer Plan, to which the Borrower or any of its Subsidiaries or any ERISA Affiliate thereof has within the preceding five plan years made contributions.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, to which the Borrower or any of its Subsidiaries or any of their respective Facilities or operations are subject and arising (a) pursuant to or in connection with any actual or alleged Environmental Liability or violation of any applicable Environmental Law; (b) in connection with any Release of any Hazardous Material; or (c) in connection with any actual or alleged damage, injury, threat or harm to health or safety (with respect to exposure to Hazardous Materials), natural resources or the environment.

“Environmental Laws” means any and all current and future foreign or domestic, federal or state (or any subdivision of either of them) Laws, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (a) the protection or cleanup of the environment or natural resources such as plants and animals; (b) Hazardous Materials; or (c) occupational health and safety or, with respect to exposure to Hazardous Materials, the protection of human, plant or animal health or welfare, in any such case, as of any date of determination, then in force and in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

“Environmental Liabilities” means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and attorneys’ costs) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, (a) any actual or alleged violation of any applicable Environmental Law; (b) any Release or threatened Release; (c) any Remedial Action; or (d) any contract or written agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“ERISA Affiliate” means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or Business under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member. Any former ERISA Affiliate of the Borrower or any Subsidiary will continue to be considered an ERISA Affiliate of the Borrower or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower or such Subsidiary and with respect to liabilities arising after such period for which the Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

“ERISA Event” means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation in effect on the Closing Date); (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by the Borrower, any Subsidiary or any of their respective ERISA Affiliates from any Pension Plan with two or more non-related contributing sponsors or the termination of any such Pension Plan resulting in liability to the Borrower, any Subsidiary or any of their respective ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan or Multiemployer Plan, or the occurrence of any event or condition which could reasonably constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any such plan; (f) the imposition of any liability under Title IV of ERISA on the Borrower, any Subsidiary or any of their respective ERISA Affiliates with respect to the termination of any Pension Plan; (g) the withdrawal of the Borrower, any Subsidiary or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by the Borrower, any Subsidiary or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; (i) the occurrence of a non-exempt “prohibited transaction” with respect to which the Borrower or any Subsidiary is a “disqualified person” or a “party in interest” (within the meaning of Section 4975 of the Internal Revenue Code or Section 406 of ERISA, respectively) or which could reasonably be expected to result in Liability to the Borrower or any Subsidiary; or (j) a determination that any Pension Plan is, or is expected to be, in “at risk” status (as defined in Section 430(j) of the Internal Revenue Code or Section 303 of ERISA) or in “critical and declining” status (within the meaning of Section 305 of ERISA).

“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, for any Interest Period, the rate per annum obtained by dividing (i) the ICE Benchmark Administration London Interbank Offered Rate on the applicable Reuters screen page (or such other commercially available source providing such quotations of LIBOR as designated by the Administrative Agent from time to time) at approximately 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 by (ii) an amount equal to (x) one *minus* (y) the applicable Statutory Reserves, if any; *provided, however*, that if the Eurodollar Rate at any time would otherwise be less than zero, such rate shall be deemed to be zero (including for purposes of clause (c) in the definition of “Base Rate”).

“Eurodollar Rate Loan” means a Loan bearing interest at a rate determined by reference to the Eurodollar Rate.

“Event of Default” as defined in Section 8.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Excluded Foreign Subsidiary” means (i) any Subsidiary that is (x) a Foreign Subsidiary which is a “controlled foreign corporation” within the meaning of Section 957 of the Internal Revenue Code (each, a “CFC”) or (y) any direct or indirect Domestic Subsidiary that is treated as a “disregarded entity” for federal income tax purposes which owns no material assets other than the Capital Stock, or intercompany Indebtedness, of one or more Subsidiaries that are CFCs (“**Pass-Through Foreign Subsidiary Holding Company**”) or other Pass-Through Foreign Subsidiary Holding Companies, (ii) any direct or indirect Subsidiary of a CFC or a Pass-Through Foreign Subsidiary Holding Company and (iii) any other Subsidiary that is a Foreign Subsidiary.

“Excluded Real Estate Assets” means, with respect to any Credit Party, (a) any fee interest in owned real property not constituting a Material Real Estate Asset, (b) any leasehold interest (including any ground lease interest) in real property and (c) any fixtures affixed to any real property to the extent (i) such real property does not constitute Collateral and/or (ii) such real property is not otherwise an Excluded Asset (as defined in the Pledge and Security Agreement) and a security interest in such fixtures may not be perfected by a UCC-1 financing statement in the jurisdiction of organization of the applicable Credit Party.

“Excluded Subsidiary” means (a) each Immaterial Subsidiary, (b) each Unrestricted Subsidiary, (c) each Excluded Foreign Subsidiary, (d) each Subsidiary to the extent that (and only for so long as) such Subsidiary is prohibited by any applicable Law from guaranteeing the Obligations, (e) each Subsidiary if, and for so long as, the guarantee of the Obligations by such Subsidiary would require the consent, approval, license or authorization of a Governmental Authority or under any binding Contractual Obligation (or, if such Subsidiary is not a wholly-owned Subsidiary, under its Organizational Documents) with any Person other than the Borrower or any Subsidiary existing on the Closing Date (or, if later, the date such Subsidiary is acquired (so long as such Contractual Obligation is not incurred in contemplation of such acquisition)), except to the extent and until such consent, approval, license or authorization has actually been obtained, (f) each Subsidiary that is a not-for-profit organization, (g) each Subsidiary which is not a wholly-owned Subsidiary of the Borrower, (h) each Subsidiary with respect to which, as reasonably determined by the Borrower in good faith, the guarantee by such Subsidiary would reasonably be expected to result in material adverse tax consequences to the Borrower or any Subsidiary, and (i) each Subsidiary with respect to which, as reasonably determined by the Borrower and the Administrative Agent the cost, burden, consequences and/or potential tax liability of providing a guarantee shall be excessive in relation to the benefits to be obtained by the Lenders therefrom.

“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 security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” (determined after giving effect to any applicable keep well, support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Credit Parties) as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 7.14) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion will apply only to the portion of such Swap Obligation that is attributable to swaps for which the Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Tax” 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, and including branch profits taxes) and franchise 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 applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) imposed on any Recipient as a result of a present or former connection between such Recipient and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any such Recipient having executed, delivered or performed its obligations or received a payment under, received or perfected a security interest under, or enforced, any Credit Document); (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which such Recipient (i) acquires such interest in the Loan or Commitment or otherwise becomes a party to this Agreement (other than, with respect to a Lender, pursuant to an assignment request by the Borrower under Section 2.23) or (ii) changes its lending office, except in each case, to the extent that, pursuant to Section 2.20, 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 that are attributable to the failure by any Recipient to deliver the documentation required to be delivered pursuant to Section 2.20(f) or Section 2.20(g); and (d) Taxes imposed under FATCA.

“Executive Officer” means, as applied to any Person, any individual holding the position of chairman of the board of directors, chief executive officer, president, chief financial officer, chief operating officer, chief compliance officer, chief legal officer and any other executive officer having substantially the same authority and responsibility as any of the foregoing.

“Executive Order No. 13224” means Executive Order No. 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.

“Export Controls” means any applicable laws, regulations, and orders related to the regulation of imports, exports, re-exports, transfers, releases, shipments, transmissions, or any other provision or receipt of goods, technology, technical data, software, or services, including the Export Administration Regulations (15 C.F.R. § 730-774), the Arms Export Control Act (22 U.S.C. § 2778), the International Traffic in Arms Regulations (22 C.F.R. § 120-130), the Tariff Act of 1930 and regulations administered and enforced by U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, and any other laws, regulations, and orders of a similar nature.

“Extended Term Lender” as defined in Section 10.5(g).

“**Extended Term Loans**” as defined in Section 10.5(g).

“**Extension**” as defined in Section 10.5(g).

“**Extension Amendment**” as defined in Section 10.5(g).

“**Extension Offer**” as defined in Section 10.5(g).

“**Facility**” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by the Borrower, any Subsidiary or any of their respective predecessors or Affiliates.

“**Fair Share**” as defined in Section 7.2.

“**Fair Share Contribution Amount**” as defined in Section 7.2.

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue 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 agreement entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

“**FCPA**” means the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1 *et seq.*).

“**Federal Funds Rate**” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate charged to the Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by the Administrative Agent.

“**Financial Officer Certification**” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer, treasurer, controller or other officer with equivalent duties of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower and the Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes.

“**FIRREA**” means the Financial Institutions Reform Recovery and Enforcement Act of 1989, as amended from time to time.

“**First Lien Net Leverage Ratio**” means, as of any date, the ratio of (a) the sum of Consolidated Total Debt that is secured by a Lien on any asset or property of the Borrower or any Subsidiary (excluding any Subordinated Debt and any Junior Lien Indebtedness that is subject to a Junior Lien Intercreditor Agreement), *minus* Unrestricted Cash (not to exceed \$60,000,000) as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

“Fiscal Quarter” means, with respect to any Person, the fiscal quarter of such Person. In the case of the Borrower, Fiscal Quarter means a fiscal quarter of any Fiscal Year of the Borrower. A Fiscal Quarter of the Borrower may be designated by reference to the last day thereof (i.e., the “December 29, 2018 Fiscal Quarter” refers to the Fiscal Quarter ended on December 29, 2018, the last day of the Borrower’s fourth Fiscal Quarter for Fiscal Year 2018) or by reference to the applicable Fiscal Quarter of a Fiscal Year (i.e., the “Q4-2018 Fiscal Quarter” also refers to the Borrower’s fourth Fiscal Quarter for Fiscal Year 2018). To the extent that the Fiscal Quarters of any Person (other than the Borrower) are different than the Fiscal Quarters of the Borrower, the Borrower shall determine in good faith a methodology to align such other Person’s Fiscal Quarters with the corresponding Fiscal Quarters of the Borrower. For purposes of this Agreement, except to the extent expressly stated otherwise, references to any “Fiscal Quarter” will mean a Fiscal Quarter of the Borrower.

“Fiscal Year” means, with respect to any Person, the fiscal year of such Person. In the case of the Borrower, Fiscal Year means the fiscal year of the Borrower and the Subsidiaries ending on the last Saturday of each calendar year. A Fiscal Year of the Borrower may be designated by reference to the last day thereof (i.e., the “December 29, 2018 Fiscal Year” refers to the Fiscal Year ended on December 29, 2018) or by reference to the calendar year in which such Fiscal Year ends (i.e., the “Fiscal Year 2018” also refers to the Fiscal Year ended on December 29, 2018). To the extent that the Fiscal Years of any Person (other than the Borrower) are different than the Fiscal Years of the Borrower, the Borrower shall determine in good faith a methodology to align such other Person’s Fiscal Years with the corresponding Fiscal Years of the Borrower. For purposes of this Agreement, except to the extent expressly stated otherwise, references to any “Fiscal Year” will mean a Fiscal Year of the Borrower.

“Flood Insurance Laws” means collectively, (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of 1973, (c) the 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), (d) the Flood Insurance Reform Act of 2004 and (e) the Biggert-Waters Flood Insurance Reform Act of 2012, each as now or hereafter in effect or any successor statute thereto and any and all official rulings and interpretation thereunder or thereof.

“Foreign Casualty Event” as defined in Section 2.15(f).

“Foreign Disposition” as defined in Section 2.15(f).

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by the Borrower or any of its Subsidiaries with respect to employees employed outside the United States.

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

“Funded Debt” means all Indebtedness of the Borrower and the Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“Funding Guarantor” as defined in Section 7.2.

“**Funding Notice**” means a notice substantially in the form of Exhibit A-1.

“**GAAP**” means, subject to the limitations on the application thereof set forth in Section 1.2 and in the definition of Capital Lease, United States generally accepted accounting principles in effect as of the date of determination thereof.

“**Global Intercompany Note**” means the Global Intercompany Note to be executed by the Borrower and the Subsidiaries substantially in the form of Exhibit J.

“**Government Official**” means (a) any official, officer, employee or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Entity, (b) any political party or party official or candidate for political office or (c) any official, officer, employee, or any Person acting in an official capacity for or on behalf of, any company, business, enterprise or other entity owned (in whole or in substantial part) controlled by or Affiliated (as defined without reference to clause (a) of the second sentence set forth in the definition of “Affiliate”) with a Governmental Entity.

“**Governmental Authority**” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government in a jurisdiction where the Borrower and the Subsidiaries operate the Business, including any supra-national bodies (such as the European Union or the European Central Bank).

“**Governmental Authorization**” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“**Governmental Entity**” means any (a) international, multinational, foreign, federal, state, local, municipal, or other government or political subdivision, (b) governmental or quasi-governmental entity of any nature (including any governmental agency, branch, department, commission, board, bureau, official, or entity and any court or other tribunal) or (c) body exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal.

“**Granting Lender**” as defined in Section 10.6(k).

“**Grantor**” as defined in the Pledge and Security Agreement.

“**Guaranteed Obligations**” means all Obligations; *provided* that, with respect to any Guarantor, “Guaranteed Obligations” shall exclude all Excluded Swap Obligations of such Guarantor.

“**Guarantor**” means the Borrower (solely with respect to the Guaranteed Obligations in respect of any Bank Product Agreement or Secured Rate Contract entered into by any other Credit Party and not with respect to its direct Obligations as a primary obligor under the Credit Documents) and each Guarantor Subsidiary, and, in each case, their respective successors and assigns.

“**Guarantor Subsidiary**” means each direct and indirect Subsidiary of the Borrower (other than an Excluded Subsidiary) that has provided a Guaranty hereunder.

“**Guaranty**” means the guaranty of each Guarantor set forth in Section 7.

“Hazardous Materials” means any chemical, material, substance or waste, exposure to which, or the Release of which, either is prohibited, limited or regulated by any Governmental Authority or may give rise to Environmental Liability.

“Hazardous Materials Activity” means any activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Historical Audited Financial Statements” means, as of the Closing Date, the audited consolidated balance sheets and related statements of income and cash flows of the Borrower as of the Fiscal Years ended December 26, 2015, December 31, 2016 and December 30, 2017 and of the Acquired Business as of the Fiscal Years of the Acquired Business ended July 31, 2015, July 31, 2016 and July 31, 2017.

“Historical Financial Statements” means, collectively, the Historical Audited Financial Statements and the Historical Unaudited Financial Statements.

“Historical Unaudited Financial Statements” means, as of the Closing Date, the unaudited consolidated balance sheets and related statements of income and cash flows of the Borrower as of the Fiscal Quarters ended June 30, 2018 and March 31, 2018 and of the Acquired Business as of the fiscal quarters of the Acquired Business ended April 30, 2018, January 31, 2018 and October 31, 2017.

“Immaterial Subsidiary” means on any date, any Subsidiary of the Borrower that has less than 5.0% of consolidated total assets on a Pro Forma Basis and generates less than 5.0% of annual consolidated revenues of the Borrower and the Subsidiaries as reflected in the most recent financial statements delivered pursuant to Section 5.1(a) prior to such date (or, at any time prior to the first date that financial statements have been or are required to be delivered pursuant to Section 5.1(a), as reflected in the Historical Audited Financial Statements for the Borrower for the Fiscal Year ended December 30, 2017 and the Historical Audited Financial Statements for the Acquired Business for the fiscal year of the Acquired Business ended July 31, 2017); *provided* that if, at any time and from time to time after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Domestic Subsidiaries that are not Guarantors solely because they meet the thresholds set forth above comprise in the aggregate more than (when taken together with the consolidated total assets of the Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Test Period) 7.5% of consolidated total assets of the Borrower and the Subsidiaries as of the end of the most recently ended Test Period or more than (when taken together with the revenues of the Subsidiaries of such Domestic Subsidiaries for such Test Period) 7.5% of the consolidated revenues of the Borrower and the Subsidiaries for such Test Period, then the Borrower shall, not later than sixty (60) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), cause one or more Domestic Subsidiaries to comply with the provisions of Section 5.10 with respect to any such Subsidiaries so that the foregoing condition ceases to be true.

“Increased Cost Lender” as defined in Section 2.23.

“**Incremental Amendment**” as defined in Section 2.24(e).

“**Incremental Equivalent Debt**” means Indebtedness of any one or more Credit Parties in the form of term loans or notes that constitute Pari Passu Lien Indebtedness or Junior Lien Indebtedness or that are unsecured; *provided* that:

(a) on the date of each incurrence of Incremental Equivalent Debt, (A) the aggregate principal amount of such Incremental Equivalent Debt (together with any Incremental Revolving Facilities and/or Incremental Term Facilities incurred on such date in reliance on clause (A) of the first sentence of Section 2.24(c)) shall not exceed an amount equal to the Incremental Ratio Amount (determined on the same basis as the Borrower may incur Incremental Facilities pursuant to the second, third, fourth and fifth sentences of Section 2.24(c), but substituting “Incremental Equivalent Debt” for “Incremental Facility” therein solely for the purposes thereof) or (B) the aggregate principal amount of such Incremental Equivalent Debt, together with the aggregate principal amount of all other Incremental Equivalent Debt incurred in reliance on this clause (B) and all Incremental Term Facilities and Incremental Revolving Facilities incurred in reliance on clause (B) of the first sentence of Section 2.24(c) (without regard to the proviso therein), shall not exceed an amount equal to the Incremental Fixed Amount (it being understood that Incremental Equivalent Debt may be incurred under either clause (A) or (B) as selected by the Borrower in its sole discretion, including by designating any portion of the Incremental Equivalent Debt in excess of an amount permitted to be incurred under clause (A) at the time of such incurrence as incurred under clause (B));

(b) any Incremental Equivalent Debt will not mature prior to the Latest Term Loan Maturity Date with respect to any Class of outstanding Term Loans, or have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of any Class of outstanding Term Loans;

(c) any Incremental Equivalent Debt that is secured (i) will not be secured by any property or assets of the Borrower or any Subsidiary other than the Collateral and (ii) will be subject to a Pari Passu Lien Intercreditor Agreement or a Junior Lien Intercreditor Agreement, as applicable;

(d) any Incremental Equivalent Debt (i) constituting Pari Passu Lien Indebtedness may participate on a *pro rata* basis, less than *pro rata* basis or greater than *pro rata* basis (but not greater than a *pro rata* basis as compared to any Class of Term Loans constituting Pari Passu Lien Indebtedness with an earlier or equivalent maturity date (other than pursuant to a permitted refinancing) with the then-outstanding Term Loans (other than Term C Loans) in any mandatory prepayments hereunder, and (ii) constituting Junior Lien Indebtedness or that is unsecured may not participate in any voluntary or mandatory prepayments, except to the extent that such prepayments are offered, to the extent required under this Agreement or any Pari Passu Lien Indebtedness, first *pro rata* to the Term Loans (other than Term C Loans) and any applicable Pari Passu Lien Indebtedness;

(e) Incremental Equivalent Debt will not be guaranteed by any Person other than the Credit Parties;

(f) with respect to any Incremental Equivalent Debt that constitutes MFN Eligible Debt, the MFN Adjustment will apply to such Incremental Equivalent Debt (but the MFN Adjustment will not apply to any other Incremental Equivalent Debt);

(g) subject to provisions of Section 1.5 if an LCA Election has been made, no Default or Event of Default (other than with respect to a Limited Condition Acquisition, which shall be subject only to the absence of an Event of Default pursuant to Section 8.1(a), (f) or (g)) will have occurred and be continuing on the date such Incremental Equivalent Debt is incurred or would occur immediately after giving effect thereto; and

(h) the other terms applicable to such Indebtedness are substantially identical to, or either (A) (taken as a whole as determined by the Borrower in good faith) not materially more restrictive to the Borrower and its Subsidiaries than those applicable to the Initial Term B Loans or (B) if the requirements in clause (A) are not satisfied, are reasonably satisfactory to the Administrative Agent; *provided* that this clause (h) will not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans (other than Term C Loans) existing at the time of incurrence of such Incremental Equivalent Debt (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness; *provided, further*, a certificate of the Borrower delivered to the Administrative Agent stating that the Borrower has reasonably determined in good faith that the terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement.

“**Incremental Facility**” as defined in Section 2.24(a).

“**Incremental Fixed Amount**” means, as of any date of measurement, the sum of (a) the greater of (x) \$145,000,000 and (y) 100% of LTM Consolidated Adjusted EBITDA as of such date, *minus* (b) the aggregate principal amount of Incremental Term Loans and Incremental Revolving Facilities previously incurred in reliance on this definition, *minus* (c) the aggregate principal amount of all Incremental Equivalent Debt previously incurred in reliance on this definition, *plus* (d) the aggregate principal amount of any voluntary prepayments of Term Loans (other than Term C Loans), Incremental Equivalent Debt or Refinancing Indebtedness in respect thereof (in each case, including those made through discounted debt buy-backs by the Borrower or any Subsidiary in an amount equal to the discounted amount actually paid in respect of such buy-back, but excluding any Incremental Loans or Incremental Equivalent Debt incurred in reliance on the Incremental Ratio Amount (or Refinancing Indebtedness in respect thereof)) made prior to such date, *plus* (e) the aggregate principal amount of voluntary permanent reductions of Incremental Revolving Credit Commitments (excluding any Incremental Revolving Credit Commitments and Incremental Revolving Loans incurred in reliance on the Incremental Ratio Amount and/or the Additional Incremental RCF Basket Amount) (or Refinancing Indebtedness in respect thereof) made prior to such date; *provided* that, in the case of each of clauses (d) and (e), solely to the extent not funded with the proceeds of Funded Debt.

“**Incremental Loans**” as defined in Section 2.24(a).

“**Incremental Ratio Amount**” means an aggregate principal amount of Indebtedness that, after the incurrence thereof on Pro Forma Basis and excluding the cash proceeds to the Borrower or any Subsidiary therefrom that are actually applied or intended to be applied to a particular use or transaction as of the date of incurrence thereof (but otherwise giving effect to the use of such proceeds so applied or intended to be applied), and subject to Section 1.5, would not result in:

(a) with respect to any Incremental Facility or Incremental Equivalent Debt to be incurred as Pari Passu Lien Indebtedness, the First Lien Net Leverage Ratio being equal to or greater than 1.82:1.00; and

(b) with respect to any Incremental Facility or Incremental Equivalent Debt to be incurred as Junior Lien Indebtedness or unsecured Indebtedness, the Total Net Leverage Ratio being equal to or greater than 3.50:1.00.

“**Incremental Revolving Facilities**” as defined in Section 2.24(a).

“**Incremental Revolving Loans**” as defined in Section 2.24(a).

“**Incremental Term Facilities**” as defined in Section 2.24(a).

“**Incremental Term Loans**” as defined in Section 2.24(a).

“**Incremental Term Loan Commitment**” means the commitment of a Lender to make or otherwise fund an Incremental Term Loan and “**Incremental Term Loan Commitments**” means such commitments of all Lenders in the aggregate.

“**Incremental Revolving Credit Commitment**” means each commitment of a Lender to make or otherwise fund any Incremental Revolving Loan, and “**Incremental Revolving Credit Commitments**” means such commitments of all of such Lenders in the aggregate. The amount of a Lender’s Incremental Revolving Credit Commitment is set forth, if applicable, in the Incremental Amendment evidencing an Incremental Revolving Facility.

“**Incremental Revolving Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Revolving Loans of such Lenders; *provided*, at any time prior to the making of the Incremental Revolving Loans, the Incremental Revolving Loan Exposure of any Lender will be equal to such Lender’s Incremental Revolving Credit Commitment.

“**Incremental Term Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Term Loans of such Lenders; *provided*, at any time prior to the making of the Incremental Term Loans, the Incremental Term Loan Exposure of any Lender will be equal to such Lender’s Incremental Term Loan Commitment.

“**Indebtedness**” as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) all obligations evidenced by bonds, debentures, notes or similar instruments; (c) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP as in effect of the date hereof (but giving effect to the proviso in the definition of “Capital Lease”); (d) any obligation owed for all or any part of the deferred purchase price of property or services, which purchase price is (A) due more than six months from the date of incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument (excluding (i) any such obligations incurred under ERISA, (ii) trade accounts, accounts payable, payroll and other liabilities and accrued expenses incurred in the ordinary course of business that are not overdue by more than one hundred eighty (180) days from the date of incurrence of the obligations in respect thereof and (iii) accruals for deferred compensation, payroll and other liabilities in the ordinary course of business; (e) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (f) Disqualified Capital Stock; (g) the direct or indirect guaranty of obligations, of the type in clauses (a)-(f) of this definition, of any other Person; (h) obligations, of the type in clauses (a)-(f) of this definition, that are secured by a Lien on any property or asset owned or held by that Person regardless of whether such obligations are owed by or recourse to such Person; and (i) obligations of such Person in respect of any derivative transaction, including any Rate Contract, whether entered into for hedging or speculative purposes. Notwithstanding the foregoing, for all purposes of this Agreement: (1) Indebtedness of any Person will include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person’s liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt; (2) with respect to clause (e) above, to the extent any letter of credit issued for the benefit of the Borrower or any Subsidiary (a “**Primary LC**”) is supported (including any “back-to-back” arrangement) by a another letter of credit also issued for the benefit of the Borrower or any Subsidiary (the “**Supporting LC**”), to the extent that both such Primary LC and the relevant Supporting LC would constitute “Indebtedness” for any purpose under this Agreement, then the Primary LC and the relevant Supporting LC shall be deemed to be a single obligation in an amount equal to the amount of Indebtedness attributable to the Primary LC (and any corresponding amount of the Supporting LC that also would then constitute “Indebtedness” will be disregarded); (3) with respect to clause (h) above, the amount of Indebtedness of any Person will be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the fair market value (as determined by such Person in good faith) of the property encumbered thereby as determined by such Person in good faith; (4) the amount of any obligation under any Rate Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date; (5) with respect to clause (i) above, in no event will obligations under any Rate Contract be deemed “Indebtedness” for the purpose of calculating any ratio contemplated by this Agreement; and (6) “Indebtedness” shall not include (i) deferred or prepaid revenue or (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller.

“Indemnified Liabilities” means, collectively, any and all liabilities (including Environmental Liabilities), obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any Remedial Action), expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented in reasonable detail fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnatee will be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and applicable Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnatee, in any manner relating to or arising out of (a) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders’ agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (b) the Agency Fee Letter and any Contractual Obligation entered into in connection with any Approved Electronic Communications; (c) any Environmental Claim, any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action required by Environmental Law to remove, remediate, clean up or abate any Hazardous Materials Activity or any action, suit, or proceeding by any Governmental Authority or any other Person related to Hazardous Materials Activity, in each case relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of the Borrower or any Subsidiary; or (d) any actual or prospective investigation, litigation or other proceeding relating to any of the foregoing, whether or not brought by any such Indemnatee or any of its Related Persons, any holders of securities or creditors (and including attorneys’ fees in any case), whether or not any such Indemnatee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Law or theory thereof, including common law, equity, contract, tort or otherwise.

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

“**Indemnitee**” as defined in Section 10.3.

“**Initial Credit Extension**” as defined in Section 3.1.

“**Initial Term B Loan**” means a Term Loan made by a Lender to the Borrower on the Closing Date pursuant to Section 2.1(a).

“**Initial Term B Loan Commitment**” means the commitment of a Lender to make or otherwise fund an Initial Term B Loan and “**Initial Term B Loan Commitments**” means such commitments of all of the Lenders in the aggregate. The amount of each Lender’s Initial Term B Loan Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term B Loan Commitments as of the Closing Date is \$350,000,000.

“**Initial Term B Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Initial Term B Loans of such Lender; *provided*, at any time prior to the making of the Initial Term B Loans, the Initial Term B Loan Exposure of any Lender will be equal to such Lender’s Initial Term B Loan Commitment.

“**Initial Term B Loan Note**” means a promissory note in the form of Exhibit B-1, as it may be amended, supplemented or otherwise modified from time to time.

“**Intellectual Property**” means all rights, priorities and privileges relating to intellectual property, whether arising under United States, state, multinational or foreign laws or otherwise, including, without limitation such rights in: copyrights (including copyrights in software) whether registered or unregistered and all applications therefor; patents and certificates of invention, or similar industrial property rights, and applications therefor; software, trademarks (whether registered or unregistered and applications therefor), goodwill associated with trademarks, service-marks, domain names, technology, trade secrets, including confidential know-how and processes, formulas and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“**Interest Payment Date**” means with respect to (a) any Base Rate Loan, the last Business Day of each calendar quarter, commencing on the first such date to occur after the borrowing of such Loan and the final maturity date or conversion date of such Loan; and (b) any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; *provided* that in the case of each Interest Period of longer than three months “Interest Payment Date” will also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

“**Interest Period**” means, in connection with a Eurodollar Rate Loan, an interest period of one-, two-, three- or six- months (or, if available (x) twelve months or shorter periods, in each case, with the consent of each applicable Lender of the affected Class or (y) a period of less than one month with the consent of the Administrative Agent in its sole discretion), as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; *provided* that (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period will expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period will expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; (iii) no Interest Period with respect to any portion of any Class of Term Loans will extend beyond such Class’s Term Loan Maturity Date; and (iv) in the case of any Term C Loan maintained as a Eurodollar Rate Loan, the Interest Period applicable thereto shall be one month.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

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

“Internally Generated Cash” means, with respect to any Person, funds of such Person and its Subsidiaries not constituting (a) proceeds of the issuance of (or contributions in respect of) Capital Stock of such Person, (b) proceeds of the incurrence of Indebtedness by such Person or any of its Subsidiaries (excluding borrowings under revolving credit facilities or revolving lines of credit) or (c) proceeds of dispositions (other than dispositions of inventory in the ordinary course of business) and Casualty Events.

“Investment” means (a) any direct or indirect purchase or other acquisition by the Borrower or any Subsidiary, or of a beneficial interest in, any of the Securities of any other Person; (b) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary from any Person, of any Capital Stock of such Person; (c) any direct or indirect loan, advance or capital contribution by the Borrower or any Subsidiary to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (d) any acquisition, whether by purchase, merger or otherwise, of all or a material portion of the assets of, or a division, unit, business line or product line of, any other Person. The amount of any Investment will be the original cost of such Investment *plus* (x) the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment *minus* (y) the amount of any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash or Cash Equivalents by the Borrower or a Subsidiary in respect of such Investment; *provided* that for purposes of calculating an Investment made in reliance on the Available Amount, the foregoing deduction in clause (y) shall be disregarded (it being understood that clauses (a)(v), (vi) and (vii) of the definition of “Available Amount” already provide for a “rebuild” based on returns, repayments, distributions, etc.).

“Joint Venture” means (a) any Person which would constitute an “equity method investee” of the Borrower or any Subsidiary and (b) any Person in whom the Borrower or any of the Subsidiaries beneficially owns any Capital Stock that is not a Subsidiary (other than an Unrestricted Subsidiary); *provided* that in no event will any Subsidiary of any Person be considered a Joint Venture of such Person.

“Joint Venture Subsidiary” means any Subsidiary that is not wholly-owned, directly or indirectly, by the Borrower and the business and management thereof is jointly controlled by the holders of the Capital Stock in such Subsidiary pursuant to customary joint venture arrangements.

“Junior Financing” means any Junior Lien Indebtedness, any Subordinated Debt and any Indebtedness of the Borrower or its Subsidiaries that is unsecured.

“Junior Lien Indebtedness” means any Indebtedness of any Credit Party that is secured by Liens on Collateral that rank junior in priority to the Liens that secure the Obligations.

“Junior Lien Intercreditor Agreement” means an intercreditor agreement, in form and substance reasonably acceptable to the Borrower, the Collateral Agent and the applicable Debt Representatives for Junior Lien Indebtedness permitted hereunder.

“Latest Term Loan Maturity Date” means, as at any date of determination, the latest maturity or expiration date applicable to any Term Loan (including any Incremental Term Loan), as extended in accordance with this Agreement from time to time.

“Laws” means, with respect to any Person, (a) the common law and any federal, state, local, foreign, multinational or international statutes, laws, treaties, judicial decisions, standards, rules and regulations, guidances, guidelines, ordinances, rules, judgments, writs, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions (including administrative or judicial precedents or authorities), in each case whether now or hereafter in effect, and (b) the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“LCA Election” as defined in Section 1.5.

“LCA Test Date” as defined in Section 1.5.

“Lead Arranger” means DBSI, in its capacity as lead arranger.

“Lender” means, collectively, (a) each Person listed on the signature pages hereto as a Lender holding a Term Loan Commitment or a Term Loan, (b) any other Person (other than a Natural Person) that becomes a party hereto pursuant to an Assignment Agreement and holds a Term Loan Commitment or a Term Loan and (c) any other Person (other than a Natural Person) that becomes a party hereto pursuant to an Incremental Amendment and holds an Incremental Revolving Credit Commitment or an Incremental Revolving Loan. Notwithstanding the foregoing, any Disqualified Lender that purports to become a Lender hereunder, and to which the Borrower has not consented in writing to allow to become a Lender hereunder, shall not be entitled to receive confidential information or attend Lender meetings.

“Lending Office” means, with respect to any Lender, the office or offices of such Lender specified as its “Lending Office” beneath its name on Appendix B hereto or in the administrative questionnaire delivered by such Lender to the Borrower and the Administrative Agent, or, in each case, such other office or offices of such Lender as it may from time to time notify the Borrower and the Administrative Agent.

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing; *provided* that in no event shall an operating lease in and of itself be deemed a Lien.

“Limited Condition Acquisition” means any Permitted Acquisition or other Investment permitted hereunder by the Borrower and/or one or more Subsidiaries the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

“Loan” means an Initial Term B Loan, a Term C Loan (if any), an Incremental Term Loan, an Extended Term Loan, a Refinancing Term Loan or, as applicable, an Incremental Revolving Loan.

“LTM Consolidated Adjusted EBITDA” means, as of any date of determination, the Consolidated Adjusted EBITDA for the four consecutive Fiscal Quarters most recently ended prior to such date for which financial statements have been delivered pursuant to Section 5.1(a) or (b) (or, in the case of a determination date that occurs prior to the first such delivery pursuant to such Sections, for the four consecutive Fiscal Quarters ended as of June 30, 2018 consistent with the Consolidated Adjusted EBITDA used in the syndication of the Initial Term B Loan Commitments), on a Pro Forma Basis.

“Margin Stock” means “margin stock” as such term is defined in Regulation U of the Board of Governors as in effect from time to time.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, properties, assets or financial condition of the Borrower and the Subsidiaries, taken as a whole; (b) the ability of any Credit Party to fully and timely perform its payment obligations under the Credit Documents; or (c) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

“Material Indebtedness” means third party Indebtedness with an aggregate principal amount (including undrawn commitments) in excess of \$30,000,000.

“Material Real Estate Asset” means any fee-owned Real Estate Asset having a fair market value (as reasonably determined by the Borrower in good faith and without requirement of delivery of an appraisal or other third-party valuation) equal to or in excess of \$5,000,000.

“Maximum Refinancing Amount” means, with respect to any Refinancing Indebtedness, the principal amount (including interest paid in kind or otherwise capitalized to principal) and/or undrawn commitments, as applicable, of the Refinanced Indebtedness subject to refinancing with such Refinancing Indebtedness *plus* the sum of (i) the amount of all accrued and unpaid interest on such Refinanced Indebtedness, (ii) the amount of any premiums (including tender premiums), make-whole amounts or penalties on such Refinanced Indebtedness, (iii) the amount of all fees (including any exit consent fees) on such Refinanced Indebtedness, (iv) the amount of all fees (including arrangement, commitment, structuring, underwriting, ticking, amendment, closing and other similar fees), commissions, costs, expenses and other amounts associated with such Refinancing Indebtedness and (v) the amount of all original issue discount and upfront fees associated with such Refinancing Indebtedness (**“Refinancing Amount”**); *provided* that (1) to the extent on the date of such Permitted Refinancing the Borrower has capacity under the clause of Section 6.1 pursuant to which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable) to incur additional principal amount of the same type as the Refinanced Indebtedness (**“Additional Incurrence Capacity”**), then the Borrower and the Subsidiaries may incur Refinancing Indebtedness in an aggregate principal amount not to exceed the maximum Additional Incurrence Capacity if greater than the Refinancing Amount; *provided, further*, that the amount of Refinancing Indebtedness incurred in reliance on the Additional Incurrence Capacity will be considered to have been incurred under the clause of Section 6.1 pursuant to which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable).

“**Merger Agreement**” as defined in the recitals hereto.

“**Merger Agreement Representations**” means such of the representations and warranties made by (or with respect to) the Acquired Business in the Merger Agreement as are material to the interests of the Lenders in their capacities as such, but only to the extent the Borrower (or its applicable Affiliate) has the right (taking into account any applicable cure provisions and determined without regard to any notice requirement) to terminate its (or its Affiliate’s) obligations (or to refuse to consummate the Acquisition) under the Merger Agreement as a result of a breach of such representations.

“**Merger Sub**” as defined in the recitals hereto.

“**MFN Adjustment**” means, with respect to the incurrence of any MFN Eligible Debt, in the event that the All-In Yield applicable to such MFN Eligible Debt exceeds the All-In Yield of the Initial Term B Loans at the time of such incurrence by more than 50 basis points, then the interest rate margins for the Initial Term B Loans will automatically be increased on the date of incurrence of such MFN Eligible Debt to the extent necessary so that the All-In Yield of the Initial Term B Loans is equal to the All-In Yield of such MFN Eligible Debt *minus* 50 basis points (*provided* that any increase in All-In Yield of the Initial Term B Loans due to the increase in a Eurodollar Rate or Base Rate floor on such MFN Eligible Debt will be effected solely through an increase in any Eurocurrency or Base Rate floor, respectively, applicable to the Initial Term B Loans).

“**MFN Eligible Debt**” means any Indebtedness that is incurred following the Closing Date as Incremental Term Loans, Incremental Equivalent Debt or Permitted Ratio Debt that is, in each case, Pari Passu Lien Indebtedness in the form of term loans (but not securities).

“**Moody’s**” means Moody’s Investor Services, Inc., or any successor thereto.

“**Mortgage**” means a mortgage, deed of trust, deed to secure debt or other document creating a Lien on any Real Estate Asset or any direct interest in any Real Estate Asset, as applicable, made in favor of the Collateral Agent for the benefit of the Secured Parties in form reasonably acceptable to the Administrative Agent.

“**Multiemployer Plan**” means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“**NAIC**” means The National Association of Insurance Commissioners and any successor thereto.

“**Narrative Report**” means, with respect to the financial statements for which such narrative report is required, a narrative report describing the results of operations and financial condition of the Borrower and the Subsidiaries in the form prepared on a basis consistent with that included in the Borrower’s historical public filings prior to the Closing Date for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the Fiscal Year in which such Fiscal Quarter occurs to the end of such Fiscal Quarter.

“**Natural Person**” means a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person.

“Net Cash Proceeds” means:

(a) with respect to any Asset Sale subject to Section 2.14(a) or Casualty Event subject to Section 2.14(b), an amount equal to: (i) cash payments (including any cash received by way of release from escrow or deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by the Borrower or any Subsidiary from such Asset Sale or Casualty Event, *minus* (ii) any bona fide direct costs incurred in connection with such Asset Sale or Casualty Event, including (A) Taxes payable in connection with such Asset Sale or Casualty Event (including taxes imposed on the distribution or repatriation of such Net Cash Proceeds), (B) payment of the outstanding principal amount of, premium or penalty, if any, interest and breakage costs on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question (and, to the extent such stock or assets constitute Collateral, only if the Lien is senior to the Lien of the Agent) and that is required to be repaid under the terms thereof as a result of such Asset Sale or Casualty Event, (C) a reserve for any purchase price adjustment or indemnification payments (fixed or contingent) established in accordance with GAAP or attributable to seller’s indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by the Borrower or any Subsidiary in connection with such Asset Sale, (D) the out-of-pocket expenses, costs and fees (including with respect to legal, investment banking, brokerage, advisor and accounting and other professional fees, sales commissions and disbursements, survey costs, title insurance premiums and related search and recording charges, transfer taxes and deed or mortgage recording taxes or following a Casualty Event, restoration costs) in each case actually incurred in connection with such Asset Sale or Casualty Event and payable to a Person that is not an Affiliate of the Borrower, (E) in the case of any Asset Sale or Casualty Event by a non-wholly-owned Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof attributable to minority interests and not available for distribution to or for the account of the Borrower or any other Subsidiary of the Borrower as a result thereof and (F) in the case of an Asset Sale, any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Subsidiary after such Asset Sale, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such Asset Sale, it being understood that “Net Cash Proceeds” shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this subclause (F); and

(b) with respect to the sale, incurrence or issuance of any Indebtedness by the Borrower or any Subsidiary, the excess, if any, of (A) the sum of all cash and Cash Equivalents received in connection with such incurrence or issuance, over (B) the sum of all Taxes paid or reasonably estimated to be payable as a result thereof, all fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and all other customary expenses, in each case incurred by the Borrower or such Subsidiary in connection with such sale, incurrence or issuance.

“Non-Consenting Lender” as defined in Section 2.23.

“Non-Credit Party” means any Subsidiary that is not a Credit Party.

“Non-U.S. Lender” means a Lender that is not a United States person as defined in Section 7701(a)(30) of the Internal Revenue Code.

“Nonpublic Information” means material information with respect to the Borrower or any Subsidiary or their respective securities which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

“Notice” means a Funding Notice or a Conversion/Continuation Notice.

“Obligations” means all obligations of every nature of each Credit Party from time to time owed to any Agent (including any former Agent), any Lender, any Indemnitee or any other Secured Party under any Credit Document, any obligations owed to any Secured Swap Provider under any Secured Rate Contract, or any obligations owed to any Bank Product Provider in respect of Bank Product Obligations under any Bank Product Agreement, in each case, whether for principal, premium, interest (including interest premiums, fees and other amounts incurred during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, whether or not due and payable and whether or not allowed or allowable in such proceeding), fees, expenses, indemnification or otherwise. For the avoidance of doubt, “Obligations” will include obligations arising under any Incremental Term Loan or any Extended Term Loan.

“Obligee Guarantor” as defined in Section 7.6.

“OFAC” means the U.S. Department of Treasury’s Office of Foreign Assets Control.

“OFAC Lists” means, collectively, the SDN List and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any applicable executive orders.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” will only be to a document of a type customarily certified by such governmental official.

“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 Credit Document, except any such Taxes that are imposed as a result of a present or former connection between a 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 Credit Document or sold or assigned an interest in any Loan or Credit Document imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

“Pari Passu Lien Indebtedness” means any Indebtedness of any Credit Party that is secured by Liens on Collateral that rank *pari passu* in priority with the Liens on Collateral that secure the Obligations.

“Pari Passu Lien Intercreditor Agreement” means an intercreditor agreement among the Collateral Agent and one or more Debt Representatives for Pari Passu Lien Indebtedness permitted hereunder in form and substance reasonably acceptable to the Borrower, the Collateral Agent and the applicable Debt Representatives for such Pari Passu Lien Indebtedness.

“Participant Register” as defined in Section 10.6(g).

“Pass-Through Foreign Subsidiary Holding Company” as defined in the definition of “Excluded Foreign Subsidiary”.

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001, as amended from time to time.

“Payment Office” means the office of the Administrative Agent set forth on Appendix B hereto, or such other office or Person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA. For the avoidance of doubt, the definition of Pension Plan does not include any Foreign Plan.

“Perfection Certificate” shall mean a certificate in the form of Exhibit K or any other form approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Acquisition” means the purchase or other acquisition of property and assets or the business of any Person or of assets constituting a business unit, a line of business or division of such Person, a facility or Capital Stock in a Joint Venture or other Capital Stock in another Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or, in the case of a purchase or acquisition of assets (other than Capital Stock), will be owned by the Borrower and/or any one or more Subsidiaries; *provided that*:

(a) subject to the provisions of Section 1.5 to the extent an LCA Election has been made with respect to such acquisition, immediately prior to and after giving effect thereto, no Default or Event of Default (other than with respect to a Limited Condition Acquisition, which shall be subject only to the absence of an Event of Default pursuant to Section 8.1(a), (f) or (g)) has occurred and is continuing;

(b) the Person, assets or division acquired are in the same business as the Business engaged in by the Borrower and the Subsidiaries on the Closing Date, after giving effect to the Transactions, or other similar, ancillary or related, or reasonable or logical extensions of such, Business or otherwise constitutes a business permitted under Section 6.10; and

(c) to the extent any acquired Person is required to become a Guarantor, the Borrower takes all actions required by Sections 5.10 and 5.11, as applicable, within the time periods specified thereunder; *provided that* the Borrower and the Guarantor Subsidiaries shall not make Permitted Acquisitions of Persons that do not become Guarantor Subsidiaries (or pay for the purchase of assets that are acquired directly by Non-Credit Parties) for aggregate consideration, together with any Investments made in reliance on the proviso in Section 6.6(b) (in each case determined as of the date of making any such Investment, and after giving effect to clause (1) in the last paragraph of Section 6.6), in excess of the greater of (i) \$50,000,000 and (ii) an amount equal to 30% of LTM Consolidated Adjusted EBITDA.

“Permitted Liens” as defined in Section 6.2.

“Permitted Ratio Debt” means Indebtedness of the Borrower and/or any one or more Subsidiaries; *provided* that:

(a) subject to the provisions of Section 1.5 to the extent an LCA Election has been made with respect to a Permitted Acquisition or other permitted Investment to be funded with the proceeds of such Indebtedness, immediately before and after giving effect thereto and to the use of the proceeds thereof no Default or Event of Default (other than with respect to a Limited Condition Acquisition, which shall be subject only to the absence of an Event of Default pursuant to Section 8.1(a), (f) or (g)) has occurred and is continuing or would result therefrom;

(b) immediately after giving effect to the issuance, incurrence, or assumption of such Indebtedness and excluding the cash proceeds to the Borrower or any Subsidiary therefrom that are actually applied or intended to be applied to a particular use or transaction as of the date of incurrence thereof (but otherwise giving effect to the use of such proceeds so applied or intended to be applied):

(i) with respect to any Permitted Ratio Debt to be incurred as Pari Passu Lien Indebtedness, the First Lien Net Leverage Ratio being equal to or less than 1.82:1.00; and

(ii) with respect to any Permitted Ratio Debt to be incurred as Junior Lien Indebtedness or unsecured Indebtedness, the Total Net Leverage Ratio being equal to or less than 3.50:1.00;

(c) to the extent that such Indebtedness is incurred by a Credit Party, such Indebtedness will not mature prior to the Latest Term Loan Maturity Date with respect to any Class of Term Loans then outstanding, or have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of any Class of Term Loans then outstanding (*provided* that Permitted Ratio Debt may be incurred in the form of a bridge or other interim credit facility intended to be refinanced or replaced with long term indebtedness, so long as such credit facility includes customary “rollover provisions” that satisfy the requirements of this clause (c) following such rollover, in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other credit facility, such clause (c) shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, redemption or repurchase provisions);

(d) if such Indebtedness is (i) Pari Passu Lien Indebtedness, then (x) a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Lien Intercreditor Agreement and (y) any mandatory prepayments of any such Permitted Ratio Debt shall be made on a *pro rata* basis, less than *pro rata* basis or greater than *pro rata* basis (but not greater than a *pro rata* basis as compared to any Class of Term Loans constituting Pari Passu Lien Indebtedness with an earlier or equivalent maturity date (other than pursuant to a permitted refinancing)) with mandatory prepayments of the then-outstanding Term Loans (other than Term C Loans), (ii) Junior Lien Indebtedness, then a Debt Representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and (iii) Junior Lien Indebtedness or unsecured, then such Permitted Ratio Debt may not participate in any mandatory prepayments, except to the extent that such prepayments are offered, to the extent required under this Agreement or any Pari Passu Lien Indebtedness, first *pro rata* to the Term Loans (other than Term C Loans) and any applicable Pari Passu Lien Indebtedness; and

(e) the interest rate, fees, and original issue discount for any Indebtedness will be as determined by the Borrower and the Persons providing such Incremental Term Loans; *provided* that the MFN Adjustment will apply to any such Indebtedness that constitutes MFN Eligible Debt; and

(f) the other terms applicable to such Indebtedness are substantially identical to, or (taken as a whole as determined by the Borrower in good faith) no more favorable to the lenders or holders providing such Permitted Ratio Debt than, those applicable to the Initial Term B Loans; *provided* that this clause (f) will not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans (other than Term C Loans) existing at the time of incurrence of such Permitted Ratio Debt (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness; *provided, further*, a certificate of the Borrower delivered to the Administrative Agent stating that the Borrower has reasonably determined in good faith that the terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement.

“Permitted Refinancing” means, with respect to any specified Indebtedness of any Person (**“Refinanced Indebtedness”**), any modification, refinancing, refunding, replacement, renewal, extension, defeasance or discharge (the Indebtedness incurred to effect such modification, refinancing, refunding, replacement, renewal, extension, defeasance or discharge, **“Refinancing Indebtedness”**) of such Refinanced Indebtedness; *provided* that:

(a) the principal amount (and/or undrawn commitments, as applicable) of such Refinancing Indebtedness is not greater than the Maximum Refinancing Amount (it being understood, however, the foregoing limitation should not be construed to limit the incurrence of additional Indebtedness permitted by a separate clause of Section 6.1 that is incurred concurrently with, and governed by the same documentation as, such Refinancing Indebtedness);

(b) except with respect to Indebtedness of the Borrower and the Subsidiaries incurred pursuant to Section 6.1(c), (d), (k), (r)(i), or (v), has (x) a scheduled final maturity that is no sooner than the scheduled final maturity date of such Refinanced Indebtedness (or, if sooner, no earlier than the date that is 91 days after the Latest Term Loan Maturity Date) and (y) a Weighted Average Life to Maturity that is no shorter than the remaining Weighted Average Life to Maturity of such Refinanced Indebtedness;

(c) the only obligors in respect of such Refinancing Indebtedness are the obligors on such Refinanced Indebtedness; *provided* that, in the case of a Permitted Refinancing that occurs in connection with a Permitted Acquisition or other Investment permitted pursuant to Section 6.6, additional Persons that are created or acquired as part of such Permitted Acquisition or Investment may be added as obligors to the Refinancing Indebtedness;

(d) the other terms applicable to such new Indebtedness are substantially identical to, or (taken as a whole as determined by the Borrower in good faith) no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Indebtedness; *provided* that this clause (d) will not apply to (i) interest rate, fees, funding discounts and other pricing terms, (ii) redemption, prepayment or other premiums, (iii) optional prepayment terms, and (iv) covenants and other terms that are (A) applied to the Term Loans (other than Term C Loans) existing at the time of incurrence of such Refinancing Indebtedness (so that existing Lenders also receive the benefit of such provisions) and/or (B) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness;

(e) to the extent such Refinanced Indebtedness is Subordinated Debt, such Refinancing Indebtedness is Subordinated Debt; and

(f) to the extent such Refinanced Indebtedness is secured by Liens on any property or assets of the Borrower or any Subsidiary, such Refinancing Indebtedness is (i) unsecured, (ii) secured by Liens on property and assets that are not Collateral, or (iii) secured by Liens on Collateral; *provided* that (x) if such Refinanced Indebtedness is Junior Lien Indebtedness, the Refinancing Indebtedness is also Junior Lien Indebtedness on intercreditor terms at least as favorable to the Lenders as those contained in the intercreditor documentation governing the Refinanced Indebtedness or is unsecured and (y) if such Refinanced Indebtedness is Pari Passu Lien Indebtedness, the Refinancing Indebtedness is either Pari Passu Lien Indebtedness or Junior Lien Indebtedness, in either case on intercreditor terms at least as favorable to the Lenders as those contained in the intercreditor documentation governing the Refinanced Indebtedness (as reasonably determined by the Borrower in good faith) or is unsecured;

provided, further, (x) in the case of clauses (d), (e) and (f) of this definition, a certificate of the Borrower delivered to the Administrative Agent stating that the Borrower has reasonably determined in good faith that the terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (b) of this definition so long as (I) such credit facility includes customary “rollover” provisions and (II) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (b) of this definition).

“**Permitted Restructuring Transactions**” means, collectively, any dividends and distributions (other than dividends and distributions paid or made directly or indirectly by the Borrower) or intercompany dispositions, transfers or Investments undertaken concurrently with, or within the 24-month period following, the consummation of the Acquisition, in order to achieve synergies or tax efficiencies related to the Acquisition and integration thereof (as reasonably determined by the Borrower); *provided* that no such transactions shall (i) individually or in the aggregate, materially and adversely impact the interest of Secured Parties in the Collateral or (ii) result in the disposition, transfer or migration of assets owned by a Credit Party (including Intellectual Property (it being understood that intercompany licenses and sub-licenses of Intellectual Property shall be permitted) but excluding Capital Stock of Persons that are not Credit Parties) to a Person that is not a Credit Party.

“**Person**” means and includes Natural Persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

“**Platform**” as defined in Section 5.1(o).

“**Pledge and Security Agreement**” means the Pledge and Security Agreement to be executed by the Borrower and each Guarantor substantially in the form of Exhibit I.

“**Pro Forma**” or “**Pro Forma Basis**” means, with respect to the calculation of the First Lien Net Leverage Ratio, the Total Net Leverage Ratio or for any other pro forma calculation called for by this Agreement to be made Pro Forma or on a Pro Forma Basis, as of any time, that pro forma effect will be given to the Transactions, any Permitted Acquisition, or any other Specified Transaction (including any such transaction prior to the Closing Date), as follows:

(a) with respect to any incurrence, assumption, guarantee, redemption or permanent repayment of Indebtedness, such ratio will be calculated giving pro forma effect thereto as if such incurrence, assumption, guarantee, redemption or permanent repayment of Indebtedness had occurred on the first day of such Test Period;

(b) with respect to the Transactions, acquisitions prior to the Closing Date, any Permitted Acquisition or other permitted Investment or the redesignation of an Unrestricted Subsidiary, such ratio or other calculation will be calculated giving pro forma effect thereto as if such action occurred on the first day of such Test Period in a manner consistent, where applicable, with the pro forma adjustments (along with the limitations pertaining thereto) set forth in the definition of “Consolidated Adjusted EBITDA” (including for the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from (A) actions taken, (B) actions relating to any acquisition, disposition or operational change committed to be taken or expected to be taken no later than 24 months after the end of such acquisition, disposition or operational change and (C) actions related to the Transactions and acquisitions that occurred prior to the Closing Date reasonably expected to be taken no later than 24 months after the Closing Date, in each case, which cost savings, operating expense reductions and synergies will be calculated as though such cost savings, operating expense reductions and synergies had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined);

(c) with respect to any merger, sale, transfer or other disposition, and the designation of an “Unrestricted Subsidiary”, such ratio will be calculated giving pro forma effect thereto as if such action had occurred on the first day of such Test Period; and

(d) all Indebtedness assumed to be outstanding pursuant to preceding clause (a) shall be deemed to have borne interest at (i) in the case of fixed rate indebtedness, the rate applicable thereto, or (ii) in the case of floating rate Indebtedness, (x) with respect to any portion of the relevant Test Period that such Indebtedness was outstanding, the actual rates applicable thereto and (y) with respect to any portion of the relevant Test Period that such Indebtedness was not in fact outstanding (or if such Indebtedness was not outstanding at any time during the relevant Test Period), the rate applicable thereto as of the applicable date of determination as if such rate had been the applicable rate for such portion of the Test Period (or the entire Test Period), in any such case under this clause (ii), after giving effect to the operation of any Rate Contracts applicable to such floating rate Indebtedness.

Notwithstanding the foregoing, for purposes of the calculation of (x) the Total Net Leverage Ratio as used in the determination of the Asset Sale Sweep Percentage and (y) the First Lien Net Leverage Ratio as used in the determination of the ECF Percentage pursuant to Section 2.14(d) in each case, such calculation shall be made on the last day of the applicable Test Period (or, in the case of the ECF Percentage, the last day of the applicable Fiscal Year), and no Pro Forma effect shall be given to any Specified Transaction that is consummated after the last day of such Test Period (or such Fiscal Year, as applicable).

“Pro Rata Share” means (a) with respect to all payments, computations and other matters relating to the Initial Term B Loan of any Lender, the percentage obtained by dividing (i) the Initial Term B Loan Exposure of that Lender by (ii) the aggregate Initial Term B Loan Exposure of all of the Lenders; (b) with respect to all payments, computations and other matters relating to the Term C Loan of any Lender, the percentage obtained by dividing (i) the Term C Loan Exposure of that Lender by (ii) the aggregate Term C Loan Exposure of all of the Lenders; (c) with respect to all payments, computations and other matters relating to the Incremental Term Loan of any Lender, the percentage obtained by dividing (i) the Incremental Term Loan Exposure of that Lender by (ii) the aggregate Incremental Term Loan Exposure of all of the Lenders; (d) with respect to all payments, computations and other matters relating to the Extended Term Loan of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender arising from Extended Term Loans of such Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders arising from the Extended Term Loans; (e) with respect to all payments, computations and other matters relating to the Refinancing Term Loan of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender arising from Refinancing Term Loans of such Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders arising from the Refinancing Term Loans; and (f) with respect to all payments, computations and other matters relating to the Incremental Revolving Credit Commitment or Incremental Revolving Loans of any Lender, the percentage obtained by dividing (i) the Incremental Revolving Loan Exposure of that Lender by (ii) the aggregate Incremental Revolving Loan Exposure of all of the Lenders. For all other purposes with respect to each Lender, **“Pro Rata Share”** means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure and the Incremental Revolving Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure and the aggregate Incremental Revolving Loan Exposure of all of the Lenders.

“Projections” as defined in Section 4.6.

“Public Lender” as defined in Section 5.1(o).

“Purchase Money Indebtedness” means Indebtedness of the Borrower or any Subsidiary incurred for the purpose of financing all or any part of the purchase price or cost of acquisition, repair, construction or improvement of property or assets used or useful in the business of the Borrower and the Subsidiaries, taken as a whole.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Credit Party that has assets exceeding \$10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualifying Term Loans” as defined in Section 2.25(c).

“Rate Contracts” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, interest rate options, 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, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, derivative transactions, insurance transactions, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing whether relating to interest rates, commodities, investments, securities, currencies or any other reference measure (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.

“Real Estate Asset” means, at any time of determination, any direct interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

“Recipient” means (a) the Administrative Agent or (b) any Lender, as applicable.

“Refinanced Indebtedness” means, (a) with respect to any Credit Agreement Refinancing Indebtedness, as defined in the definition thereof, (b) with respect to any Permitted Refinancing, as defined in the definition thereof and (c) with respect to any other refinancing, the obligations being refinanced.

“Refinancing Amendment” means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.26.

“Refinancing Indebtedness” means, (a) with respect to any Term Loans, Credit Agreement Refinancing Indebtedness, (b) with respect to any Permitted Refinancing, as defined in the definition thereof and (c) with respect to any other refinancing, the new obligations being incurred the proceeds of which will be used to refinance other obligations.

“Refinancing Term Commitments” means one or more Classes of Term Loan Commitments hereunder that result from a Refinancing Amendment.

“Refinancing Term Loans” means one or more Classes of Term Loans that result from a Refinancing Amendment.

“Register” as defined in Section 2.7(b).

“Regulation D” means Regulation D of the Board of Governors, as in effect from time to time.

“Regulation FD” means Regulation FD as promulgated by the U.S. Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

“Related Fund” means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Related Person” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, partner, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

“Remedial Action” means all actions required pursuant to applicable Environmental Laws to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

“Replacement Term Loan” as defined in Section 10.5(f)(ii).

“Repricing Event” shall mean (a) the incurrence by the Borrower or any Subsidiary of any Indebtedness (including any new or additional Term Loans under this Agreement, whether incurred directly or by way of the conversion of the Initial Term B Loans into a new tranche of replacement Term Loans under this Agreement) (i) having an All-In Yield that is less than the All-In Yield for the Initial Term B Loans of the respective Type of Loan (as determined by the Administrative Agent), and (ii) the proceeds of which are used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, the outstanding principal of the Initial Term B Loans or (b) any effective reduction in the All-In Yield applicable to the Initial Term B Loans (e.g., by way of amendment, waiver or otherwise); *provided* that a Repricing Event shall not include any event described in clause (a) or (b) above that is not consummated for the primary purpose of lowering the All-In Yield applicable to the Initial Term B Loans (as determined in good faith by the Borrower) or is consummated in connection with a Change of Control or Transformative Acquisition.

“Required Lenders” means, as of any date of determination, one or more of the Lenders having or holding Term Loan Exposure and/or Incremental Revolving Loan Exposure representing more than 50% of the sum of (i) the aggregate Term Loan Exposure of all of the Lenders, and (ii) the aggregate Incremental Revolving Loan Exposure of all the Lenders.

“Required Prepayment Date” as defined in Section 2.15(e).

“Required Term C Loan Lenders” means, as of any date of determination, one or more of the Lenders having or holding Term C Loan Exposure and representing more than 50% of the aggregate Term C Loan Exposure of all of the Lenders

“Responsible Officer” means the chief executive officer, president or chief financial officer of the Borrower.

“Restricted Debt Payment” means any payment of principal of, or any payment of any premium, if any, or interest on, or fees on, or indemnities or expenses owing to any holder of, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment, in each case prior to the stated maturity or due date thereof, with respect to any Junior Financing.

“Restricted Equity Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of the Borrower now or hereafter outstanding, except a dividend payable solely in Capital Stock of the Borrower (other than Disqualified Capital Stock); (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of the Borrower now or hereafter outstanding, other than in exchange for Capital Stock of the Borrower (other than Disqualified Capital Stock); and (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 stock of the Borrower now or hereafter outstanding, other than in exchange for Capital Stock of the Borrower (other than Disqualified Capital Stock).

“Restricted Junior Payment” means any Restricted Equity Payment and any Restricted Debt Payment.

“S&P” means S&P Global Ratings, or any successor entity thereto.

“Sanctions” means any economic sanctions or trade restrictions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union, or Her Majesty’s Treasury, or any other relevant sanctions authority of a jurisdiction where the Borrower and the Subsidiaries operate the Business.

“Sanctioned Country” means, at any time, any country or territory, with whom dealings are broadly prohibited or restricted by any Sanctions (including, but not limited to, the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria).

“SDN List” means the Specially Designated Nationals and Blocked Persons List maintained by OFAC.

“Secured Party” means the Administrative Agent, the Collateral Agent, each other Agent, each Lender, each other Indemnitee solely to the extent of any outstanding claim under Section 10.2 or for Indemnified Liabilities of such Indemnitee pursuant to and in accordance with Section 10.3, each Secured Swap Provider and each Bank Product Provider.

“Secured Rate Contract” means any Rate Contract between the Borrower and/or any Subsidiary and the counterparty thereto, which has been provided by the Administrative Agent, a Lender or an Affiliate of the Administrative Agent or a Lender (or a Person who was the Administrative Agent, a Lender or an Affiliate of the Administrative Agent or a Lender at the time of execution and delivery of a Rate Contract).

“Secured Swap Provider” means an Agent or a Lender or an Affiliate of an Agent or a Lender (or a Person who was an Agent or a Lender or an Affiliate of an Agent or a Lender at the time of execution and delivery of a Rate Contract) who has entered into a Secured Rate Contract with the Borrower and/or any Subsidiary, and in the case of any such Affiliate, that has executed and delivered to the Administrative Agent a letter agreement (or other written confirmation) in form and substance reasonably acceptable to the Administrative Agent pursuant to which such Affiliate of such Lender or Agent appoints the Administrative Agent and the Collateral Agent as agents under the applicable Credit Documents.

“Securities” means any Capital Stock, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Solvent” means, with respect to any Person, that as of the date of determination, (a) the fair value of the present assets of the Borrower and its Subsidiaries, taken as a whole, exceeds the debts (including contingent liabilities) of the Borrower and its Subsidiaries, taken as a whole, (b) the present fair saleable value of the assets of the Borrower and its Subsidiaries, taken as a whole, is not less than the amount that will be required to pay the probable liabilities (including contingent liabilities) of the Borrower and its Subsidiaries, taken as a whole, on their debts as such debts become absolute and matured, (c) the Borrower and the Subsidiaries, taken as a whole, are able to pay their debts (including current obligations and contingent liabilities) as such debts and liabilities become absolute and matured and do not intend to incur, or believe they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business, and (d) the capital of the Borrower and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower or its Subsidiaries, taken as a whole, contemplated as of such date. For the purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“SPC” as defined in Section 10.6(k).

“**Specified Representations**” means the representations and warranties set forth in Sections 4.1(a), 4.1(b)(ii), 4.1(b)(iii), 4.2, 4.3(a)(i)(1), 4.4, 4.12, 4.13, 4.16, 4.17(b), 4.17(c), 4.19 and 4.20 (with respect to use of proceeds in accordance with Section 2.6(d)).

“**Specified Transaction**” means any Permitted Acquisition, any permitted Investment or other acquisition (including acquisition of a line of business), any issuance, incurrence, assumption, guarantee, redemption or permanent repayment of indebtedness (including indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction), the creation of any Lien, any designation or re-designation of an “Unrestricted Subsidiary,” any merger or other fundamental change, all sales, transfers and other dispositions of any Subsidiary, line of business or division or any Restricted Junior Payment.

“**Statutory Reserves**” means, for any day during any Interest Period for any Eurodollar Rate Loan, the aggregate maximum rate (expressed as a decimal) at which reserves (including any marginal, supplemental, special or emergency reserves) are required to be maintained with respect thereto during such Interest Period under regulations issued by the Board of Governors against Eurocurrency funding liabilities (currently referred to as “Eurocurrency liabilities” (as such term is used in Regulation D)). Such reserves shall include those imposed under Regulation D. Eurodollar Rate Loans will be deemed to constitute “Eurodollar Liabilities” (as defined in Regulation D) and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

“**Subordinated Debt**” means, collectively, any Incremental Equivalent Debt, Permitted Ratio Debt or other Indebtedness, in each case permitted to be incurred hereunder, that is subject to a Subordination Agreement made by the holders or lenders of such Indebtedness (or a Debt Representative with respect thereto) with respect to the Obligations. For the avoidance of doubt, no Indebtedness will be construed to be Subordinated Debt due to the fact that such Indebtedness is unsecured or secured by Liens that rank junior in priority to any other Liens.

“**Subordination Agreement**” means, collectively, each agreement with respect to Indebtedness (other than the Obligations) that provides that such Indebtedness is expressly subordinated in right of payment to the payment of the Obligations. For the avoidance of doubt, neither the subordination of the priority of any Lien securing any Indebtedness (other than the Obligations), nor the fact that any Indebtedness is unsecured, shall be construed to be the subordination of such Indebtedness in right of payment to the Obligations.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; *provided* that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person will be deemed to be outstanding. For purposes of this Agreement, except to the extent expressly stated otherwise, (a) references to any “Subsidiary” will mean a Subsidiary of the Borrower and (b) with respect to the Borrower or any of its direct or indirect subsidiaries, references to “Subsidiary” will not include any Unrestricted Subsidiary; *provided, however*, that for purposes of all representations and warranties, negative covenants, affirmative covenants and event of default provisions solely with respect to matters related to Anti-Money Laundering Laws and Anti-Corruption Laws (including, but not limited to, Sections 2.6(d), 4.17(b), 4.17(c), 5.7 and 5.8 (solely to the extent of any portion of such provisions relate to Anti-Money Laundering Laws and Anti-Corruption Laws)), references to “Subsidiary” will include all Unrestricted Subsidiaries.

“**Swap Obligation**” 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 Rate Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Rate Contracts, (a) for any date on or after the date such Rate Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Rate Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Rate Contracts (which may include a Lender or any Affiliate of a Lender).

“**Target Person**” as defined in Section 6.6(5).

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, levied, collected, withheld or assessed by any Governmental Authority, together with any interest thereon, additions to tax or penalties imposed with respect thereto.

“**Term C Loan**” means a Term Loan made by a Lender to the Borrower on the Closing Date pursuant to Section 2.1(b), if any.

“**Term C Loan Commitment**” means the commitment of a Lender to make or otherwise fund a Term C Loan and “**Term C Loan Commitments**” means such commitments of all of the Lenders in the aggregate. The amount of each Lender’s Term C Loan Commitment, if any, is set forth on Appendix A-2. The aggregate amount of the Term C Loan Commitments as of the Closing Date is \$0 (it being understood that the Borrower elected to reduce the aggregate amount of the Term C Loan Commitments to \$0 by notice to the Administrative Agent after the pricing and allocation of the Initial Term B Loans in connection with the primary syndication thereof and prior to the Closing Date).

“**Term C Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term C Loans of such Lender; *provided*, at any time prior to the making of the Term C Loans, the Term C Loan Exposure of any Lender will be equal to such Lender’s Term C Loan Commitment.

“**Term C Loan Note**” means a promissory note in the form of Exhibit B-2, as it may be amended, supplemented or otherwise modified from time to time.

“**Term C Loan Payment Cross Default**” as defined in Section 8.1(a).

“**Term C Loan Payment Event of Default**” as defined in Section 8.2(b).

“**Term Lender**” means a Lender with a Term Loan Commitment or an outstanding Term Loan.

“**Term Loan**” means, individually and collectively, the Initial Term B Loans, the Term C Loans, the Incremental Term Loans, if any, Extended Term Loans, if any, and Refinancing Term Loans, if any.

“**Term Loan Commitment**” means, collectively, the Initial Term B Loan Commitments, the Term C Loan Commitments, the Incremental Term Loan Commitments (if any) and commitments to make Refinancing Term Loans, if any, and Extended Term Loans, if any.

“**Term Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender will be equal to such Lender’s Term Loan Commitment.

“**Term Loan Maturity Date**” means (a) for the Initial Term B Loans, the earlier of (i) the seventh anniversary of the Closing Date, as extended in accordance with this Agreement from time to time, and (ii) the date that all such Initial Term B Loans become due and payable in full hereunder, whether by acceleration or otherwise; (b) for the Term C Loans (if any), the earlier of (i) the date which is 30 days after the Closing Date and (ii) the date that all such Term C Loans become due and payable in full hereunder, whether by acceleration or otherwise, (c) for any Incremental Term Loans, the earlier of (i) the date identified in the applicable Incremental Amendment, as extended in accordance with this Agreement from time to time, and (ii) the date that all such Incremental Term Loans become due and payable in full hereunder, whether by acceleration or otherwise; (d) for any Extended Term Loans, the earlier of (i) the final maturity date as specified in the applicable Extension Amendment and (ii) the date such Extended Term Loans become due and payable in full hereunder, whether by acceleration or otherwise, (e) with respect to any Refinancing Term Loans, the earlier of (i) the final maturity date as specified in the applicable Refinancing Amendment and (ii) the date such Refinancing Term Loans become due and payable in full hereunder, whether by acceleration or otherwise.

“**Term Loan Note**” means an Initial Term B Loan Note and a Term C Loan Note, as the context requires.

“**Terminated Lender**” as defined in Section 2.23.

“**Test Period**” in effect at any time means the most recent period of four consecutive Fiscal Quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 5.1(a) or (b), as applicable; *provided* that, prior to the first date that financial statements have been or are required to be delivered pursuant to Section 5.1(a) or (b), the Test Period in effect will be the period of four consecutive Fiscal Quarters of the Borrower ended June 30, 2018 consistent with the Consolidated Adjusted EBITDA used in the syndication of the Initial Term B Loan Commitments. A Test Period may be designated by reference to the last day thereof (i.e., the “December 29, 2018 Test Period” refers to the period of four consecutive Fiscal Quarters ended on December 29, 2018) or by reference to the applicable fiscal period (i.e., references to the “Q4-2018 Test Period” and the “Fiscal Year 2018 Test Period” also both refer to the period of four consecutive Fiscal Quarters ended on December 29, 2018), and a Test Period will be deemed to end on the last day thereof.

“**Total Net Leverage Ratio**” means, as of any date, the ratio of (a) Consolidated Total Debt as of such date, *minus* Unrestricted Cash (not to exceed \$60,000,000) as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

“**Transaction Costs**” means the fees, costs and expenses paid or payable by the Borrower or the Subsidiaries in connection with the Transactions paid on or about the Closing Date.

“**Transactions**” means the Initial Credit Extension, the consummation of the Acquisition on the Closing Date, the payment of the Transaction Costs, the other transactions consummated (or to be consummated) on or about the Closing Date and the other transactions to occur pursuant to or in connection with the Merger Agreement and the Credit Documents.

“**Transformative Acquisition**” means any merger, acquisition, Investment, dissolution, liquidation, consolidation or disposition, in any such case by the Borrower or any Subsidiary that is either (a) not permitted by the terms of any Credit Document immediately prior to the consummation of such transaction or (b) if permitted by the terms of the Credit Documents immediately prior to the consummation of such transaction, would not provide the Borrower and the Subsidiaries with adequate flexibility under the Credit Documents for the continuation and/or expansion of their combined operations following such consummation, as reasonably determined by the Borrower acting in good faith.

“**Type of Loan**” means, with respect to either Term Loans or Incremental Revolving Loans, a Base Rate Loan or a Eurodollar Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the Collateral Agent in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, the term “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Unrestricted Cash**” means the sum of the aggregate amount of cash and Cash Equivalents held in accounts of the Borrower and the Subsidiaries reflected in the combined consolidated balance sheet of the Borrower and the Subsidiaries to the extent that (a) it would not appear as “restricted” on the combined consolidated balance sheet of the Borrower and the Subsidiaries (unless such appearance is related to the Credit Documents (or the Liens created thereunder)), (b) it is not subject to any Lien (other than Permitted Liens) in favor of any Person other than the Collateral Agent for the benefit of the Secured Parties or (c) for purposes of calculating any of the First Lien Net Leverage Ratio or the Total Net Leverage Ratio, it does not represent the cash proceeds of any Indebtedness then being incurred.

“**Unrestricted Subsidiary**” means, as of any date, collectively and individually, any direct or indirect subsidiary (determined in accordance with the definition of “Subsidiary” but without giving effect to clause (b) of the last sentence thereof) of the Borrower identified by the Borrower in writing to the Administrative Agent as being an “Unrestricted Subsidiary” pursuant to Section 5.13; *provided* that (a) except to the extent provided in Section 5.13, no Subsidiary may be designated (or re-designated) as an Unrestricted Subsidiary and (b) no Person may be designated as an “Unrestricted Subsidiary” if such Person is not an “Unrestricted Subsidiary” or is a “Guarantor” under any agreement, document or instrument evidencing any Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or other Material Indebtedness of the Borrower or any of its Subsidiaries, or any Permitted Refinancing in respect of the foregoing, or has otherwise guaranteed or given assurances of payment or performance under or in respect of any such Indebtedness. For purposes of calculating Investments permitted under Section 6.6, (i) the designation of any Subsidiary as an “Unrestricted Subsidiary” will constitute an Investment in an amount equal to the fair market value of such Subsidiary, determined as of the date of such designation by the Borrower in its good faith and reasonable business judgment and (ii) the aggregate amount of all Investments permitted to be made in all “Unrestricted Subsidiaries” will be limited as provided in Section 6.6. The designation of any Unrestricted Subsidiary as a Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time and (except for purposes of the calculation of a return on Investment pursuant to clause (vi) of the definition of Available Amount) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value as determined by the Borrower in good faith at the date of such designation of the Borrower’s or its Subsidiary’s (as applicable) Investment in such Subsidiary. On the Closing Date, immediately after giving effect to the Transactions, there are no Unrestricted Subsidiaries.

“U.S.” or “United States” means United States of America.

“U.S. Lender” means each Lender that is a United States person as defined in Section 7701(a)(30) of the Internal Revenue Code.

“Voting Capital Stock” means, with respect to any Person, shares of such Person’s Capital Stock having the right to vote for the election of directors of such Person and any other Capital Stock of such Person treated as voting stock for purposes of Treasury Regulation Section 1.956-2(c)(2).

“Waivable Mandatory Prepayment” as defined in Section 2.15(e).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, 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 and the making of such payment; by (b) the then-outstanding principal amount of such Indebtedness.

“wholly-owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Capital Stock of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“Write-Down and Conversion Powers” means, 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.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein will have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Lenders pursuant to Sections 5.1(a) and 5.1(b) will be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(f), if applicable). If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Credit Document, and either the Borrower or the Required Lenders will so request, the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that until so amended, (a) such ratio, requirement or covenant will continue to be computed in accordance with GAAP prior to such change therein and (b) the Borrower will provide to the Administrative Agent and the Lenders reconciliation statements to the extent provided in Section 5.1(f), if applicable. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein will be construed, and all computations of amounts and ratios referred to in Section 5 and Section 6 will be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other Liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value.” Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof may utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements, including those identified as exceptions to generally accepted accounting principles in the definition of “GAAP.”

1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References to “hereof” or “herein” mean of or in this Agreement, as applicable. References herein to any Section, Appendix, Schedule or Exhibit will be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, will not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather will be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license will include sub-lease and sub-license, as applicable. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document (including any Organizational Document) will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document). Any reference herein to any Person will be construed to include such Person’s successors and permitted assigns. The words “asset” and “property” will be construed to have the same meaning and effect. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Any reference to any law or regulation will (i) include all statutory and regulatory provisions consolidating, replacing or interpreting or supplementing such law or regulation and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.3 will apply, *mutatis mutandis*, to all Credit Documents.

1.4 Certifications. Any certificate or other writing required hereunder or under any other Credit Document to be certified by any officer or other authorized representative of any Person will be deemed to be executed and delivered by such officer or other authorized representative solely in such individual’s capacity as an officer or other authorized representative of such Person and not in such officer’s or other authorized representative’s individual capacity.

1.5 Limited Condition Acquisitions. Notwithstanding anything in this Agreement or any Credit Document to the contrary, when (a)(i) calculating any applicable ratio or the use of any basket (including baskets measured as a percentage of LTM Consolidated Adjusted EBITDA), (ii) determining the accuracy of the representations and warranties set forth in Section 4 hereof or (iii) determining satisfaction of any conditions precedent or (b) determining compliance with any provision that requires that no Default or Event of Default has occurred, is continuing or would result therefrom, in the case of each of clauses (a) and (b) in connection with a Limited Condition Acquisition, the date of determination of such ratio and determination of such compliance will, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and any other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) calculated as if such Limited Condition Acquisition or other transactions had occurred at the beginning of the most recently ended Test Period ending prior to the LCA Test Date for which financial statements are delivered (or were required to have been delivered), the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios, then such provisions will be deemed to have been complied with, unless an Event of Default pursuant to Section 8.1(a), (f) or (g) will be continuing on the date such Limited Condition Acquisition is consummated. For the avoidance of doubt, (i) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in LTM Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDA or Consolidated Current Assets) at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (ii) such ratios and compliance with such conditions will not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions, unless an Event of Default pursuant to Section 8.1(a), (f) or (g) will be continuing. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket will be calculated and tested (x) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof and the use of cash which would have otherwise constituted Unrestricted Cash for the purpose of calculating any applicable ratio) have not been consummated and (y) 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 and the use of cash which would have otherwise constituted Unrestricted Cash for the purpose of calculating any applicable ratio) have been consummated, until such time as the applicable Limited Condition Acquisition has actually closed or the definitive agreement with respect thereto has been terminated or expires.

SECTION 2. LOANS

2.1 Term Loans.

(a) **Initial Term B Loan Commitments.** Subject to the terms and conditions hereof, each Lender identified on Appendix A-1 hereto severally agrees to make, on the Closing Date, an Initial Term B Loan to the Borrower in an amount equal to such Lender's Initial Term B Loan Commitment as of such date; *provided* that the Borrower will deliver to Administrative Agent on behalf of the Lenders a fully executed Funding Notice no later than 12:00 p.m. (New York City time) at least one (1) Business Day in advance of the proposed funding date, and in any case which Funding Notice may be conditional on consummation of the Acquisition. The Borrower may make only one borrowing under the Initial Term B Loan Commitment, which will be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.12, 2.13 and 2.14, all amounts owed hereunder with respect to the Initial Term B Loans will be paid in full no later than the applicable Term Loan Maturity Date. Each Lender's Initial Term B Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Initial Term B Loan Commitment on such date.

(b) Term C Loan Commitments. Subject to the terms and conditions hereof, each Lender identified on Appendix A-2 hereto severally agrees to make, on the Closing Date, a Term C Loan to the Borrower in an amount equal to such Lender's Term C Loan Commitment as of such date; *provided* that the Borrower will deliver to Administrative Agent on behalf of the Lenders a fully executed Funding Notice no later than 12:00 p.m. (New York City time) at least one (1) Business Day in advance of the proposed funding date, and in any case which Funding Notice may be conditional on consummation of the Acquisition. The Borrower may make only one borrowing under the Term C Loan Commitment, which will be on the Closing Date. Any amount borrowed under this Section 2.1(b) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.12, 2.13 and 2.14, all amounts owed hereunder with respect to the Term C Loans will be paid in full no later than the applicable Term Loan Maturity Date. Each Lender's Term C Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Term C Loan Commitment on such date. Notwithstanding the forgoing or anything else in this Agreement or the other Credit Documents to the contrary, it is understood that the amount of the Term C Loan Commitments as of the Closing Date is \$0 and no Term C Loans were borrowed by the Borrower on the Closing Date and the other provisions in this Agreement regarding the Term C Loans (including the provisions regarding a Term C Loan Payment Event of Default and Term C Loan Payment Cross Default) shall be inoperative.

2.2 **[Reserved].**

2.3 **[Reserved].**

2.4 **[Reserved].**

2.5 **Pro Rata Shares; Availability of Funds.**

(a) Pro Rata Shares. All Loans will be made, and all participations will be purchased, by the Lenders simultaneously and proportionately to their respective Pro Rata Shares. No Lender will be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor will any Term Loan Commitment or any Incremental Revolving Credit Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless the Administrative Agent will have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but will not be obligated to, make available to the Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent will be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent will promptly notify the Borrower and the Borrower will immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.5(b) will be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments and Incremental Revolving Credit Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.6 Use of Proceeds.

(a) The proceeds of the Initial Term B Loans will be used to consummate the Transactions. The proceeds of any Term C Loans will be used to consummate the Transactions.

(b) [Reserved].

(c) No portion of the proceeds of or draws related to any Credit Extension will be used to purchase or carry Margin Stock or in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

(d) No Credit Party, nor any of its Controlled Entities or any of their respective directors and officers, will directly or, to its knowledge, indirectly use any part of any proceeds of any Credit Extension or lend, contribute, or otherwise make available such proceeds to any Person (a) to fund or facilitate any activities or business of or with any Person that, at the time of such funding or facilitation, is the subject or the target of applicable Sanctions except to the extent authorized or permissible for a Person required to comply with Sanctions, (b) to fund or facilitate any activities or business of or in any Sanctioned Country except to the extent authorized or permissible for a Person required to comply with applicable Sanctions or (c) in any other manner that, in each case, will result in a violation by any Credit Party or any of its Controlled Entities of Sanctions. No part of the proceeds of any Credit Extension will be used by any Credit Party or any of its Controlled Entities, directly or indirectly, for any payments to any Government Official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation by any Credit Party or any of its Controlled Entities of the FCPA or in material violation by any Credit Party or any of its Controlled Entities of any other Anti-Corruption Laws.

2.7 Evidence of Debt; Register; Disqualified Lender List; Term Loan Notes.

(a) Evidence of Debt. Each Lender will maintain on its internal records an account or accounts evidencing the Indebtedness of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation will be conclusive and binding on the Borrower, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, will not affect any Lender's Commitments or the Borrower's Obligations in respect of any applicable Loans; and *provided, further*, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register will govern.

(b) Register. The Administrative Agent will maintain a register for the recordation of the names and addresses of the Lenders and the Commitments and the Loans of each Lender from time to time (the "**Register**"). The Register will be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time from time to time upon reasonable prior notice. The Administrative Agent will record in the Register the Loans and the Commitments, the principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation will be conclusive and binding on the Borrower and each Lender, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, will not affect any Lender's Commitments or the Borrower's Obligations in respect of any Loan. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.7, and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents and affiliates will constitute "Indemnitees."

(c) Disqualified Lender List. The list of Disqualified Lenders will be available to the Lenders and other Agents upon written request to the Borrower and the Administrative Agent. The parties to this Agreement hereby acknowledge and agree that the Administrative Agent will not be deemed to be in default under this Agreement or to have any duty or responsibility or to incur any liabilities as a result of a breach of this Section 2.7(c), nor will the Administrative Agent have any duty, responsibility or liability to monitor or enforce assignments, participations or other actions in respect of Disqualified Lenders, inquire as to whether any Person is a Disqualified Lender or otherwise take (or omit to take) any action with respect thereto.

(d) Term Loan Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent) at least two (2) Business Days prior to the Closing Date, or at any time thereafter, the Borrower will execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the date that is three (3) Business Days prior to the Closing Date, promptly after the Borrower's receipt of such notice) a Term Loan Note or Term Loan Notes to evidence such Lender's Term Loan.

2.8 Interest on Loans.

(a) Except as otherwise set forth herein, each Class of Loans will bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

Class of Loans	Interest
Initial Term B Loans and Term C Loans that are Base Rate Loans	Base Rate <i>plus</i> the Applicable Margin
Initial Term B Loans and Term C Loans that are Eurodollar Rate Loans	Eurodollar Rate <i>plus</i> the Applicable Margin
Incremental Loans, Extended Term Loans or Refinancing Term Loans that are Base Rate Loans	Base Rate <i>plus</i> the applicable margin set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.
Incremental Loans, Extended Term Loans or Refinancing Term Loans that are Eurodollar Rate Loans	Eurodollar Rate <i>plus</i> the applicable margin set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any Eurodollar Rate Loan, will be selected by the Borrower and notified to the Administrative Agent and the Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan will be a Base Rate Loan.

(c) In connection with Eurodollar Rate Loans there will be no more than five (5) Interest Periods outstanding at any time (unless otherwise agreed by the Administrative Agent). In the event the Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event the Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower will be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent will determine (which determination will, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that will apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to Section 2.8(a) will be computed (i) in the case of Base Rate Loans with the Base Rate determined pursuant to subclause (a) of the definition of "Base Rate", on the basis of a 365-day year (or 366-day year, in the case of a leap year), (ii) in the case of Base Rate Loans with the Base Rate determined pursuant to subclause (b) or (c) of the definition of "Base Rate", on the basis of a 360-day year and (iii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, will be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, will be excluded; *provided* that if a Loan is repaid on the same day on which it is made, one day's interest will be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan will accrue on a daily basis and be payable in arrears (i) on each Interest Payment Date applicable to that Loan; (ii) any prepayment of that Term Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity and, after such maturity (or termination), on each date on which demand for payment is made.

2.9 Conversion/Continuation.

(a) Subject to Section 2.18 and so long as no Default or Event of Default will have occurred and then be continuing, the Borrower will have the option:

(i) to convert at any time all or any part of any Term Loan or Incremental Revolving Loan equal to \$100,000 and integral multiples of \$50,000 in excess of that amount from one Type of Loan to another Type of Loan; *provided* that a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless the Borrower will pay all amounts due under Section 2.18 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to \$100,000 and integral multiples of \$50,000 in excess of that amount as a Eurodollar Rate Loan.

(b) The Borrower will deliver a Conversion/Continuation Notice to the Administrative Agent by Electronic Transmission no later than 12:00 p.m. (New York City time) at least one (1) Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three (3) Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans will be irrevocable on and after the related Interest Rate Determination Date, and the Borrower will be bound to effect a conversion or continuation in accordance therewith.

2.10 Default Interest. The overdue principal amount of any Loans and, to the extent permitted by applicable law and due and owing, any overdue interest payments on the Loans and any other overdue fees and other overdue amounts, will bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws), payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts that do not relate to a specific Class of Loans or Commitments, at a rate which is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Initial Term B Loans outstanding as Base Rate Loans); *provided* that in the case of any overdue principal or interest with respect to Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any the increase in interest rate is effective, such Eurodollar Rate Loans will thereupon become Base Rate Loans and thereafter such overdue principal or interest, as applicable, will bear interest payable upon demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for such Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and will not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

2.11 Loan Call Protection.

(a) Loan Call Protection. At the time of the effectiveness of any Repricing Event that is consummated during the period from the Closing Date to the six-month anniversary of the Closing Date, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each Lender with Initial Term B Loans that are either repaid, converted or subjected to a pricing reduction or amendment (including the Initial Term B Loans of any Non-Consenting Lender replaced pursuant to Section 2.23 in connection with such conversion or amendment), in each case, in connection with such Repricing Event, a fee in an amount equal to 1.00% of (x) in the case of a Repricing Event described in clause (a) of the definition thereof, the aggregate principal amount of all Initial Term B Loans prepaid (or converted) in connection with such Repricing Event and (y) in the case of a Repricing Event described in clause (b) of the definition thereof, the aggregate principal amount of all Initial Term B Loans outstanding on such date that are subject to an effective pricing reduction pursuant to such Repricing Event. Such fees shall be earned, due and payable upon the date of the effectiveness of such Repricing Event.

(b) All fees referred to in Section 2.11(a) will be calculated on the basis of a 360-day year and the actual number of days elapsed.

(c) In addition to the foregoing fees, the Borrower agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon.

(d) Once paid, none of the foregoing fees will be refundable under any circumstances.

2.12 Scheduled Payments.

(a) The Borrower will repay to the Administrative Agent for the ratable account of the Lenders holding Initial Term B Loans:

(i) on the last Business Day of each Fiscal Quarter (commencing with the Fiscal Quarter ending December 29, 2018, which is the first full Fiscal Quarter after the Closing Date) an aggregate principal amount equal to 0.25% of the original aggregate principal amount of all Initial Term B Loans outstanding on the Closing Date (which, for the avoidance of doubt, is \$875,000 per calendar quarter, subject to adjustment as provided in clause (c) below), and

(ii) on the applicable Term Loan Maturity Date, the aggregate principal amount of all Initial Term B Loans outstanding on such date.

(b) In the event any Incremental Term Loans, Extended Term Loans or Refinancing Term Loans are made, such Incremental Term Loans, Extended Term Loans or Refinancing Term Loans will be repaid in such installments as may be set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment, as applicable.

(c) The Borrower will repay to the Administrative Agent for the ratable account of the Lenders holding Term C Loans (if any), on the applicable Term Loan Maturity Date, the aggregate principal amount of all Term C Loans outstanding on such date.

(d) Notwithstanding the foregoing clauses (a), (b) and (c):

(i) any installment payments contemplated by clause (a) or (b) above will be reduced in connection with any voluntary or mandatory prepayments of the applicable Term Loans in accordance with Sections 2.13, 2.14 and 2.15, as applicable, or any Discounted Prepayments of the Term Loans in accordance with Section 2.25 or 10.6(j);

(ii) the rate of amortization (or the amount of any installment) with respect to any Class of Term Loans may be increased (and the provisions of clause (a)(i) or the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment may be amended accordingly) without the consent of the Lenders or the Administrative Agent in connection with the incurrence of any subsequent Incremental Term Loans, Extended Term Loans or Refinancing Term Loans that also comprise part of such Class of Term Loans; and

(iii) the Term Loans of a given Class, together with all other amounts owed hereunder with respect thereto, will, in any event, be paid in full no later than the applicable Term Loan Maturity Date.

2.13 Voluntary Prepayments. Any time and from time to time, with respect to any Type of Loan, the Borrower may prepay the Loans, in whole or in part, on any Business Day in whole or in part, in an aggregate minimum amount of and integral multiples in excess of that amount (or, in each case, if less the entire amount thereof), and upon prior written notice given to the Administrative Agent, by 1:00 p.m. (New York City time) on the applicable date indicated below, in each case, as set forth in the following table:

Type of Loans	Minimum Amount	Integral Multiple	Prior Notice
Base Rate Loans	\$100,000	\$50,000	One Business Day
Eurodollar Rate Loans	\$100,000	\$50,000	Three Business Days

Any amounts received after such time on such date will be deemed to have been received on the next succeeding Business Day. Upon the giving of any such notice, the principal amount of the Loans specified in such notice will become due and payable without premium or penalty (except as set forth in Section 2.11(a) and subject to Section 2.18(c)) on the prepayment date specified therein; *provided* that such notice may be conditioned on receiving the proceeds necessary for such prepayment in a refinancing or otherwise conditioned. Any such voluntary prepayment will be applied as specified in Section 2.15(a). The foregoing provisions will not apply with respect to any Discounted Prepayment governed by Section 2.25.

2.14 Mandatory Prepayments/Commitment Reductions.

(a) **Asset Sales.** No later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from Asset Sales made pursuant to Section 6.8(e), the Borrower will prepay, or cause to be prepaid, the Term Loans (other than Term C Loans) in accordance with Section 2.15(b) in an aggregate amount equal to 100% (such percentage, as it may be reduced as described below, the “**Asset Sale Sweep Percentage**”) of such Net Cash Proceeds (subject to Sections 2.15(e) and 2.15(f)); *provided* that:

(i) the Borrower will have the option, directly or through one or more Subsidiaries, to invest such Net Cash Proceeds within three hundred sixty-five (365) days of receipt thereof (subject to extension as provided in subclause (ii) below) in the Business (other than inventory and other working capital assets), which investment may include research and development expenditures, capital expenditures and the repair, restoration or replacement of the applicable assets thereof; and

(ii) if the Borrower or any Subsidiary enters into a legally binding commitment to invest such Net Cash Proceeds within the 365-day period specified in subclause (i) above, it may directly or through one or more Subsidiaries, so invest such Net Cash Proceeds within one hundred eighty (180) days following the end of such initial 365-day period.

provided that (x) so long as no Event of Default has occurred and is continuing, if, as of the last day of the most recently ended Test Period prior to such Asset Sale, the Total Net Leverage Ratio (determined on a Pro Forma Basis by reference to the applicable Compliance Certificate then last delivered pursuant to Section 5.1(e)) is less than 0.82:1.00, the Asset Sale Sweep Percentage will be 50% and (y) to the extent that the sum of all Net Cash Proceeds from Asset Sales made pursuant to Section 6.8(e) received during any Fiscal Year does not exceed \$10,000,000, then no such prepayment shall be required (it being understood that if such Net Cash Proceeds exceeds \$10,000,000 in a Fiscal Year, then the Borrower shall only be required to make a prepayment with such excess amount above \$10,000,000).

(b) Casualty Events. No later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary, or the Administrative Agent as loss payee, of any Net Cash Proceeds from a Casualty Event, the Borrower will prepay, or cause to be prepaid, the Term Loans (other than Term C Loans) in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such Net Cash Proceeds (subject to Sections 2.15(e) and 2.15(f)); *provided that*:

(i) the Borrower will have the option, directly or through one or more of the Subsidiaries, to invest such Net Cash Proceeds within three hundred sixty-five (365) days of receipt thereof (subject to extension as provided in subclause (ii) below) in assets used or useful in the Business, which investment may include the repair, restoration or replacement of the applicable assets thereof; and

(ii) if the Borrower or any Subsidiary enters into a legally binding commitment to invest such Net Cash Proceeds within the 365-day period specified in subclause (i) above, it may directly or through one or more of the Subsidiaries, so invest such Net Cash Proceeds within one hundred eighty (180) days following the end of such initial 365-day period.

(c) Issuance of Debt. No later than the first Business Day following receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from the incurrence of any Indebtedness of the Borrower or any Subsidiary (other than any Indebtedness permitted to be incurred or issued pursuant to Section 6.1 (excluding Credit Agreement Refinancing Indebtedness and Replacement Term Loans)), the Borrower will prepay the Term Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such Net Cash Proceeds.

(d) Consolidated Excess Cash Flow. In the event that there is positive Consolidated Excess Cash Flow for any Fiscal Year (commencing with the Fiscal Year ending 2019), the Borrower will, within five (5) Business Days of delivery (or, if later, required delivery) of the annual financial statements pursuant to Section 5.1(a) (the date of such payment, the “**ECF Payment Date**”), prepay the Term Loans in accordance with Section 2.15(b) in an aggregate amount equal to 25% (such percentage, as it may be increased or decreased as described below, the “**ECF Percentage**”) of the sum of (subject to Sections 2.15(e) and 2.15(f)):

(i) Consolidated Excess Cash Flow for such Fiscal Year, *minus*

(ii) the aggregate amount of all voluntary repayments or prepayments of Loans (including Incremental Term Loans, but excluding Term C Loans) and any other Pari Passu Lien Indebtedness, in each case made during such Fiscal Year (other than (A) repayments or prepayments of Incremental Revolving Loans, unless such repayments or prepayments are accompanied by a permanent reduction of the Incremental Revolving Credit Commitments in like amount, (B) repurchases or other refinancing of Term Loans pursuant to Section 2.26 or substantially comparable repurchase or refinancing provisions in the definitive documentation governing such other Indebtedness and (C) repayments or prepayments of Loans or such other Indebtedness with proceeds of Funded Debt), *minus*

(iii) the aggregate amount of all voluntary purchases, repayments or prepayments of the Term Loans (including Incremental Term Loans, but excluding Term C Loans) and any other Pari Passu Lien Indebtedness made at a discount to par in compliance with Section 2.25 or Section 10.6(j) or comparable provisions in the definitive documentation governing such other Indebtedness (in each case, other than any such purchase, repayment or prepayment made with proceeds of Funded Debt), with such amount being equal to the discounted amount actually paid in respect of such prepayment for such Indebtedness during such Fiscal Year;

provided that if, as of the last day of the most recently ended Fiscal Year, the First Lien Net Leverage Ratio on a Pro Forma Basis (determined for any such period by reference to the applicable Compliance Certificate delivered pursuant to Section 5.1(e), calculating the First Lien Net Leverage Ratio on a Pro Forma Basis as of the last day of such Fiscal Year) is (i) equal to or greater than 2.50:1.00, the ECF Percentage will be increased to 50% and (ii) equal to or less than 1.50:1.00, the ECF Percentage will be decreased to 0%, so long as no Default or Event of Default has occurred and is continuing.

(e) Prepayment Certificate. Concurrently with any prepayment of the Term Loans pursuant to Sections 2.14(a) through 2.14(d), the Borrower will deliver to the Administrative Agent a calculation of the amount of the applicable Net Cash Proceeds or Consolidated Excess Cash Flow, as the case may be. In the event that the Borrower will subsequently determine that the actual amount received exceeded the amount applied pursuant to this Section 2.14, the Borrower will promptly make an additional prepayment of the Term Loans in an amount equal to such excess, and the Borrower will concurrently therewith deliver to the Administrative Agent a calculation of such excess.

2.15 Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments. Subject to Section 2.15(d), any prepayment of any Loan pursuant to Section 2.13 will be applied as specified by the Borrower in the applicable notice of prepayment and absent any such direction as to the prepayment of such Loans, in direct order of maturity; provided that in any event, any prepayment shall be applied ratably among holders of the same Class of Loans (or, in the case of any Obligations other than Loans, of the same type of such Obligations).

(b) Application of Mandatory Prepayments. Subject to Section 2.15(d), any amount required to be paid pursuant to Sections 2.14(a) through 2.14(d) will be applied as follows:

(i) except as set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment (or as otherwise provided in Section 2.14(a) or (b)), such prepayment will be applied to each Class of Term Loans on a *pro rata* basis (in accordance with the respective outstanding principal amounts thereof); provided that any prepayment of Term Loans with the Net Cash Proceeds of Credit Agreement Refinancing Indebtedness will be applied solely to each applicable Class of Refinanced Indebtedness, and

(ii) such prepayment will be applied to the succeeding installments of each applicable Class of Term Loans in such order as the Borrower may direct, or, if no direction is given, in direct order of maturity, with the balance, if any, applied to the amount due at maturity.

Notwithstanding anything to the contrary in any Credit Document, the Borrower may use a portion of the amounts required to be paid pursuant to Sections 2.14(a) and 2.14(b) to prepay, repurchase, redeem, defease or otherwise repay, or offer to prepay, repurchase, redeem, defease or otherwise repay, with such amounts other Pari Passu Lien Indebtedness and the amount required to be paid pursuant to such Sections will be ratably reduced; provided that the definitive documentation in respect of such Pari Passu Lien Indebtedness requires the issuer or borrower thereof to prepay, repurchase, redeem, defease or otherwise repay, or offer to prepay, repurchase, redeem, defease or otherwise repay, such Pari Passu Lien Indebtedness with such amounts, in each case, on a *pro rata* basis with the outstanding principal amount of Term Loans.

(c) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof will be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case, in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.18(c).

(d) Application of Payments or Proceeds. During the continuance of an Event of Default, the Administrative Agent may and will upon the direction of the Required Lenders apply any and all payments received by the Administrative Agent in respect of any Obligation in accordance with Section 8.2. All payments made by a Credit Party to the Administrative Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, will be applied in accordance with Section 8.2.

(e) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, so long as any Term Loans are outstanding, in the event the Borrower is required to make any mandatory prepayment pursuant to Section 2.14(a) through (d) (other than any mandatory prepayment with the Net Cash Proceeds of any Credit Agreement Refinancing Indebtedness or Replacement Term Loans) (a “**Waivable Mandatory Prepayment**”), not less than three (3) Business Days prior to the date (the “**Required Prepayment Date**”) on which the Borrower is are required to make such Waivable Mandatory Prepayment, the Borrower will notify the Administrative Agent of the amount of such prepayment. Each such Lender may exercise its option to refuse any Waivable Mandatory Prepayment by giving written notice to the Borrower and the Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Borrower and the Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date will be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrower will pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount will be applied to those Lenders that have elected not to exercise such option, as prepayment of the Term Loans (which prepayment will be applied to the scheduled installments of principal of the Term Loans of Lenders not electing to exercise such option, in accordance with Section 2.15(b)), with any balance of the Waivable Mandatory Prepayment to be retained by the Borrower and used for any purpose permitted by the terms of this Agreement.

(f) Repatriation; Foreign Considerations. Notwithstanding any provisions of Section 2.14 or this Section 2.15 to the contrary:

(i) to the extent that any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary (or a Domestic Subsidiary of a Foreign Subsidiary) giving rise to a prepayment event pursuant to Section 2.14(a) (a “**Foreign Disposition**”), the Net Cash Proceeds of any Casualty Event from a Foreign Subsidiary (or a Domestic Subsidiary of a Foreign Subsidiary) giving rise to a prepayment event pursuant to Section 2.14(b) (a “**Foreign Casualty Event**”) or Consolidated Excess Cash Flow are prohibited or delayed by applicable local law (including, without limitation, as to financial assistance, restrictions on upstreaming of cash, corporate benefit restrictions and as to fiduciary and statutory duties of directors and managers) from being repatriated to the United States, the portion of such Net Cash Proceeds or Consolidated Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in Section 2.14 but may be retained by the applicable Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States, and once such repatriation of any of such affected Net Cash Proceeds or Consolidated Excess Cash Flow is permitted under the applicable local law, such repatriation will be effected promptly and such repatriated Net Cash Proceeds or Consolidated Excess Cash Flow will be promptly (and in any event not later than three (3) Business Days after such repatriation) applied (net of additional Taxes payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to Section 2.14 to the extent provided therein, and

(ii) to the extent that the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds of any Foreign Disposition, Net Cash Proceeds of any Foreign Casualty Event or Consolidated Excess Cash Flow would result in material adverse Tax consequences (taking into account any foreign tax credit or benefit received in connection with such repatriation) with respect to such Net Cash Proceeds or Consolidated Excess Cash Flow, the Net Cash Proceeds or Consolidated Excess Cash Flow so affected may be retained by the applicable Subsidiary; *provided* that, to the extent that the repatriation of any Net Cash Proceeds or Consolidated Excess Cash Flow from the relevant Subsidiary would no longer result in such material adverse Tax consequences, an amount equal to the Net Cash Proceeds or Consolidated Excess Cash Flow, as applicable, not previously applied by operation of this clause (ii) shall be promptly applied to the repayment of the Term Loans pursuant to Section 2.14 as otherwise provided therein.

2.16 General Provisions Regarding Payments.

(a) All payments by the Borrower of principal, interest, fees and other Obligations will be made in Dollars in same day funds and by wire transfer or ACH transfer (which will be the exclusive means of payment hereunder), without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Administrative Agent not later than 1:00 p.m. (New York City time) on the date due at the Payment Office (or such other address as the Administrative Agent may from time to time specify in accordance with Section 10.1) for the account of the Lenders; for purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date will be deemed to have been paid by the Borrower on the next succeeding Business Day.

(b) All payments of the principal amount of any Term Loan made pursuant to Section 2.13 will be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments will be applied to the payment of interest then due and payable before application to principal.

(c) The Administrative Agent (or its agent or sub-agent appointed by it) will promptly distribute to each Lender at such address as such Lender may indicate in writing, (i) such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due to such Lender pursuant to Sections 2.8, 2.10, 2.12, 2.13 or 2.14, and (ii) all other amounts due to such Lender, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, the Administrative Agent will give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of “Interest Period,” whenever any payment to be made hereunder is stated to be due on a day that is not a Business Day, such payment will be made on the next succeeding Business Day and such extension of time will be included in the computation of the payment of interest hereunder.

(f) The Administrative Agent will deem any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 1:00 p.m. (New York City time) to be a non-conforming payment. Any such payment will not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds and (ii) the applicable next Business Day. The Administrative Agent will give prompt written notice to the Borrower if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest will continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.10 from the date such amount was due and payable until the date such amount is paid in full.

(g) Notwithstanding any other provisions hereof, so long as no Event of Default has occurred and is continuing, if any prepayment of Eurodollar Rate Loans is required to be made prior to the last day of the Interest Period therefor, in lieu of making any payment in respect of any such Eurodollar Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in the sole discretion of the Borrower, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into an escrow account designated by the Administrative Agent until the last day of such Interest Period, at which time the Administrative Agent will be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of such Term Loans in accordance with the provisions of this Agreement otherwise applicable to such payment. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent will also be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the provisions of this Agreement otherwise applicable to such payment.

2.17 Ratable Sharing. The Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker’s lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code or as a distribution in connection with a plan of reorganization, plan of liquidation or similar dispositive plan, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the “**Aggregate Amounts Due**” to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment will (a) notify the Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it will be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due will be shared by all of the Lenders in proportion to the Aggregate Amounts Due to them; *provided* that if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of the Borrower or otherwise, those purchases will be rescinded and the purchase prices paid for such participations will be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker’s lien, set-off or counterclaim with respect to any and all monies owing by the Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.17 will not be construed to apply to (i) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement, (ii) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it, (iii) the exchange of any Loans held by a Lender for all or a portion of a new tranche of Loans issued hereunder or (iv) the acceptance of the Waivable Mandatory Prepayment in accordance with Section 2.15(e).

2.18 Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. In the event that the Administrative Agent determines (which determination will be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that (i) adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of “Eurodollar Rate” or (ii) the Eurodollar Rate for any requested Interest Period does not adequately and fairly reflect the cost to Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will on such date give notice (by electronic notice or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist and (ii) any Funding Notice or Conversion/Continuation Notice given by the Borrower with respect to the Loans in respect of which such determination was made will be deemed to be rescinded by the Borrower.

(b) Eurodollar Replacement Rate. If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (i) of Section 2.18(a) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (i) of Section 2.18(a) have not arisen but the supervisor for the administrator of the screen rate used by the Administrative Agent pursuant to clause (a)(i) of the definition of “Eurodollar Rate” or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which such screen rate shall no longer be used or published for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin).

Notwithstanding anything to the contrary in Section 10.5, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders of each Class stating that such Required Lenders object to such amendment; *provided* that, to the extent such written notice is received from the Required Lenders within such time period, only the consent of the Required Lenders shall be necessary to amend this Agreement to reflect an alternate rate of interest to the Eurodollar Rate, and such other related changes to this Agreement as may be applicable. Until an alternate rate of interest shall be determined in accordance with this Section 2.18(b) (but, in the case of the circumstances described in clause (ii) of the immediately preceding paragraph (b), only to the extent the screen rate used by the Administrative Agent pursuant to clause (a)(i) of the definition of “Eurodollar Rate” for such Interest Period is not available or published at such time on a current basis), (x) any Funding Notice or Conversion/Continuation Notice that requests the conversion of any Loan to, or continuation of any Loan as, a Eurodollar Rate Loan shall be ineffective, and (y) if any Funding Notice or Conversion/Continuation Notice requests a Eurodollar Rate Loan, such Loan shall be made as or converted into a Base Rate Loan; *provided* that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

(c) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender determines in good faith (which determination will be final and conclusive and binding upon all parties hereto but will be made only after consultation with the Borrower and the Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the Closing Date that materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, each such Lender will be an “**Affected Lender**” and it will on that day give notice (by electronic notice or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent will promptly transmit to each other Lender). If the Administrative Agent receives a notice from any Lender pursuant to the preceding sentence, then (A) the obligation of such Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans will be suspended until such notice is withdrawn by such Affected Lender, (B) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, such Lender makes such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (C) such Lender’s obligations to maintain its outstanding Eurodollar Rate Loans (the “**Affected Loans**”) will be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (D) the Affected Loans will automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Borrower will have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent will promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.18(c) will affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(d) Compensation for Breakage or Non-Commencement of Interest Periods. In the event of (i) the payment or prepayment (voluntary or otherwise) of any principal of any Eurodollar Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (ii) the conversion of any Eurodollar Rate Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue or prepay any Eurodollar Rate Loan on the date specified in any notice delivered pursuant hereto or (iv) the assignment of any Eurodollar Rate Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.23, then, in any such event, the Borrower will compensate each Lender for the actual loss, cost and expense incurred by such Lender attributable to such event, excluding loss of anticipated profits or margin and without giving to any applicable LIBOR “floor.” A certificate of any Lender computing any amount or amounts that such Lender is entitled to receive pursuant to this Section in reasonable detail will be delivered to the Borrower and will be presumptively correct. The Borrower will pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(e) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

2.19 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which will be controlling with respect to the matters covered thereby), in the event that any Lender determines in good faith (which determination will, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a Governmental Authority, in each case that becomes effective after the Closing Date, or compliance by such Lender with any guideline, request or directive issued or made after the Closing Date by any central bank or other Governmental Authority: (i) subjects such Lender (or its applicable Lending Office) to any additional Tax (other than (x) Indemnified Taxes and (y) Excluded Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable Lending Office) of principal, interest, fees or any other amount payable hereunder or thereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of "Eurodollar Rate"); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable Lending Office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable Lending Office) with respect thereto; then, in any such case, the Borrower will pay to such Lender, within ten (10) Business Days of receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion may determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender will deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(a), which statement will be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender determines that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital or liquidity requirements, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable Lending Office) or any entity controlling any Lender with any guideline, request or directive regarding capital or liquidity requirements (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Incremental Revolving Credit Commitments, if any, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling entity could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling entity with regard to capital or liquidity requirements), then from time to time, within five (5) Business Days after receipt by the Borrower from such Lender of the statement referred to in the next sentence, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling entity for such reduction. Such Lender will deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.19(b), which statement will be conclusive and binding upon all parties hereto absent manifest error.

(c) Dodd-Frank; Basel III. 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 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 in respect of this clause (ii) pursuant to Basel III, will, in each case, be deemed to be a change in law, treaty or governmental rule, regulation or order under subsection (a) above and/or a change in law, rule or regulation (or any provision thereof) regarding capital or liquidity requirements under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

(d) Delay in Requests. The failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.19 will not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.19 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender sends the Borrower written notice of such Lender's intention to claim compensation therefor; *provided, further* that if the circumstance giving rise to such increased costs or reductions suffered is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

(e) Most Favored Nations Limitation. A Lender shall only be entitled to demand compensation pursuant to the foregoing provisions of this Section 2.19 if such Lender is requesting compensation from borrowers similarly situated to the Borrower under syndicated credit facilities comparable to those provided hereunder.

2.20 Taxes; Withholding, etc.

(a) Except as required by Law or otherwise provided in this Section 2.20, each payment by any Credit Party under any Credit Document will be made without deduction or withholding for any Taxes with respect thereto.

(b) If any Taxes will be required by any Law to be deducted from or in respect of any amount payable under any Credit Document to any Recipient (i) to the extent such Taxes required to be deducted are Indemnified Taxes, such amount will be increased as necessary to ensure that, after all required deductions for Indemnified Taxes are made (including deductions for Indemnified Taxes applicable to any increases to any amount under this Section 2.20(b)(i)), such Recipient receives the amount it would have received had no such deductions for Indemnified Taxes been made, (ii) the relevant Credit Party or the Administrative Agent, as applicable, will make such deductions, (iii) the relevant Credit Party or the Administrative Agent, as applicable, will timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Law and (iv) within 30 days after any such payment by a Credit Party is made, the relevant Credit Party will deliver to the Administrative Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to the Administrative Agent.

(c) In addition, the Credit Parties will timely pay to the relevant Governmental Authority, in accordance with applicable law, any Other Taxes. Within 30 days after the date of any payment of Other Taxes by any Credit Party pursuant to this Section 2.20(c), the Borrower will deliver to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to the Administrative Agent.

(d) Without duplication of Section 2.20(b) or Section 2.20(c), the Credit Parties will jointly and severally indemnify and reimburse, within 30 days after receipt of a written demand therefor (with copy to the Administrative Agent), each Recipient for all Indemnified Taxes (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 2.20) imposed on or with respect to any payment made by the Credit Parties hereunder, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Any Recipient claiming indemnity pursuant to this Section 2.20(d) will notify the Credit Parties of the imposition of the relevant Indemnified Taxes as soon as practicable after the Recipient becomes aware of such imposition. A certificate of the Recipient (or of the Administrative Agent on behalf of such Recipient) claiming any compensation under this clause (d), setting forth in reasonable detail the amounts to be paid thereunder and delivered to the Borrower with copy to the Administrative Agent, will be conclusive, binding and final for all purposes, absent manifest error.

(e) Without limiting Section 2.21, any Lender claiming any additional amounts payable pursuant to this Section 2.20 will use its reasonable efforts (consistent with its internal policies and Law) to change the jurisdiction of its Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(f)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will 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 2.20(f)(ii)(1), Section 2.20(f)(ii)(2) and Section 2.20(f)(ii)(4) below) will 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:

(1) any U.S. Lender will deliver to the Borrower and the Administrative Agent, on or prior to the date on which such Lender becomes a party to this Agreement from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, executed originals of IRS Form W-9 (certifying that such U.S. Lender is exempt from U.S. federal backup withholding tax);

(2) Any Non-U.S. Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as will be requested by the recipient), on or prior to the date on which such Non-U.S. Lender becomes a party to 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:

i) in the case of a Non-U.S. 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 Credit Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E 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 Credit Document, executed originals of IRS Form W-8BEN or W-8BEN-E 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;

ii) executed originals of IRS Form W-8ECI or W-8EXP;

iii) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10-percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E; or

iv) to the extent a Non-U.S. Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9 and/or other certification documents from each beneficial owner, as applicable; *provided* that, if the Non-U.S. Lender is a partnership and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption, such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(3) any Non-U.S. Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as will be requested by the recipient), on or prior to the date on which such Non-U.S. Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals 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

(4) if a payment made to a Recipient under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Recipient will 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 Internal Revenue 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 Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.20(f)(ii)(4), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Any Administrative Agent that (i) is a U.S. Person will deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), duly completed copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding tax or (ii) is not a U.S. Person will deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), duly completed copies of (A) IRS Form W-8IMY evidencing its agreement with the Borrower to be treated as a U.S. Person and (B) IRS Form W-8ECI, in each of case (A) and (B) establishing that the Borrower can make payments to the Administrative Agent without deduction or withholding of any Taxes imposed by the United States, including Taxes imposed under FATCA. The Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

(h) If any Recipient determines in its sole discretion exercised in good faith that it has received a refund (which for purposes of this paragraph shall include a credit received in lieu of a refund) of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it will pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made or additional amounts paid under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all reasonable, documented, out-of-pocket expenses of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of such Recipient, will repay to such Recipient the amount paid over pursuant to this Section 2.20(h) (*plus* any penalties, interest or other charges properly imposed by the relevant Governmental Authority) in the event that such Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Recipient be required to pay any amount to a Credit Party pursuant to this paragraph (h) the payment of which would place the Recipient in a less favorable net after-Tax position than the 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 paragraph will 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 Credit Party or any other Person.

(i) Each party's obligations under this Section 2.20 will survive the resignation or replacement of the Administrative Agent or any assignment of right by, or the replacement of, a Recipient.

2.21 Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.18, 2.19 or 2.20, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts (a) to make, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) to take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.18, 2.19 or 2.20 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, funding or maintaining of such Commitments or Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Commitments or Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this Section 2.21 unless the Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by the Borrower pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Borrower (with a copy to the Administrative Agent) will be conclusive absent manifest error.

2.22 [Reserved].

2.23 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that:

(a) (i) any Lender (an "**Increased Cost Lender**") gives notice to the Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.18, 2.19 or 2.20, (ii) the circumstances that have caused such Lender to be an Affected Lender or that entitle such Lender to receive such payments remain in effect, and (iii) such Lender fails to withdraw such notice within five (5) Business Days after the Borrower's request for such withdrawal; or

(b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of a Credit Document as contemplated by Section 10.5(b), the consent of Required Lenders with respect to which has been obtained but the consent of one or more of such other Lenders (each a “**Non-Consenting Lender**”) whose consent is required has not been obtained;

then, with respect to each such Increased Cost Lender or Non-Consenting Lender (the “**Terminated Lender**”), the Borrower may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Incremental Revolving Credit Commitments, if any, in full to one or more Eligible Assignees (each a “**Replacement Lender**”) in accordance with the provisions of Section 10.6 and the Borrower will pay the fees, if any, payable thereunder in connection with any such assignment from an Increased Cost Lender or a Non-Consenting Lender; *provided* that (1) on the date of such assignment, the Replacement Lender must pay to a Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.11; (2) on the date of such assignment, the Borrower must pay any amounts payable to such Terminated Lender pursuant to Section 2.11(a), 2.18(c), 2.19 or 2.20; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender will consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the assignment of all amounts owing to any Terminated Lender and the termination or assignment of such Terminated Lender’s Incremental Revolving Credit Commitments, if any, such Terminated Lender will no longer constitute a “Lender” for purposes hereof; *provided* that any rights of such Terminated Lender to indemnification hereunder will survive as to such Terminated Lender. Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender as a Non-Consenting Lender or Terminated Lender, such Lender will, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one (1) Business Day after receipt of such notice, each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power of attorney will be coupled with an interest) to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Non-Consenting Lender or Terminated Lender and any such documentation so executed by the Administrative Agent will be effective for purposes of documenting an assignment pursuant to Section 10.6.

2.24 Incremental Facilities.

(a) **Notice.** At any time and from time to time, on one or more occasions, the Borrower may, by notice to the Administrative Agent, (i) increase the aggregate principal amount of any outstanding tranche of Term Loans (other than Term C Loans) or add one or more additional tranches of term loans under the Credit Documents (the “**Incremental Term Facilities**” and the term loans made thereunder, the “**Incremental Term Loans**”) or (ii) establish a tranche (or a new tranche) of Incremental Revolving Credit Commitments on terms as agreed between the Borrower and the Lenders providing such Incremental Revolving Credit Commitments (but subject to the terms of this Section 2.24) and/or increase the aggregate principal amount of Incremental Revolving Credit Commitments on the same terms as any then-existing Incremental Revolving Credit Commitments (the “**Incremental Revolving Facilities**” and the revolving loans and other extensions of credit made thereunder, the “**Incremental Revolving Loans**”) (each such increase or tranche pursuant to clauses (i) and (ii), an “**Incremental Facility**” and the loans or other extensions of credit made thereunder, the “**Incremental Loans**”).

(b) Ranking. Incremental Facilities will (i) rank *pari passu* in right of payment and security with the Initial Term B Loans and the Term C Loans (subject to Section 8.2), (ii) be secured by the same Liens on the Collateral (with the same ranking in priority) that secure the Term C Loans and the Initial Term B Loans and (iii) benefit from the same Guaranties as the Term C Loans and the Initial Term B Loans.

(c) Size. On the date of each incurrence of Incremental Facilities, (A) the aggregate principal amount of such Incremental Facilities (or relevant portion thereof, if such Incremental Facilities includes a portion that will be incurred under clause (B)) (together with any Incremental Equivalent Debt incurred on such date in reliance on subclause (A) of clause (a) of the first proviso appearing in the definition of "Incremental Equivalent Debt") shall not exceed an amount equal to the Incremental Ratio Amount or (B) the aggregate principal amount of such Incremental Facilities (or relevant portion thereof, if such Incremental Facilities includes a portion that will be incurred under clause (A)), together with the aggregate principal amount of all other Incremental Facilities incurred in reliance on this clause (B) (but without regard to the immediately succeeding proviso) and all Incremental Equivalent Debt incurred in reliance on subclause (B) of clause (a) of the definition of "Incremental Equivalent Debt", shall not exceed an amount equal to the Incremental Fixed Amount (it being understood that Incremental Facilities may be incurred under either clause (A) or (B) as selected by the Borrower in its sole discretion, including by designating any portion of the Incremental Facilities in excess of an amount permitted to be incurred under clause (A) at the time of such incurrence as incurred under clause (B)); *provided, however*, that in addition to the foregoing, Incremental Revolving Facilities may be established, so long as on the date of the establishment thereof, the aggregate principal amount of such Incremental Revolving Facilities, together with the aggregate principal amount of all other Incremental Revolving Facilities incurred in reliance on this proviso, shall not exceed an amount equal to the Additional Incremental RCF Basket Amount. Calculation of the Incremental Ratio Amount, if used, will be made on Pro Forma Basis and, for purposes of the calculation thereof, all Incremental Revolving Facilities incurred at the time of such calculation (other than any Incremental Revolving Facilities incurred in reliance on the Additional Incremental RCF Basket Amount) shall be deemed fully utilized. Each Incremental Amendment executed in connection with an Incremental Facility will identify whether all or any portion of such Incremental Facility is being incurred pursuant to the Incremental Fixed Amount, the Incremental Ratio Amount or the Additional Incremental RCF Basket Amount. For the avoidance of doubt, if the Borrower incurs indebtedness under an Incremental Facility under the Incremental Fixed Amount on the same date that it incurs indebtedness under the Incremental Ratio Amount, then the First Lien Net Leverage Ratio or Total Net Leverage Ratio, as applicable, will be calculated with respect to such incurrence under the Incremental Ratio Amount without regard to any incurrence of indebtedness under the Incremental Fixed Amount. Unless the Borrower elects otherwise, each Incremental Facility will be deemed incurred first under the Incremental Ratio Amount to the extent permitted, with the balance incurred under the Incremental Fixed Amount. The Borrower may redesignate any indebtedness originally designated as incurred under the Incremental Fixed Amount as having been incurred under the Incremental Ratio Amount, so long as at the time of such redesignation, the Borrower would be permitted to incur under the Incremental Ratio Amount the aggregate principal amount of indebtedness being so redesignated (for purposes of clarity, with any such redesignation having the effect of increasing the Borrower's ability to incur indebtedness under the Incremental Fixed Amount as of the date of such redesignation by the amount of indebtedness so redesignated). Each Incremental Facility will be in an integral multiple of \$1,000,000 and in an aggregate principal amount that is not less than \$5,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the limit set forth above.

(d) Incremental Lenders. Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to make all or any portion of any Incremental Loan) or by any Additional Lender on terms permitted by this Section 2.24; *provided* that the Administrative Agent will have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Incremental Facilities if such consent would be required under Section 10.6(c)(ii) for an assignment of Loans or Commitments to such Person.

(e) Incremental Facility Amendments; Use of Proceeds. Each Incremental Facility will become effective pursuant to an amendment (each, an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Credit Documents, executed by the Borrower, each Person providing such Incremental Facility and the Administrative Agent. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable good faith opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.24, which shall include, without limitation, in the case of an Incremental Revolving Facility, amendments to add customary revolving credit facility conditions and provisions relating to letters of credit, swingline facilities and defaulting Lenders, letter of credit fees, commitment fees, financial maintenance covenants (which may exclusively benefit Lenders with Incremental Revolving Loan Exposure), customary prepayment and repayment provisions and voting and events of default provisions relating to financial maintenance covenants that solely benefit Lenders with Incremental Revolving Loan Exposure, in each case, without the consent of any Term Lender. An Incremental Amendment may, at the election of the Borrower, effect such amendments as may be reasonably necessary or advisable so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans or so that such Incremental Term Loans are fungible with other outstanding Term Loans, including by (i) extending or adding "call protection" to any applicable existing tranche of Term Loans, including amendments to Section 2.11(a), and (ii) amending the schedule of amortization payments relating to any applicable existing tranche of Term Loans, including amendments to Section 2.12(a) (*provided* that any such amendment will not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender immediately prior to the effectiveness of the applicable Incremental Amendment); *provided* that such amendments are not adverse to the existing Term Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Credit Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Loans evidenced thereby. This Section 2.24 will supersede any provisions in Section 2.17 or 10.5 to the contrary. The Borrower may use the proceeds of the Incremental Loans for working capital and other general corporate purposes, including the financing of Permitted Acquisitions and other Investments and any other purpose not prohibited by this Agreement.

(f) Conditions. The availability of Incremental Facilities under this Agreement will be subject solely to the following conditions:

(i) no Default or Event of Default (other than with respect to a Limited Condition Acquisition, which shall be subject only to the absence of an Event of Default pursuant to Section 8.1(a), (f) or (g)) will have occurred and be continuing on the date such Incremental Loans are incurred or would occur immediately after giving effect thereto, subject to Section 1.5; and

(ii) the representations and warranties in the Credit Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility (except to the extent that such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date); *provided* that if such Incremental Facility is being provided in connection with a Limited Condition Acquisition, the condition set forth in this clause (ii) may, if agreed by the lenders providing such Incremental Facility, be satisfied with (x) the accuracy of customary “specified representations” and “acquisition agreement representations” and (y) such other limitations or exceptions to representations and warranties as may be agreed by the lenders providing such Incremental Facility.

(g) Terms. Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. The other terms of each tranche of Incremental Term Loans will be as agreed between the Borrower and the Persons providing such Incremental Term Loans; *provided* that:

(i) the final stated maturity date of such Incremental Term Loans will be no earlier than the Latest Term Loan Maturity Date of any Class of then-outstanding Term Loans;

(ii) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of any then-outstanding Class of Term Loans;

(iii) any such Incremental Term Loans may participate on a *pro rata* basis, a less than *pro rata* basis or a greater than *pro rata* basis (but not greater than a *pro rata* basis as compared to any earlier or equivalent maturing Class of Term Loans (other than pursuant to a refinancing)) in any mandatory repayments or prepayments of any other Term Loans (other than Term C Loans); and

(iv) the other terms applicable to such Incremental Term Loans are substantially identical to, or either (A) (taken as a whole as determined by the Borrower in good faith) not materially more restrictive to the Borrower and its Subsidiaries than those applicable to any then-outstanding Class of Term Loans (other than Term C Loans) or (B) if the requirements in clause (A) are not satisfied, are reasonably satisfactory to the Administrative Agent; *provided* that this clause (iv) will not apply to (1) interest rates, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms, in each case that are (i) applied to the Term Loans existing at the time of incurrence of such Incremental Term Facility (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness; *provided, further*, a certificate of the Borrower delivered to the Administrative Agent stating that the Borrower has reasonably determined in good faith that the terms and conditions satisfy the foregoing requirement in clause (A) shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement in clause (A); *provided, further* that, in each case, the operational and agency provisions contained in such documentation are reasonably satisfactory to the Administrative Agent.

(h) **Pricing.** The interest rate, fees, and original issue discount for any Incremental Term Loans will be as determined by the Borrower and the Persons providing such Incremental Term Loans; *provided* that the MFN Adjustment will apply to any Incremental Term Loans that constitute MFN Eligible Debt.

2.25 Discounted Prepayments.

(a) **Generally.** Notwithstanding anything in any Credit Document to the contrary, so long as (i) no Default or Event of Default has occurred and is continuing on both the date a Discounted Prepayment Notice (as defined below) is delivered to the Administrative Agent and Lenders and the date a Discounted Prepayment (as defined below) is made (both before and after giving effect thereto), (ii) all parties to such transaction render a Big Boy Letter and (iii) no proceeds of Incremental Revolving Loans are used to make any such Discounted Prepayment, the Borrower or other Credit Party (in such capacity, the “**Discounted Prepayment Offeror**”) will be permitted to (x) offer to make voluntary prepayments of the Term Loans (other than Term C Loans) from internally generated funds and/or with the proceeds of any contribution to the common equity capital of the Discounted Prepayment Offeror (each, a “**Discounted Prepayment**”) on one or more occasions pursuant to the provisions of this Section 2.25, and (y) make such Discounted Prepayment on one or more occasions pursuant to the provisions of this Section 2.25 (it being understood that no Lender will have an obligation to accept a Discounted Prepayment). As used herein, “**Big Boy Letter**” means a letter from a Lender acknowledging that (1) the Borrower may have information regarding the Borrower and the Subsidiaries, their ability to perform the Obligations or any other material information that has not previously been disclosed to the Administrative Agent and the Lenders (“**Excluded Information**”), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Term Loans to the Borrower pursuant to this Section 2.25 notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, the Borrower and the Subsidiaries with respect to the nondisclosure of the Excluded Information; or otherwise in form and substance reasonably satisfactory to the Administrative Agent, the Borrower and assigning such Lender

(b) **Procedures.** In connection with any Discounted Prepayment, the Discounted Prepayment Offeror will notify the Administrative Agent in writing (the “**Discounted Prepayment Notice**”) that the Discounted Prepayment Offeror desires to prepay the Term Loans on a specified Business Day, in a maximum aggregate amount (which amount will be not less than \$1,000,000 and whole increments of \$100,000 in excess thereof) (the “**Discounted Prepayment Amount**”) at a discount to par (which will be expressed as a range of percentages of par of the principal amount of the Term Loans (other than Term C Loans)) specified by the Discounted Prepayment Offeror with respect to each Discounted Prepayment (the “**Discount Price Range**”); *provided* that (i) such notice will be received by the Administrative Agent and Lenders no earlier than 15 Business Days and no later than 5 Business Days prior to the proposed date by which Lenders are required to respond to the Discounted Prepayment Notice if they desire to participate (the “**Discounted Prepayment Response Date**”) and (ii) at the Discounted Prepayment Offeror’s discretion, the offer in any such notice will be made to all Lenders holding Term Loans (other than Term C Loans) (it being understood that different Discount Price Ranges may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.25). The Administrative Agent will promptly provide each Lender of the applicable Classes a copy of such Discounted Prepayment Notice. In connection with a Discounted Prepayment, each Lender holding the Term Loans of the applicable Classes will be entitled to specify to the Administrative Agent a discount to par (which will be expressed as a price equal to a percentage of par of the principal amount of the Term Loans held by such Lender, the “**Acceptable Discount Price**”) within the Discount Price Range for a principal amount (subject to rounding requirements specified by the Administrative Agent) of the Term Loans of the applicable Class held by such Lender at which such Lender is willing to accept such Discounted Prepayment. Each response by a Lender to a Discounted Prepayment Notice (x) will be due no later than 5:00 p.m. (New York City time) on the Discounted Prepayment Response Date, (y) to the extent not timely received by the Administrative Agent will be disregarded and such Lender will be deemed to have declined the Discounted Prepayment offer and (z) to the extent timely received by the Administrative Agent will be irrevocable. The Administrative Agent will provide the Discounted Prepayment Offeror with a summary of all tenders by Lenders in response to the Discounted Prepayment Notice and, based on the Acceptable Discount Prices and principal amounts of the Term Loans of the applicable Classes specified by Lenders, the Administrative Agent, in consultation with the Discounted Prepayment Offeror, will determine the applicable discount price (the “**Applicable Discount Price**”) for the applicable Discounted Prepayment of all Term Loans to be prepaid in such Discounted Prepayment, which will be the lower of (i) the lowest Acceptable Discount Price at which the Discounted Prepayment Offeror can complete the Discounted Prepayment for 100% of the Discounted Prepayment Amount and (ii) if the Lenders’ response is such that the Discounted Prepayment could not be completed for 100% of the Discounted Prepayment Amount, the highest Acceptable Discount Price specified by the Lenders that is within the Discount Price Range specified by the Discounted Prepayment Offeror. The Discounted Prepayment Offeror will have the right, by written notice to the Administrative Agent, to revoke in full (but not in part) its offer to make a Discounted Prepayment and rescind any Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Discounted Prepayment Response Date (and if such offer is revoked or notice rescinded, any failure by the Discounted Prepayment Offeror to make a prepayment to a Lender, as applicable, pursuant to this Section will not constitute a Default or Event of Default under Section 8.1 or otherwise).

(c) Prepayments; Application. The Discounted Prepayment Offeror will prepay the Term Loans of the applicable Classes (or the respective portion thereof) accepted by Lenders at the Acceptable Discount Prices specified by each such Lender that are equal to or less than (expressed as a percentage of par of the principal amount of such Term Loans) the Applicable Discount Price (“**Qualifying Term Loans**”) at the Applicable Discount Price; *provided* that if the aggregate proceeds required to prepay Qualifying Term Loans (disregarding any interest payable under this Section 2.25) would exceed the Discounted Prepayment Amount for such Discounted Prepayment, the Discounted Prepayment Offeror will prepay such Qualifying Term Loans at the Applicable Discount Price ratably based on the respective principal amounts of such Qualifying Term Loans (subject to rounding requirements specified by the Administrative Agent). The portion of the Term Loans prepaid by the Discounted Prepayment Offeror pursuant to this Section 2.25 will be accompanied by payment of accrued and unpaid interest on the par principal amount so prepaid to, but not including, the date of prepayment. The par principal amount of the Term Loans prepaid pursuant to this Section 2.25 will be applied to reduce the remaining installments of Term Loans *pro rata* against all such scheduled installments (including, for the avoidance of doubt, the amount of scheduled installments owing to Lenders not prepaid pursuant to this Section 2.25). The Administrative Agent will notify the Discounted Prepayment Offeror and the Lenders that received the Discounted Prepayment Notice of the results of the offer promptly after completion of the determinations referred to above, and the Discounted Prepayment Offeror will make the Discounted Prepayment no later than 3 Business Days after receipt of such notice. The par principal amount of the Term Loans prepaid pursuant to this Section 2.25 will be deemed immediately cancelled upon payment of the applicable Discounted Prepayment.

(d) Lender Consent. The Lenders hereby consent to the transactions described in this Section 2.25 and waive (i) the requirements of Section 2.17 or any other requirement to the extent it would require that the Discounted Prepayment be made in respect of the Lenders’ Pro Rata Share of the Term Loans or with respect to all Classes of Term Loans, and (ii) the requirements of any provision of this Agreement or any other Credit Document that might otherwise result in a Default or Event of Default as a result of a Discounted Prepayment.

(e) Miscellaneous. Each Discounted Prepayment will be consummated pursuant to procedures (including as to timing, rounding and minimum amounts, type and Interest Periods of accepted Term Loans, conditions for terminating a Discounted Prepayment or rescinding an acceptance of prepayment, forms of other notices (including notices of offer and acceptance) by the Discounted Prepayment Offeror and Lenders and determination of Applicable Discount Price) established by the Administrative Agent acting in its reasonable discretion in consultation with the Discounted Prepayment Offeror. The making of a Discounted Prepayment will be deemed to be a representation and warranty by the Borrower that all conditions precedent to such Discounted Prepayment set forth in this Section 2.25 were satisfied in all respects.

2.26 Credit Agreement Refinancing Indebtedness; Refinancing Amendments.

(a) Refinancing Term Loans. At any time after the Closing Date, the Borrower may obtain (i) from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in the form of Refinancing Term Loans or Refinancing Term Commitments, in each case pursuant to a Refinancing Amendment, or (ii) from any bank, other financial institution or institutional investor that agrees to provide any portion of any Credit Agreement Refinancing Indebtedness in any other form, such other Credit Agreement Refinancing Indebtedness, in each case to refinance (and to reduce on a dollar-for-dollar or greater basis) all or any portion of the Term Loans (other than Term C Loans) then outstanding under this Agreement.

(b) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions set forth in Sections 3.1 and 3.2 as may be requested by the providers of applicable Refinancing Term Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Term Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Refinancing Term Loans).

(c) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed), the Borrower and the Persons providing the applicable Refinancing Term Loans, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.26. This Section 2.26 supersedes any provisions in Section 10.5 to the contrary.

(d) Providers of Refinancing Term Loans. Refinancing Term Loans may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to make all or any portion of any Refinancing Term Loan) or by any Additional Lender on terms permitted by this Section 2.26; *provided* that the Administrative Agent will have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Refinancing Term Loans or Refinancing Term Commitments if such consent would be required under Section 10.6(c), respectively, for an assignment of Term Loans or Term Loan Commitments to such Person.

SECTION 3. CONDITIONS PRECEDENT

3.1 Closing Date. The obligation of the Lenders on the Closing Date to fund the Initial Term B Loans and the Term C Loans on the Closing Date (collectively, the “**Initial Credit Extension**”) is subject to the satisfaction, or waiver by the Administrative Agent, of only the following conditions on or before the Closing Date:

(a) Credit Documents. The Administrative Agent will have received a copy of each of the following Credit Documents, in each case where applicable, executed and delivered by the Borrower and each Guarantor Subsidiary party thereto: (A) this Agreement; (B) the Pledge and Security Agreement; (C) each of the Term Loan Notes (if such Term Loan Notes have been requested at least three (3) Business Days prior to the date the funding of the Initial Credit Extension would otherwise occur); and (D) the Perfection Certificate.

(b) Organizational Documents; Incumbency; Resolutions; Good Standing Certificates. The Administrative Agent will have received a customary secretary’s certificate from the Borrower and each Guarantor Subsidiary appending:

(i) *Organizational Documents.* A copy of each Organizational Document of the Borrower and each Guarantor Subsidiary and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto.

(ii) *Incumbency Certificate.* A signature and incumbency certificate of the officers or other authorized representatives of the Borrower and each Guarantor Subsidiary executing the Credit Documents referenced in Section 3.1(a).

(iii) *Resolutions.* Resolutions of the board of directors or similar governing body of the Borrower and each Guarantor Subsidiary approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary (or any other officer with an equivalent role) as being in full force and effect without modification or amendment.

(iv) *Good Standing Certificates.* A good standing certificate from the applicable Governmental Authority of the jurisdiction of incorporation, organization or formation of the Borrower and each Guarantor Subsidiary.

(c) [Reserved].

(d) Funding Notice. The Administrative Agent will have received a fully executed and delivered Funding Notice as required pursuant to Section 2.1; *provided* that all certifications made under such Funding Notice will be made (or deemed made) as of the Closing Date.

(e) Closing Date Certificate and Attachments. The Administrative Agent will have received an executed Closing Date Certificate, together with all attachments thereto, certifying to the satisfaction of the conditions set forth in Sections 3.1(f), 3.1(g) and 3.1(j).

(f) Acquisition. The Acquisition will have been consummated substantially concurrently with the Initial Credit Extension in accordance with the terms and conditions of the Merger Agreement without any waiver, amendment or modification thereof, in each case, that is materially adverse to the Lenders unless consented to in writing by the Administrative Agent and the Lead Arranger (such consents not to be unreasonably withheld or delayed); it being understood and agreed that any alteration, change, supplement, amendment, modification, waiver or consent (a) that decreases the purchase price in respect of the Acquisition shall not be deemed to be adverse to the interests of the Lenders in any material respect, so long as any such decrease is allocated on a dollar-for-dollar basis to reduce (i) first, the aggregate principal amount of the Initial Term B Loans and (ii) thereafter, the aggregate principal amount of the Term C Loans and (b) that results in any increase in the purchase price in respect of the Acquisition shall not be deemed to be adverse to the interests of the Lenders in any material respect, so long as such increase is funded solely by an issuance of common equity interests of, or unrestricted cash on hand of, the Borrower.

(g) Specified Representations and Merger Agreement Representations. Each of (x) the Specified Representations and (y) the Merger Agreement Representations will be true and correct in all material respects on and as of the Closing Date (or, if qualified by materiality, true and correct in all respects).

(h) [Reserved].

(i) Financial Statements. The Administrative Agent and the Lenders will have received (i) the audited consolidated balance sheets and related statements of income and cash flows of each of the Borrower and the Acquired Business for the Fiscal Years ended December 26, 2015, December 31, 2016 and December 30, 2017, with respect to the Borrower, and ended July 31, 2015, July 31, 2016 and July 31, 2017, with respect to the Acquired Business; (ii) the unaudited consolidated balance sheets and related statements of income and cash flows of the Borrower and the Acquired Business for the Fiscal Quarters ended June 30, 2018 and March 31, 2018, with respect to the Borrower, and ended April 30, 2018, January 31, 2018 and October 31, 2017, with respect to the Acquired Business; and (iii) a pro forma consolidated balance sheet for the Borrower and its Subsidiaries (including the Acquired Business) and a pro forma consolidated statement of comprehensive income (loss) for the Borrower and its Subsidiaries as of and for the twelve-month period ending June 30, 2018, prepared after giving effect to the Transactions as if the Transactions had occurred at the beginning of such period, which need not be prepared in compliance with Regulation S-X of the Securities Act, or include adjustments for purchase accounting.

(j) No Material Adverse Effect No event, occurrence, revelation or development of a state of circumstances or facts, which individually or in the aggregate has had or would reasonably be expected to have a Company Material Adverse Effect, has occurred.

(k) Solvency. The Administrative Agent will have received a solvency certificate in the form attached as Exhibit D from the chief financial officer or other officer with reasonably equivalent duties of the Borrower certifying to the solvency of the Borrower and the Subsidiaries on a consolidated basis after giving effect to the Transactions.

(l) Existing Indebtedness. On the Closing Date, after giving effect to the Transactions, the Borrower and its Subsidiaries shall have no outstanding third party Indebtedness for borrowed money, other than Indebtedness permitted pursuant to Sections 6.1(a) and (c), working capital Indebtedness in an amount not to exceed \$10,000,000, purchase money Indebtedness and Capital Lease obligations incurred in the ordinary course of business and such other Indebtedness as agreed by the Lead Arranger.

(m) Personal Property Collateral. The Collateral Agent will have received (or arrangements shall have been made for the execution, delivery and filing of the following substantially concurrently with the consummation of the Transactions):

(i) Deliverables, Etc. In connection with the pledge of Capital Stock held by the Credit Parties, and the pledge of Indebtedness owing to the Credit Parties, in each case to the extent required under the Pledge and Security Agreement, the Borrower and each applicable Guarantor Subsidiary will deliver, or cause to be delivered, to the Collateral Agent, to the extent required under the Pledge and Security Agreement, an original stock certificate or other instruments representing such pledged Capital Stock or Indebtedness, together with customary blank stock or other equity transfer powers and instruments of transfer and irrevocable powers duly executed in blank.

(ii) UCC financing statements in appropriate form for filing under the UCC, documents suitable for filing with the United States Patent and Trademark Office *and* United States Copyright Office, and all other documents and instruments necessary to establish and perfect under the laws of the United States the Collateral Agent's first priority Lien in the Collateral other than foreign Intellectual Property (subject to Permitted Liens), in each case, executed and delivered (if applicable, in proper form for filing) by the Borrower and the Guarantors;

provided that, to the extent any Liens on the Collateral that are required hereunder or the other Credit Documents have not attached or are not perfected on the Closing Date (other than to the extent that a Lien on such Collateral may be perfected by (A) the filing of a financing statement under the UCC or (B) the delivery of certificated securities representing equity of direct wholly-owned material domestic subsidiaries of the Borrower (other than any subsidiaries of the Acquired Business, which will, to the extent the Borrower has used commercially reasonable efforts to obtain such certificated securities, only be required to be delivered on the Closing Date to the extent received from the holders thereof prior to the Closing Date)) after use of commercially reasonable efforts to do so, such attachment or perfection will not constitute a condition precedent to the borrowing on the Closing Date, but will be required in accordance with Section 5.17.

(n) Opinions of Counsel to Credit Parties. The Administrative Agent and its counsel will have received copies of (and each Credit Party hereby instructs such counsel to deliver such opinions to the Administrative Agent and the Lenders) customary legal opinions, each dated as of the Closing Date, of Cleary Gottlieb Steen & Hamilton LLP, Young Conaway Stargatt & Taylor, LLP and DLA Piper LLP, special counsel to the Borrower, with respect to the Borrower and each Guarantor Subsidiary.

(o) Fees and Expenses. All reasonable and documented costs, fees, expenses (including, without limitation, legal fees and expenses) and other compensation payable to the Lead Arranger, Administrative Agent and the Lenders will have been paid (or will concurrently be paid) to the extent then due and owing on the Closing Date; *provided* that an invoice of such expenses will have been presented no less than three (3) Business Days prior to the Closing Date.

(p) "Know-Your-Customer". The Administrative Agent will have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations (including the PATRIOT Act) at least three (3) Business Days prior to the Closing Date, to the extent requested in writing from the Borrower at least ten (10) days prior to the Closing Date. At least three (3) days prior to the Closing Date, the Borrower and any Guarantor Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to the Borrower and any such Guarantor Subsidiary.

(q) Upfront Fee. The Borrower shall have paid each Lender an upfront fee equal to 0.50% of its Initial Term B Loan Commitment on the Closing Date (as in effect immediately before giving effect to the termination thereof pursuant to Section 2.1(a)), with such payment to be earned by, and payable to, each such Lender on the Closing Date.

For purposes of determining compliance with the conditions specified in this Section 3.1, (i) 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 and (ii) transactions occurring (or to occur) on the Closing Date in accordance with, and as expressly set forth in, the funds flow memorandum delivered to (and approved by) the Administrative Agent shall be deemed to occur and have occurred substantially simultaneously with the Initial Credit Extension.

3.2 Conditions to Each Credit Extension After the Closing Date.

(a) Conditions Precedent. Except (x) in connection with the Initial Credit Extension and (y) as may be limited in respect of certain conditions precedent as set forth in Section 2.24(f) with respect to Incremental Term Loans or in Section 1.5 with respect to any Limited Condition Acquisition, the obligation of each Lender to make any Loan on any Credit Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) *Notice*. The Administrative Agent will have received a fully executed and delivered Funding Notice or Application, as the case may be;

(ii) *Representations and Warranties*. As of such Credit Date, the representations and warranties contained herein and in the other Credit Documents will be true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will be true and correct in all respects) both immediately before and after such Credit Extension on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties will have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will have been true and correct in all respects) on and as of such earlier date; and

(iii) *No Default or Event of Default*. Both immediately before and after the Credit Extension on such Credit Date, no Default or an Event of Default shall have occurred and be continuing.

(b) Notices. Any Notice will be executed by an Authorized Officer in a writing delivered to the Administrative Agent. The Administrative Agent or any Lender will not have any obligation to verify the veracity of any such notice referred to above nor will the Administrative Agent or any Lender incur any liability to the Borrower in acting upon any notice referred to above that the Administrative Agent believes in good faith to have been given by a duly authorized officer or other Person authorized on behalf of the Borrower. Each delivery of a Notice will constitute a representation and warranty that as of the date of any Credit Extension (both immediately before and immediately after such Credit Extension) the conditions contained in Section 3.2 have been satisfied.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders and each Agent to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to the Lenders and the Agents, on the Closing Date and on each Credit Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. The Borrower and each Subsidiary (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization which, as of the Closing Date, is identified in Schedule 4.10(b), (b) has all requisite organizational power and authority to (i) own and operate its properties, to lease the property it operates as lessee, and to carry on its business as now conducted and as proposed to be conducted, (ii) to enter into the Credit Documents to which it is a party and (iii) to carry out the transactions contemplated hereby and thereby, and (c) is qualified to do business and in good standing as a foreign entity in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where (i) such Person is organized, (ii) there is no requirement to be so registered, or (iii) the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

4.2 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.3 No Conflict; Government Consents.

(a) No Conflict with Organizational Documents, Law or Contractual Obligations; No Creation of Liens. The execution, delivery and performance by each Credit Party of the Credit Documents to which it is a party and the consummation of the transactions contemplated by the Credit Documents do not and will not (i)(1) violate any of the Organizational Documents of such Credit Party or (2) otherwise require any approval of any stockholder, member or partner of such Credit Party, except for such approvals or consents which have been obtained or made prior to the Closing Date; (ii) violate any provision of any law, rule, regulation, order, judgment or decree of any Governmental Authority applicable to or otherwise binding on such Credit Party, except to the extent such violation would not reasonably be expected to have a Material Adverse Effect; (iii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under, or otherwise require any approval or consent of any Person under, (x) any Contractual Obligation of such Credit Party, except to the extent such conflict, breach or default would not reasonably be expected to have a Material Adverse Effect, or (y) any Material Indebtedness, and in each case, except for such approvals or consents which have been obtained or made; or (iv) result in or require the creation or imposition of any Lien upon any of the properties or assets of such Credit Party (other than any Liens created under any of the Credit Documents in favor of the Collateral Agent, on behalf of the Secured Parties, and Permitted Liens).

(b) Governmental Consents. The execution, delivery and performance by each Credit Party of the Credit Documents to which it is party and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent, license, permit or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for (x) such filings and recordings with respect to the Collateral made as of the Closing Date or made or to be made in accordance with Sections 5.10, 5.12 and 5.17, (y) such as have been obtained or made and are (or will so be) in full force and effect on the Closing Date and (z) those the failure to obtain or make which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

4.4 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general equitable principles, regardless of whether considered in a proceeding in equity or at law and principles of good faith and fair dealing.

4.5 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto, and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

4.6 [Reserved].

4.7 No Material Adverse Effect. Since December 30, 2017, no event or change has occurred that has caused or would reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect.

4.8 Adverse Proceedings. There are no Adverse Proceedings, individually or in the aggregate, that would reasonably be expected to have a Material Adverse Effect. None of the Borrower or the Subsidiaries is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

4.9 Payment of Taxes. Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower and the Subsidiaries have timely filed (or obtained valid extensions) with the appropriate United States federal, state, local and foreign taxing authorities all tax returns and reports that were required to be filed and have timely paid all Taxes owed by them, except those that are being contested in good faith by appropriate proceedings, so long as adequate reserves or other appropriate provisions are being maintained in accordance with GAAP therefor.

4.10 Ownership of Material Property.

(a) Generally. The Borrower and its Subsidiaries have (i) good, valid and legal fee simple title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or tangible personal property) and (iii) good title, valid leasehold interests in, licenses of, or other rights with respect to (in the case of all other tangible personal property), all of their respective properties and material assets necessary in the ordinary conduct of the Business (as of the Closing Date, as reflected in the Historical Financial Statements and, from time to time after the Closing Date, as reflected in the most recent financial statements delivered pursuant to Section 5.1(a) or (b)), in each case, to the extent necessary to not materially interfere with its ability to conduct the Business or utilize such assets for their intended purposes as of the date of such financial statements, except (x) for assets disposed of since the balance sheet date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.8 and (y) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as permitted by this Agreement or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, all such properties and assets are free and clear of Liens, except for Permitted Liens.

(b) **Capital Stock and Subsidiaries** The Capital Stock of the Borrower and each Subsidiary has been duly authorized and validly issued in compliance with all applicable federal, state and other Laws and is fully paid and non-assessable (except to the extent such concepts are not applicable under the applicable Law of such Subsidiary's jurisdiction of formation). Except as set forth on Schedule 4.10(b), as of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement (including preemptive rights) to which the Borrower or any Subsidiary is a party requiring, and there is no membership interest or other Capital Stock of the Borrower or any Subsidiary outstanding which upon conversion or exchange would require, the issuance by the Borrower or any Subsidiary of any additional membership interests or other Capital Stock of the Borrower or any Subsidiary or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of the Borrower or any Subsidiary.

(c) **Intellectual Property**. The Borrower and the Subsidiaries own, license, or otherwise have the right to use all Intellectual Property that is used in or otherwise necessary for the operation of their respective Business substantially as currently conducted, except where the failure of the foregoing would not reasonably be expected to have a Material Adverse Effect. The operation of the Business by the Borrower and the Subsidiaries does not infringe upon, misappropriate, violate or otherwise conflict with the material Intellectual Property of any third party, except, in each case, as would not reasonably be expected to have a Material Adverse Effect.

4.11 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) neither the Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any Environmental Claim, or any Environmental Liability;

(b) there are and, to the knowledge of any Executive Officer of the Borrower, have been, no conditions or occurrences which could reasonably be expected to form an Environmental Claim against the Borrower or any Subsidiary or give rise to any Environmental Liabilities of the Borrower or any Subsidiary; and

(c) the Borrower, each Subsidiary and their respective Facilities and operations are in compliance with applicable Environmental Laws, including obtaining, maintaining and complying with the terms of any Governmental Authorizations required under any applicable Environmental Law.

4.12 Governmental Regulation. None of the Credit Parties is required to register as an "investment company" under the Investment Company Act of 1940, as amended.

4.13 Margin Stock. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of any Credit Extension made to or for the benefit of any Credit Party or any Subsidiary will be used to purchase or carry any Margin Stock, to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that, in each case, violates the provisions of Regulation U or X of the Board of Governors, as in effect from time to time or any successor to all or any portion of such regulations.

4.14 Employee Matters. Neither the Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any Subsidiary, or to the knowledge of any Executive Officer of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or any Subsidiary or to the knowledge of any Executive Officer of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or, to the knowledge of any Executive Officer of the Borrower, threatened involving the Borrower or any Subsidiary, (c) no collective bargaining agreement with any union covering the employees of any Credit Party or any Subsidiary as of the Closing Date and (d) to the knowledge of any Executive Officer of the Borrower, no union representation question existing with respect to the employees of the Borrower or any Subsidiary, to the knowledge of any Executive Officer of the Borrower, no union organization activity that is taking place, except, with respect to any matter specified in clause (a), (b) or (d) above, either individually or in the aggregate, as would not be reasonably likely to result in a Material Adverse Effect.

4.15 Employee Benefit Plans. (a) The Borrower, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, (b) each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and, to the knowledge of any Executive Officer of the Borrower, nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status, (c) no Liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan (except in the ordinary course) or any trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower or any Subsidiary or any of their respective ERISA Affiliates, (d) except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any of the Borrower or any Subsidiary or any of their respective ERISA Affiliates, (e) the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by the Borrower or any Subsidiary or any of their respective ERISA Affiliates, (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan and (f) no ERISA Event has occurred or is reasonably expected to occur; in each case, except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect. To the extent applicable, each Foreign Plan has been maintained in material compliance with its terms and with the requirements of any and all applicable requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities except where the failure to comply or be maintained in good standing would not reasonably be expected to have a Material Adverse Effect. No Credit Party has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan that could reasonably be expected to have a Material Adverse Effect.

4.16 Solvency. On the Closing Date, after giving effect to the Transactions, including the making of the Credit Extensions to be made on the Closing Date and giving effect to the application of the proceeds thereof, the Borrower and the Subsidiaries, on a consolidated basis, are Solvent.

4.17 Compliance with Laws.

(a) Generally. Each of the Borrower and the Subsidiaries is in compliance with all applicable Laws in respect of the conduct of its business and the ownership of its property, except such non-compliance that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Sanctions, Anti-Money Laundering Laws, Etc. Without limiting clause (a) above, no Credit Party nor any of its Controlled Entities or any of their respective directors or officers (i) is located, organized or resident in a Sanctioned Country, (ii) is in material violation of any Anti-Money Laundering Law, (iii) is in violation of any Sanctions, (iv) evades or avoids, or has the purpose of evading or avoiding, or engages in or conspires to engage in any transaction that attempts to violate any of the prohibitions set forth in any Anti-Money Laundering Law or Sanctions or (v) is a Blocked Person.

(c) Anti-Corruption Laws, Etc. During the five (5) years prior to the Closing Date, there has been no action taken, directly or indirectly, by any Credit Party or any of its Controlled Entities or any officer, director, or employee of any Credit Party or any of its Controlled Entities when they are acting on behalf of any Credit Party or any of its Controlled Entities, in violation of the FCPA or in material violation of any other applicable Anti-Corruption Laws. In the five (5) years prior to the Closing Date, to the knowledge of the Responsible Officers, (i) none of the Credit Parties or any of their Controlled Entities has been subjected to any investigation by a Governmental Entity for violation of any applicable Anti-Corruption Laws, (ii) there has been no material suit, litigation, arbitration, claim, audit, action, investigation, or proceeding pending or threatened against the Credit Parties or any of their Controlled Entities related to any applicable Anti-Corruption Laws, before or by any Governmental Entity, and (iii) none of the Credit Parties or any of their respective Subsidiaries has received any written notice, request or citation regarding any actual or potential noncompliance with any of the foregoing. In the five (5) years prior to the Closing Date, none of the Credit Parties or any of their respective Subsidiaries has made a voluntary, directed, or involuntary disclosure to any Governmental Entity with respect to any alleged act or omission arising under or relating to any noncompliance with any Anti-Corruption Laws.

4.18 Disclosure. None of the written information and data (other than any projections, any information of a forward-looking nature and any general economic or specific industry information) heretofore furnished to any Agent or the Lenders by or on behalf of the Borrower on or prior to the Closing Date for use in connection with the transactions contemplated hereby, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact (known to any Executive Officer of the Borrower, in the case of any document not furnished by the Borrower) necessary in order to make the statements contained therein taken as a whole not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates to such written information and data, in each case, furnished after the date on which such written information or data was originally delivered and prior to the Closing Date). Any projections and information of a forward-looking nature furnished to any Agent or the Lenders by or on behalf of the Borrower have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made (it being understood and agreed that such projections and information of a forward-looking nature are not to be viewed as a guarantee of financial performance or achievement, that such projections and information of a forward-looking nature are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that actual results may differ from the Projections and such differences may be material and that no assurance can be given that the projected results will be realized).

4.19 Perfection of Security Interests in the Collateral. On the Closing Date, the Collateral Documents create valid security interests in, and Liens on, the Collateral of the Credit Parties purported to be covered thereby on such date and described therein (other than foreign Intellectual Property), which security interests and Liens will be first priority Liens (subject to Permitted Liens) with respect to personal property of the Credit Parties, to the extent such Liens are perfected by filing appropriate UCC-1 financing statements against each such Credit Party with the secretary of state of the state of incorporation or formation of each such Credit Party and the receipt and recording of appropriate filings with the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, or the pledge and delivery of original stock certificates representing Capital Stock and customary stock and other equity powers related thereto upon the timely and proper filings, deliveries and other actions contemplated by the Collateral Documents (to the extent that such security interests and Liens may be perfected by such filings, deliveries and other actions contemplated by the Collateral Documents).

4.20 Use of Proceeds. The Borrower has used (or will use) the proceeds of the Initial Term B Loans and the Term C Loans (if any) in accordance with Section 2.6.

SECTION 5. AFFIRMATIVE COVENANTS

The Borrower and each Guarantor Subsidiary covenants and agrees that so long as the Commitments have not been terminated and until the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Credit Document (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or with respect to which no claim has been made) have been paid in full and the Borrower will cause each of the Subsidiaries to perform (to the extent applicable to such Subsidiaries), all covenants in this Section 5.

5.1 Financial Statements; Notices and Other Reports. The Borrower will deliver to the Administrative Agent by Electronic Transmission:

(a) **Annual Financial Statements.** As soon as available, and in any event within ninety (90) days after the end of each Fiscal Year ended after the Closing Date, (i) the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of comprehensive income, stockholders' equity and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such Fiscal Year, setting forth, in each case, in comparative form the corresponding figures for the previous Fiscal Year, together with a Financial Officer Certification and a Narrative Report with respect thereto, and (ii) with respect to such consolidated financial statements, a report thereon of independent certified public accountants of recognized national standing selected by the Borrower (or another accounting firm selected by the Borrower and reasonably satisfactory to the Administrative Agent), which report (1) will not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception (other than with respect to (A) an upcoming maturity of any Loans under this Agreement within the subsequent twelve (12) months or (B) any actual or anticipated inability to satisfy a financial covenant hereunder or in any Incremental Equivalent Debt) or any qualification or exception as to the scope of such audit and (2) will state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements).

(b) **Quarterly Financial Statements.** As soon as available, and in any event within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the September 30, 2018 Fiscal Quarter, the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of comprehensive income and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth, in each case, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and in accordance with GAAP in all material respects (subject to normal year-end audit adjustments and the absence of footnotes), together with a Financial Officer Certification and a Narrative Report with respect thereto.

(c) Annual Budget. As soon as practicable and in any event no later than ninety (90) days after the beginning of each Fiscal Year after the Closing Date, commencing with Fiscal Year 2019, upon the request of the Administrative Agent, a summary consolidated budget for such Fiscal Year (a “**Annual Budget**”) in a form customarily prepared by management of the Borrower.

(d) Information Regarding Unrestricted Subsidiaries. Notwithstanding anything to the contrary in this Section 5.1, if the Borrower has any Unrestricted Subsidiaries as of the last date on which the financial statements or Annual Budget for any fiscal period are required to be delivered pursuant to Section 5.1(a), 5.1(b) or 5.1(c), then the Borrower will include, together with delivery of such financial statements or Annual Budget, consolidating information (which shall be audited or unaudited, as applicable) that shows in reasonable detail in accordance with GAAP the breakdown of assets and liabilities, and revenues and expenses, between the Borrower and the Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand, as of the dates and for the periods covered by such financial statements or Annual Budget.

(e) Compliance Certificate. Together with each delivery of financial statements of the Borrower and the Subsidiaries and Unrestricted Subsidiaries pursuant to Sections 5.1(a) and 5.1(b), a duly executed and completed Compliance Certificate.

(f) [Reserved].

(g) [Reserved].

(h) Notice of Default. Promptly upon an Executive Officer of the Borrower obtaining knowledge:

(i) of the occurrence of any Default or Event of Default; or

(ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect;

a certificate of an Authorized Officer of the Borrower specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Borrower has taken, is taking and proposes to take with respect thereto.

(i) Notice of Litigation and Judgments. Promptly upon an Executive Officer of the Borrower obtaining knowledge of:

(i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Administrative Agent; or

(ii) any material development in any Adverse Proceeding or the entry of any judgment;

that if adversely determined could be reasonably expected to result in a Material Adverse Effect, written notice thereof by the Borrower.

(j) Notices of ERISA Events. (i) Promptly upon an Executive Officer of the Borrower becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to result in a material liability, a written notice specifying the nature thereof, what action the Borrower or any Subsidiary or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (A) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any Subsidiary or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (B) all notices received by the Borrower or any Subsidiary or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in a Material Adverse Effect; and (C) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as the Administrative Agent will reasonably request.

(k) [Reserved].

(l) [Reserved].

(m) [Reserved].

(n) Other Information. The Borrower will deliver to the Administrative Agent, promptly upon request therefor, such other information and data with respect to the Borrower, any Subsidiary or any Unrestricted Subsidiary the Administrative Agent may from time to time reasonably request (including on behalf of any Lender) relating to the Loans.

(o) Certification of Public Information. Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.1, the Borrower will indicate in writing whether such document or notice contains Nonpublic Information. The Borrower and each Lender acknowledge that certain of the Lenders may be “public-side” Lenders (Lenders that do not wish to receive Nonpublic Information, a “**Public Lender**”) and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed by Electronic Transmission (including, through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform approved by the Administrative Agent (the “**Platform**”)), any document or notice that the Borrower has indicated contains Nonpublic Information will not be posted on that portion of the Platform designated for such public-side Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Nonpublic Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Nonpublic Information with respect to the Borrower and the Subsidiaries and their respective securities. Notwithstanding the foregoing or anything to the contrary in this Agreement, the following documentation, notices and information shall be deemed not to contain Nonpublic Information: (A) the Credit Documents, (B) notification of changes in the terms of the Credit Documents and (C) all information delivered pursuant to Section 5.1(a) or (b).

(p) Substitution of SEC Reports; Purchase Accounting. Notwithstanding anything to the contrary in this Section 5.1:

(i) the filing by the Borrower of a Form 10-K or Form 10-Q (or any successor or comparable forms) with the Securities and Exchange Commission (or any successor thereto) with respect to any Fiscal Year or Fiscal Quarter will be deemed to satisfy the obligations under Section 5.1(a) or 5.1(b), as applicable, as to the Credit Parties and Subsidiaries covered by such filing to deliver financial statements and a Narrative Report; and

(ii) any financial statements required to be delivered pursuant to Sections 5.1(a) or 5.1(b) will not be required to contain purchase accounting adjustments relating to the Transactions or any other any transaction(s) permitted hereunder (including Permitted Acquisitions or other Investments permitted under Section 6.6).

(q) **Confidentiality and Privilege.** Notwithstanding anything to the contrary in any Credit Document, neither the Borrower nor any Subsidiary will be required to deliver or disclose to the Administrative Agent or any Lender any financial information or data (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by applicable Laws, (iii) that is subject to bona fide attorney client or similar privilege or constitutes attorney work product or (iv) the disclosure of which is prohibited by binding agreements not entered into primarily for the purpose of qualifying for the exclusion in this clause (iv); *provided* the foregoing will not limit the Borrower's obligation to deliver financial statements or forecasts pursuant to Section 5.1(a), 5.1(b) and 5.1(c).

5.2 Existence. Except as otherwise permitted under Section 6.8, each Credit Party will, and will cause each of the Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights (charter and statutory), franchises, licenses, permits and approvals unless (other than with respect to the preservation of the existence of the Borrower) the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.3 Payment of Taxes and Claims. The Borrower will, and will cause each of its Subsidiaries to, pay all Taxes before the same shall become delinquent or in default; *provided* that no such Tax or claim need be paid if (x) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as may be required pursuant to GAAP has been made therefor, or (y) the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.4 Maintenance of Properties. Except as otherwise permitted under Section 6.8 or where the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Borrower will, and will cause each of the Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all properties that are necessary in the operation of the business of such Person and from time to time will make or cause to be made all necessary repairs, renewals and replacements thereof in Borrower's reasonable discretion, and prosecute, protect, defend, preserve, maintain, renew and enforce all Intellectual Property (except to the extent the Borrower reasonably determines in good faith that (a) such actions are not necessary, (b) such Intellectual Property is not used in the conduct of the business of any Credit Party or (c) it is no longer economically practicable to maintain such Intellectual Property or the cost of such actions is excessive in relation to the value of such Intellectual Property).

5.5 Insurance.

(a) The Borrower will maintain or cause to be maintained, with financially sound and reputable unaffiliated insurers, such liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damages in respect of the assets, properties and Business of the Borrower and the Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons engaged in similar Business, in each case, in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as may be customary for such Persons. Without limiting the generality of the foregoing, the Borrower will maintain or cause to be maintained replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons engaged in similar Business. Subject to Section 5.17, each such policy of insurance will, (i) in the case of liability insurance, name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a lender loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lender loss payee thereunder for any covered loss. To the extent that the requirements of this Section 5.5 are not satisfied on the Closing Date, the Borrower may satisfy such requirements within ninety (90) days of the Closing Date (as extended by the Administrative Agent in its reasonable discretion).

(b) If any portion of any improved Material Real Estate Asset subject to a Mortgage 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 in effect on the Closing Date or thereafter or any successor act thereto), then the Borrower shall, or shall cause each applicable Credit Party to, (i) 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 Collateral Agent evidence of such compliance in form and substance reasonably acceptable to the Collateral Agent.

5.6 Books and Records; Inspections. Each Credit Party will, and the Borrower will cause each of the Subsidiaries to, keep proper books of record and accounts in accordance with GAAP in which full, true and correct entries will be made of all material dealings and transactions in relation to its business and activities. Subject to the last paragraph of Section 5.1, each Credit Party will, and the Borrower will cause each of the Subsidiaries to, permit the Administrative Agent and any Lender and their respective authorized representatives to visit and inspect any of the properties of such Person, to inspect and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided an authorized representative of the Borrower and its Subsidiaries shall be allowed to be present), all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; *provided* that (a) unless an Event of Default has occurred and is continuing, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 5.6; *provided, further* that unless an Event of Default has occurred and be continuing, the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year and only one (1) such time shall be at the Borrower's expense and (b) 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 indemnity, non-reliance letter or other than requirements of such accountants.

5.7 Compliance with Laws. The Borrower will comply, and will cause each of the Subsidiaries to comply, with the requirements of all applicable Laws, rules, regulations and orders of any Governmental Authority (including all applicable Environmental Laws and ERISA, but excluding Export Controls and Anti-Money Laundering Laws), noncompliance with which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Borrower will comply, and will cause each of the Subsidiaries to comply, in all material respects with the requirements of all Export Controls, Anti-Money Laundering Laws, the FCPA, and other applicable Anti-Corruption Laws.

5.8 Anti-Money Laundering Laws and Anti-Corruption Laws(a). The Borrower will maintain in effect and enforce, and will procure that each of the Subsidiaries maintains in effect and enforces, policies, procedures and internal controls reasonably designed to promote and achieve continued compliance by the Borrower, the Subsidiaries and their respective directors, officers, and employees with Anti-Money Laundering Laws and Anti-Corruption Laws.

5.9 [Reserved].

5.10 Additional Subsidiaries.

(a) In the event that any Person becomes a Subsidiary (which, for purposes of the foregoing reference to “Subsidiary” only, will be deemed to include an Unrestricted Subsidiary) of the Borrower (including pursuant to a Delaware LLC Division), such Person will be deemed to be a Subsidiary hereunder until such time as the Borrower has designated such Subsidiary as an Unrestricted Subsidiary in accordance with the terms hereof.

(b) In the event that any Person becomes (including pursuant to a Delaware LLC Division) a Subsidiary of the Borrower (other than an Excluded Subsidiary), the Borrower will, within sixty 60 days (or such longer time as the Administrative Agent may agree in its sole discretion):

(i) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to the Administrative Agent and the Collateral Agent a Counterpart Agreement and such other Collateral Documents (including the deliverables set forth in Section 5.11 below) and an acknowledgement to any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement then applicable, in each case as may be reasonably requested by the Collateral Agent and take and cause such Subsidiary to take such actions (including the actions set forth in Section 5.11 below) as are required by the Collateral Documents or are reasonably requested by the Collateral Agent to perfect the security interests created by the Collateral Documents;

(ii) upon reasonable request by the Administrative Agent, take all such actions and execute and deliver, or cause to be executed and delivered, all appropriate resolutions, secretary certificates, certified Organizational Documents and customary legal opinions relating to the matters described in this Section 5.10(b); and

(iii) to the extent any applicable information is required to be disclosed, deliver to the Administrative Agent a supplement to Schedule 4.10(b), which will be deemed to supplement Schedule 4.10(b) for all purposes hereof.

(c) In the event that any Person becomes an Excluded Foreign Subsidiary of the Borrower, and the ownership interests of such Excluded Foreign Subsidiary are owned directly by the Borrower or by any Guarantor Subsidiary, the Borrower will, or will cause such Guarantor Subsidiary to (in the absence of any other applicable limitation hereunder), within sixty (60) days (or such longer time as the Administrative Agent may agree in its sole discretion), deliver all such applicable documents, instruments and agreements necessary in the reasonable determination of the Administrative Agent to grant to the Collateral Agent a perfected Lien in such ownership interests in favor of the Collateral Agent, for the benefit of the Secured Parties, under the Pledge and Security Agreement; *provided* that in no event will more than 65.0% of the Voting Capital Stock of any such Excluded Foreign Subsidiary be required to be delivered or granted or perfected as a Lien for the benefit of the Secured Parties; *provided, further* that in no event will the Borrower or any Subsidiary be required to execute any document, instrument or agreement, complete any filing or take any other action (i) with respect to the creation or perfection of the Collateral Agent’s security interest in such ownership interests in any jurisdiction outside of the United States or any State thereof, (ii) that would violate applicable Law or (iii) that would provide any Lien in respect of Excluded Assets (as defined in the Pledge and Security Agreement).

5.11 Material Real Estate Assets. In the event that any Credit Party acquires a Material Real Estate Asset or an Executive Officer of the Borrower discovers that a Real Estate Asset (other than Excluded Real Estate Assets) owned on the Closing Date becomes a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of the Collateral Agent, for the benefit of the Secured Parties, then such Credit Party, no later than ninety (90) days (or such later date agreed to by the Administrative Agent) following the acquisition of such Material Real Estate Asset or such discovery, will take all such actions and execute and deliver, or cause to be executed and delivered, all such applicable Mortgages covering, among other things, such interest in real property (*provided* that to the extent any property that is to be subject to a Mortgage is located in a jurisdiction which imposes mortgage recording taxes, intangibles tax, documentary tax or similar tax, if such tax will be owed on the entire amount of the indebtedness evidenced hereby, the Collateral Agent will, to the extent permitted by applicable law, limit the amount secured by the Mortgage to the fair market value of the Material Real Estate Asset at the time the Mortgage is entered into if such limitation results in such tax being calculated based upon such fair market value as reasonably determined by Borrower in good faith and without requirement of delivery of an appraisal or other third-party valuation), title insurance policies and endorsements thereto reasonably requested by the Collateral Agent and to the extent available in the applicable jurisdiction at reasonable cost (*provided* that any title insurance amounts shall not exceed the reasonably ascertainable fair market value of the applicable Material Real Estate Asset) based on readily available information, appraisals (solely to the extent required under the FIRREA), Phase I environmental assessments (to the extent reasonably requested by the Collateral Agent), A.L.T.A. survey plans (provided that new or updated surveys will not be required if an existing survey, ExpressMap or other similar documentation is available and together with customary affidavits from the applicable Credit Party is sufficient for the title insurer to remove the general survey exception and issue customary survey-based endorsements attached to the title insurance policies without the need for such new or updated surveys), "Life-of Loan" Federal Emergency Management Agency Standard Flood Hazard Determinations under Regulation H of the Federal Reserve Board (together with evidence of flood insurance for any improved Material Real Estate Asset located in a flood hazard area to the extent required by the Flood Insurance Laws, and in accordance with Section 5.5(b) hereof), customary legal opinions regarding the security interest created by the applicable Mortgage, certificates and documentation that the Administrative Agent reasonably requires to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid and perfected lien and security interest in such Material Real Estate Assets, with each of the foregoing documents in form and substance reasonably satisfactory to the Collateral Agent.

5.12 Further Assurances. At any time or from time to time upon the request of the Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent or the Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party will take such actions as the Administrative Agent or the Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by the Collateral, including all of the outstanding Capital Stock of the Borrower and each of the Subsidiaries to the extent constituting Collateral.

5.13 Designation of Subsidiaries and Unrestricted Subsidiaries. The Borrower may designate any Subsidiary as an Unrestricted Subsidiary or re-designate any Unrestricted Subsidiary as a Subsidiary, in each case, so long as immediately before and after giving effect to such designation or re-designation, (a) no Default or Event of Default will have occurred and be continuing or would immediately result therefrom and (b) the Borrower and its Subsidiaries are in compliance on a Pro Forma Basis with a Total Net Leverage Ratio not to exceed 1.82:1.00; *provided* that (i) no Subsidiary may be designated as an Unrestricted Subsidiary if such Subsidiary or any of its Subsidiaries owns any equity interests of, or owns or holds any Lien on any property of, the Borrower or any other Subsidiary of the Borrower that is not a Subsidiary of the Subsidiary to be so designated and (ii) the Investment resulting from the designation of such Subsidiary as an Unrestricted Subsidiary as described in the definition of “Unrestricted Subsidiary” shall be permitted by Section 6.6.

5.14 Annual Lender Calls. Annually, at a time to be mutually agreed with, and at the written request of, the Administrative Agent that is promptly after the delivery of the information required pursuant to Section 5.1(a) above, the Borrower will participate in a conference call for Lenders to discuss the financial condition and results of operations of the Borrower and the Subsidiaries for the most recently-ended Fiscal Year for which financial statements have been delivered, which requirement shall be satisfied by the Borrower’s routine earnings call in connection with the filing by the Borrower of a Form 10-K (or any successor or comparable forms) with the Securities and Exchange Commission (or any successor thereto).

5.15 Maintenance of Ratings. The Borrower will use commercially reasonable efforts to maintain (a) a public corporate credit rating (but not a specific rating) from S&P and a public corporate family rating (but not a specific rating) from Moody’s, in each case in respect of the Borrower, and (b) a public rating (but not a specific rating) in respect of the credit facilities (other than the Term C Loans) provided to the Borrower under this Agreement from each of S&P and Moody’s.

5.16 Use of Proceeds. All proceeds of the Loans will be used in accordance with Section 2.6 (including that no part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulation T, Regulation U or Regulation X).

5.17 Post-Closing Matters. The Borrower will, and will cause each of the Subsidiaries to, take each of the actions set forth on Schedule 5.17 within the time period prescribed therefor on such schedule (as such time period may be extended by the Administrative Agent).

SECTION 6. NEGATIVE COVENANTS

The Borrower and each Guarantor Subsidiary covenants and agrees that so long as the Commitments have not been terminated and until the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Credit Document (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or with respect to which no claim has been made) have been paid in full and the Borrower will cause each Subsidiary to perform (to the extent applicable to such Subsidiary), all covenants in this Section 6.

6.1 Indebtedness. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, create, incur, assume or guaranty, or otherwise become directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations (including Incremental Facilities, Refinancing Term Loans, Extended Term Loans, all obligations arising under any Secured Rate Contract and all Bank Product Obligations, in each case to the extent constituting Obligations);

(b) [reserved];

(c) Indebtedness of the Borrower or any Subsidiary in existence on the Closing Date and, to the extent that any such item of Indebtedness has an aggregate outstanding principal amount in excess of \$5,000,000 (other than intercompany Indebtedness), such Indebtedness shall be described on Schedule 6.1;

(d) Indebtedness of the Borrower or any Subsidiary with respect to Capital Leases and Purchase Money Indebtedness in an aggregate amount at any time outstanding not to exceed the greater of (1) \$30,000,000 and (2) an amount equal to 15% of LTM Consolidated Adjusted EBITDA, in each case determined at the time of incurrence (but not any refinancings thereof); *provided* that (i) such Indebtedness is issued and any Liens securing such Indebtedness are created within 270 days after the acquisition, construction, lease or improvement of the asset financed and (ii) any such Indebtedness is secured only by the asset acquired, constructed, leased or improved in connection with the incurrence of such Indebtedness or proceeds thereof and related property (and any improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto); *provided, further*, that individual financings provided by a lender or group of lenders may be cross collateralized to other financings provided by such lender or group;

(e) Indebtedness in respect of Rate Contracts entered into for non-speculative purposes;

(f) Indebtedness of any Subsidiary owing to the Borrower or to any other Subsidiary, or of the Borrower owing to any Subsidiary; *provided* that (i) all such Indebtedness owed by a Credit Party to a Subsidiary that is not a Guarantor Subsidiary is subordinated in right of payment to the Obligations on terms no less favorable than the subordination provisions contained in the Global Intercompany Note attached as Exhibit J hereto and (ii) in the case of any Indebtedness of any such Subsidiary that is not a Guarantor Subsidiary owing to the Borrower or any Guarantor Subsidiary, such Indebtedness is permitted under Section 6.6;

(g) Incremental Equivalent Debt;

(h) Credit Agreement Refinancing Indebtedness that does not constitute Obligations;

(i) Permitted Ratio Debt;

(j) [reserved];

(k) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary, or Indebtedness attaching solely to assets that are acquired by the Borrower or any Subsidiary, in each case after the Closing Date; *provided* that (i) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation or contemplation thereof and (ii) such Indebtedness is not guaranteed by the Borrower or any of its Subsidiaries (other than by any Person that becomes a Subsidiary in connection with the foregoing and its Subsidiaries);

(l) Indebtedness incurred by the Borrower or any Subsidiary in the form of indemnification, incentive, non-compete, consulting, adjustment of purchase price or similar obligations (including “earn-outs” or similar obligations in connection with acquisitions) and other contingent obligations (other than in respect of Indebtedness for borrowed money of another Person), or guaranty securing the performance of the Borrower or any Subsidiary (both before and after liability associated therewith becomes fixed), in each case, pursuant to any agreement entered into in connection with dispositions or acquisitions (including Permitted Acquisitions and other permitted Investments) of any business, assets or Subsidiary;

(m) Indebtedness pursuant to any guaranties, performance, surety, statutory, appeal or similar bonds or obligations incurred in the ordinary course of business or any bankers’ acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities (including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims) or tenant improvement loans incurred in the ordinary course of business;

(n) guaranties of the obligations of suppliers, customers, franchisees, lessors and licensees of the Borrower or any Subsidiary incurred in the ordinary course of business;

(o) [reserved];

(p) Indebtedness of the Borrower or any Subsidiary in connection with Bank Products incurred in the ordinary course of business;

(q) Indebtedness owing to any unaffiliated insurance company or a financing company in connection with the financing of insurance premiums;

(r) Indebtedness incurred or assumed by the Borrower or any Subsidiary in connection with a Permitted Acquisition; *provided* that (i) in the case of such Indebtedness that is assumed, such Indebtedness was not created in anticipation or contemplation of such Permitted Acquisition and (ii) in the case of any such Indebtedness that is incurred, such Indebtedness would qualify as Permitted Ratio Debt;

(s) [reserved];

(t) to the extent constituting Indebtedness, Investments permitted under Section 6.6 (other than under Section 6.6(n) or 6.6(q));

(u) Indebtedness of Foreign Subsidiaries owed to a third party (other than a Credit Party or a Subsidiary) in an aggregate principal amount at any time outstanding not to exceed the greater of (1) \$30,000,000 and (2) an amount equal to 17.5% of LTM Consolidated Adjusted EBITDA;

(v) Indebtedness incurred in connection with deferred compensation or stock-based compensation;

(w) [reserved];

(x) the incurrence by the Borrower or any Subsidiary of Indebtedness constituting a Permitted Refinancing in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted to be incurred under clause (c), (d), (g), (h), (i), (k), (r), (u) or (z) of this Section 6.1;

(y) (i) guaranties by the Borrower of Indebtedness of a Guarantor Subsidiary, (ii) guaranties by any Subsidiary of Indebtedness of the Borrower or a Guarantor Subsidiary, or (iii) guaranties by the Borrower or a Guarantor Subsidiary of Indebtedness of any Non-Credit Party and that, in the case of this clause (iii), would have been permitted as an Investment by the Borrower or a Guarantor Subsidiary in such Non-Credit Party pursuant to Section 6.6, with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; *provided* that if the Indebtedness that is being guarantied is unsecured and/or Subordinated Debt, the guaranty will also be unsecured and/or be expressly subordinated in right of payment to the Obligations; *provided, further* that the foregoing clause (ii) shall not be construed to allow a Non-Credit Party to guarantee the obligations of a Credit Party in cases where such guarantee is otherwise restricted or limited hereunder by the definition of Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness, Permitted Ratio Debt or otherwise;

(z) additional Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount that, when taken together with all other Indebtedness incurred pursuant to this clause (z) and then outstanding, does not exceed the greater of (1) \$60,000,000 and (2) an amount equal to 35% of LTM Consolidated Adjusted EBITDA; and

(aa) Indebtedness (a) arising from intercompany cash management arrangements, tax and accounting operations or related activities arising in the ordinary course of business by and among the Borrower and its Subsidiaries or (b) consisting of intercompany loans and advances by and among the Borrower and its Subsidiaries having a term not exceeding 364 days and made in the ordinary course of business (inclusive of any rollover or extensions of terms); *provided* that all such Indebtedness owed by a Credit Party to a Non-Credit Party is subordinated in right of payment to the Obligations on terms no less favorable than the subordination provisions contained in the Global Intercompany Note attached as Exhibit J hereto;

provided that, the aggregate principal amount of Indebtedness of Non-Credit Parties incurred in reliance on clause (i) or (r) of this Section 6.1 will not exceed, at any one time outstanding, the greater of (1) \$20,000,000 and (2) an amount equal to 12% of LTM Consolidated Adjusted EBITDA, and Permitted Refinancings of the foregoing;

For purposes of determining compliance with this Section 6.1:

(1) the principal amount in Indebtedness outstanding under any clause of this Section 6.1 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(2) guaranties of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness;

(3) (i) the accrual of interest, (ii) the payment of premiums, fees, expenses and charges and (iii) increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness;

(4) for purposes of determining compliance with any Cap on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is issued to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated Cap to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated Cap will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (i) the principal amount of such Indebtedness being refinanced *plus* (ii) the aggregate amount of accrued but unpaid interest, fees, underwriting discounts, defeasance costs, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing;

(5) the principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing; the principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP;

(6) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.1, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; *provided* that all Indebtedness created pursuant to the Credit Documents will be deemed to have been incurred in reliance on the exception in clause (a) above, and shall not be permitted to be reclassified pursuant to this paragraph (other than in connection with a refinancing thereof pursuant to a separate exception to this covenant); *provided, further*, that any Indebtedness incurred under a Dollar-based Cap may not be reclassified as Indebtedness incurred in reliance on a financial ratio-based exception;

(7) for the avoidance of doubt, if the Borrower or any Subsidiary incurs Indebtedness using a ratio-based test on the same date that it incurs Indebtedness under any Dollar-based Cap, then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any incurrence of Indebtedness under the Dollar-based Cap; and

(8) in the case of any Permitted Refinancing of Indebtedness, (x) the original amount of Refinanced Indebtedness (including with respect to successive Permitted Refinancings) will continue to be considered to have been incurred under the clause of this Section 6.1 in reliance on which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable), and (y) if Refinanced Indebtedness was initially incurred in reliance on (or at such time has been classified to, as applicable) a clause of this Section 6.1 that is subject to a Cap, and such Permitted Refinancing would cause such Cap to be exceeded, then such Cap will be deemed not to be exceeded to the extent that the aggregate principal amount of the Refinancing Indebtedness incurred to replace the Refinanced Indebtedness does not exceed the Maximum Refinancing Amount.

6.2 Liens. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any of its property or assets (including any document or instrument in respect of goods or accounts receivable) of the Borrower or any Subsidiary, whether now owned or hereafter acquired, or any income or profits therefrom, except the following (collectively, “**Permitted Liens**”):

(a) Liens securing the Obligations (including Incremental Facilities, Refinancing Term Commitments, Refinancing Term Loans, Extended Term Loans, and all obligations arising under any Secured Rate Contract and all Bank Product Obligations, in each case to the extent constituting Obligations);

(b) [reserved];

(c) Liens in existence on the Closing Date and, to the extent securing Indebtedness in excess of \$5,000,000, such Liens shall be described on Schedule 6.2, including any modification, replacement, extension or renewal of any such Lien upon or in the same property subject thereto and the modification, replacement, extension, renewal or refinancing of the obligations secured or benefited by such Liens (including, if such Lien secures Indebtedness in existence on the Closing Date (and to the extent required, as described on Schedule 6.2), Liens securing any Permitted Refinancing thereof);

(d) Liens securing Indebtedness in respect of Capital Leases and Purchase Money Indebtedness, in each case permitted pursuant to Section 6.1(d), and Permitted Refinancings thereof;

(e) Liens granted to (and in favor of) a Credit Party to secure intercompany Indebtedness permitted by Section 6.1; *provided* that, if such Liens encumber Collateral, such Liens shall rank junior in priority to the Liens securing the Obligations pursuant to intercreditor and/or subordination terms that are reasonably acceptable to the Administrative Agent;

(f) Liens securing (i) Incremental Equivalent Debt or (ii) Credit Agreement Refinancing Indebtedness permitted under Sections 6.1(g) or (h), respectively, and Permitted Refinancings thereof;

(g) Liens on assets acquired, or on assets of a Person that is acquired, securing Indebtedness permitted pursuant to Sections 6.1(k) or (r)(i) (*provided* that such (i) Liens were existing at the time of such acquisition and were not created in anticipation or contemplation of such acquisition and (ii) do not extend to property not subject to such Liens at the time of such acquisition (other than improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property)) and Permitted Refinancings thereof;

(h) Liens solely on any cash earnest money deposits made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder;

(i) Liens of landlords, carriers, warehousemen, mechanics, repairmen, lessors, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business and not overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(j) Liens for Taxes not more than 30 days past due or to the extent the Borrower and the Subsidiaries are in compliance with Section 5.3 with respect thereto;

(k) deposits to secure the performance of (i) tenders, bids, trade contracts, governmental contracts, trade contracts, performance and return-of-money bonds and other similar contracts (other than obligations for the payment of Indebtedness for borrowed money) and (ii) leases, subleases, statutory obligations, surety, stay, judgment and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(l) Liens incurred by the Borrower or any Subsidiary in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security;

(m) Liens created in the ordinary course of business on deposits to secure liability for premiums to insurance carriers or securing insurance premium financing arrangements;

(n) (i) Liens that are contractual or common law rights of set-off or rights of pledge relating to (A) the establishment of depository relations in the ordinary course of business with banks or other deposit-taking financial institutions not given in connection with the incurrence of Indebtedness or (B) pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Subsidiaries, or (C) purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business or consistent with past practice and (ii) Liens securing cash management obligations (that do not constitute Indebtedness) and obligations in respect of Bank Products incurred in the ordinary course of business;

(o) Liens (i) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) encumbering reasonable customary initial deposits and margin deposits, (iii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes and (iv) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(p) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and in connection with Investments not otherwise prohibited by this Agreement; *provided* that such Liens (i) attach only to such Investments and (ii) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing or otherwise;

(q) survey exceptions, encumbrances, ground leases, easements, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone, cable television lines and other similar utility lines, gas and oil pipelines and other similar purposes, reservations of rights, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not and will not in the aggregate materially adversely interfere with the ordinary conduct of the business of the Borrower or any Subsidiary;

(r) any zoning, building or similar land use restrictions or rights reserved to or vested in any governmental office or agency, including without limitation, site plan agreements, development agreements and contractual zoning agreements, to control or regulate the use of any real property;

(s) leases, subleases, licenses, sublicenses, occupancy agreements or assignments of or in respect of real or personal property;

(t) Liens disclosed by the title insurance policies (and, to the extent such Liens secure obligations to pay money due and payable, approved by the Collateral Agent) delivered on or subsequent to the Closing Date for any Material Real Estate Asset subject to a Mortgage and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(u) any interest or title of a lessor or sublessor under any lease of real estate permitted (or not prohibited) hereunder or any Liens on such interest or title that do not affect the Borrower's or applicable Subsidiary's leasehold or subleasehold estate in any Real Estate Asset;

(v) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business or consistent with past practice (or other agreement under which the Borrower or any Subsidiary has granted rights to end users to access and use the Borrower or any Subsidiary products, technologies, facilities or services) which do not (x) interfere in any material respect with the business of the Borrower and the Subsidiaries, taken as a whole, or (y) secure any Indebtedness;

(w) outbound licenses or sub-licenses of patents, copyrights, trademarks and other Intellectual Property rights granted by the Borrower or any Subsidiary in the ordinary course of business and any interest or title in connection therewith, which do not interfere in any material respect with the ordinary conduct of business of the Borrower or any Subsidiary;

(x) Liens arising in connection with 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 permitted by this Agreement, purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business;

(y) purported Liens (i) evidenced by the filing of precautionary financing statements relating solely to operating leases of personal property entered into in the ordinary course of business or (ii) arising from equipment or other materials which are not owned by the Borrower or any Subsidiary located on the premises of the Borrower or a Subsidiary (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of the Borrower and the Subsidiaries and precautionary financing statement filings in respect thereof;

(z) Liens on cash or Cash Equivalents used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited hereunder;

(aa) trustees' Liens granted pursuant to any indenture governing any Indebtedness not otherwise prohibited by this Agreement in favor of the trustee under such indenture and securing only obligations to pay compensation to such trustee, to reimburse such trustee of its expenses and to indemnify such trustee under the terms of such indenture;

(bb) 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 and Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit permitted under Section 6.1 issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(cc) Liens on Capital Stock in joint ventures securing obligations of such joint venture or customary buy / sell arrangements set forth in joint venture agreements and similar binding agreements;

(dd) judgment Liens not constituting an Event of Default under Section 8.1(h);

(ee) [reserved];

(ff) [reserved];

(gg) Liens on assets of Non-Credit Parties securing Indebtedness of Non-Credit Parties permitted to be incurred under Section 6.1;

(hh) Liens securing Permitted Ratio Debt or Indebtedness incurred in connection with a Permitted Acquisition in reliance on Section 6.1(r)(ii), in any such case to the extent incurred as Pari Passu Lien Indebtedness or Junior Lien Indebtedness, and Permitted Refinancings thereof; and

(ii) Liens securing obligations, including Indebtedness, in an aggregate amount that, when taken together with all other obligations secured by Liens incurred pursuant to this clause (ii) and then outstanding, does not to exceed, on the date such Liens are granted, the greater of (1) \$30,000,000 and (2) an amount equal to 20% of LTM Consolidated Adjusted EBITDA, and Permitted Refinancings thereof.

For purposes of determining compliance with this Section 6.2:

(1) the increase in the amount of any obligation secured by a Lien as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence or existence of additional Liens;

(2) in the case of any Permitted Refinancing of Indebtedness or other obligations secured by a Lien, (x) the original amount of Refinanced Indebtedness or other obligations (including with respect to successive Permitted Refinancings) will continue to be considered to have been incurred under the clause of this Section 6.2 in reliance on which such Lien was initially incurred (or to which such Lien at such time has been classified, as applicable), and (y) if any Liens securing obligations are incurred to refinance Liens securing obligations initially incurred in reliance on a clause of this Section 6.2 measured by a Cap, and such refinancing would cause such Cap to be exceeded, then such clause will be deemed not to be exceeded to the extent that the aggregate principal amount of the new obligations incurred to replace such existing obligations does not exceed the Maximum Refinancing Amount;

(3) for the avoidance of doubt, if the Borrower or any Subsidiary incurs any Lien securing Indebtedness using a ratio-based test on the same date that it incurs any Lien securing Indebtedness under any Dollar-based Cap, then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any incurrence of Indebtedness under the Dollar-based Cap; and

(4) in the event that any Lien (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.2, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant; *provided* that all Liens created pursuant to the Credit Documents will be deemed to have been incurred in reliance on the exception in clause (a) above and shall not be permitted to be reclassified pursuant to this paragraph (other than in connection with a permitted refinancing thereof); *provided, further*, that any such Lien incurred under a Dollar-based Cap may not be reclassified as a Lien incurred in reliance on a financial ratio-based exception.

6.3 No Further Negative Pledges. The Borrower will not, nor will it permit any Subsidiary to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations other than:

(a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other disposition permitted under Section 6.8;

(b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements, asset sale agreements, stock sale agreements and similar agreements entered into to the extent permitted hereunder; *provided* that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, joint venture agreements, asset sale agreements, stock sale agreements or similar agreements, as the case may be;

(c) [reserved];

(d) restrictions set forth in any document governing Incremental Equivalent Debt, Permitted Ratio Debt and Credit Agreement Refinancing Indebtedness, in each case, so long as such restrictions do not restrict or otherwise impair the rights of the Agents, the Lenders or any other Secured Party under this Agreement or any other Credit Document or any refinancing thereof;

(e) restrictions under any subordination or intercreditor agreement reasonably acceptable to the Administrative Agent with respect to Indebtedness permitted under Section 6.1;

(f) restrictions on Non-Credit Parties pursuant to Indebtedness permitted under Section 6.1;

(g) restrictions on Persons or property at the time such Person or property is acquired (including under Indebtedness permitted to be incurred pursuant to Section 6.1(k)); *provided* such restrictions were existing at the time of such acquisition and were not created in anticipation or contemplation thereof and are limited to the Person or property so acquired (and any improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto);

(h) restrictions on assets financed or acquired pursuant to Section 6.1(d) (to the extent such restrictions were not created in contemplation of such acquisition of assets and do not extend to any assets other than such assets so acquired except to the extent permitted by Section 6.1(d));

(i) restrictions that exist on the Closing Date and (to the extent not otherwise permitted by this Section 6.3) are listed on Schedule 6.3 hereto and to the extent such restrictions are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such restrictions;

(j) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Subsidiary;

(k) restrictions arising in connection with cash or other deposits permitted under Section 6.2;

(l) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that are, taken as a whole, in the good faith judgment of the Borrower, not materially more restrictive with respect to the Borrower or any Subsidiary than customary market terms for Indebtedness of such type (and, in the case of any term indebtedness, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required or to provide security hereunder; and

(m) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that limit the right of the obligor to dispose of the assets securing such Indebtedness or that are limited the property or assets intended to secure such Indebtedness.

6.4 Restricted Junior Payments. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, pay or make any Restricted Junior Payment except:

(a) (i) so long as no Event of Default has occurred and is continuing or would be caused thereby, redemptions and repurchases by the Borrower of Capital Stock of the Borrower from officers, directors, employees, advisors or consultants or their respective estates, trusts, family members or former spouses of any Credit Party or any Subsidiary (or their Affiliates), upon termination of employment, in connection with the exercise of stock options, stock appreciation rights or other equity incentives or equity based incentives or in connection with the death or disability of such officers, directors, employees, advisors or consultants (or Affiliate); *provided* that in all such cases the aggregate amount of such payments in respect of all such Capital Stock so redeemed or repurchased does not exceed \$10,000,000 in any Fiscal Year (with unused amounts in any Fiscal Year rolled over to the immediately succeeding Fiscal Year), *plus* (A) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or any Guarantor Subsidiary after the Closing Date, (B) the amount of net cash proceeds from the sale of Capital Stock of the Borrower (other than Disqualified Capital Stock) to officers, directors, employees, advisors or consultants, to the extent not otherwise used under this Agreement or applied to the Available Amount and (C) the amount of any cash bonuses or other compensation otherwise payable to any future, present or former director, employee, consultant or distributor of the Borrower or any Subsidiary that are foregone in return for the redemption of Capital Stock of the Borrower; and (ii) cashless repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants, settlements or vesting if such stock represents a portion of the exercise price thereof;

(b) payments in the form of Capital Stock of the Borrower (other than Disqualified Capital Stock and to the extent not otherwise used under this Agreement or applied to the Available Amount);

(c) 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 Capital Stock;

(d) subject to the terms of any applicable subordination provisions, the Borrower or any Subsidiary may (A) make all regularly scheduled payments of principal, interest, fees and premiums and all payments of indemnities and expenses in respect of any Junior Financing when due, (B) pay customary closing, consent and similar fees related to any Junior Financing, (C) make mandatory prepayments, mandatory redemptions and mandatory purchases in connection with a “change of control” or “asset sale offer to purchase”, in each case pursuant to the terms governing any Junior Financing as in effect on the date of incurrence or issuance (including in connection with a refinancing thereof) of such Junior Financing, (D) prepay Indebtedness (x) of the Borrower or any Subsidiary owed to the Borrower or any Guarantor Subsidiary, (y) of any Non-Credit Party owed to any Non-Credit Party or (z) so long as no Event of Default has occurred and is continuing or would result therefrom, of the Borrower or any Guarantor Subsidiary to any Non-Credit Party, (E) prepay or refinance any Junior Financing (including the payment of any premium in connection therewith) with the proceeds of any other Junior Financing otherwise permitted by Section 6.1 (including any Permitted Refinancing thereof) and (F) convert any Junior Financing to Capital Stock (other than Disqualified Capital Stock) of the Borrower;

- (e) the declaration and payment of any dividend or other Restricted Equity Payment by any Subsidiary of the Borrower on a ratable basis to its equity holders;
- (f) the declaration and payment of quarterly cash dividends by the Borrower in the amount of \$0.06 per share of common Capital Stock in the Borrower;
- (g) Restricted Junior Payments in an aggregate amount not to exceed the Available Amount as in effect immediately before such Restricted Junior Payment; *provided* that (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the Total Net Leverage Ratio on a Pro Forma Basis would be less than or equal to 3.50:1.00;
- (h) Restricted Equity Payments and Restricted Debt Payments, so long as (i) no Event of Default has occurred and is continuing at such time or would result from the making of such Restricted Junior Payment, (ii) the Total Net Leverage Ratio on a Pro Forma Basis would be less than or equal to 1.75:1.00;
- (i) so long as no Event of Default has occurred and is continuing at such time or would result after giving effect thereto, Restricted Junior Payments in an aggregate amount not to exceed \$20,000,000; and
- (j) any Restricted Equity Payments in order to effect the Acquisition.

For purposes of determining compliance with this Section 6.4:

- (1) the amount set forth in Section 6.4(h) (without duplication) may, in lieu of Restricted Junior Payments, be utilized by the Borrower or any Subsidiary to make or hold any Investments without regard to Section 6.6;
- (2) for the avoidance of doubt, if the Borrower or any Subsidiary makes any Restricted Junior Payment using a ratio-based test on the same date that it makes any Restricted Junior Payment under any Dollar-based Cap, then the ratio-based test will be calculated with respect to such payment under the ratio-based test without regard to any payment under the Dollar-based Cap;
- (3) the payment of any Restricted Equity Payment within sixty (60) days after the date of declaration thereof shall be permitted if at the date of declaration such payment would have complied with the provisions of this Agreement; and
- (4) in the event that any Restricted Junior Payment (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.4, the Borrower may, in its sole discretion, at the time of making such payment, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Restricted Junior Payment (or any portion thereof) in any manner that complies with this covenant; *provided* that any such Restricted Junior Payment incurred under a Dollar-based Cap may not be reclassified as a Restricted Junior Payment using a ratio-based test.

6.5 Restrictions on Subsidiary Distributions. Except as provided herein, the Borrower will not, nor will it permit any Subsidiary to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of the Borrower to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by the Borrower or any other Subsidiary of the Borrower; (ii) repay or prepay any Indebtedness owed by such Subsidiary to the Borrower or any other Subsidiary of the Borrower; (iii) make loans or advances to the Borrower or any other Subsidiary of the Borrower; or (iv) transfer any of its property or assets to the Borrower or any other Subsidiary of the Borrower, in each case, other than restrictions:

(a) in agreements evidencing Indebtedness permitted in accordance with Section 6.1(a), (c), (d) (that impose restrictions on the property so acquired, constructed, leased or improved and any improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto), (g), (h), (i), (k) (limited to such acquired Person or asset), (p), (r), (u) and (z);

(b) in agreements evidencing Permitted Refinancing of Indebtedness permitted in accordance with Section 6.1(x) or other Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, defease, discharge, renew or replace other Indebtedness; *provided* that any encumbrances, restrictions and conditions of a type described in this Section 6.5 under any such refinancing are not materially more restrictive, taken as a whole, than those contained in the documentation governing the Indebtedness being refinanced (as determined by the Borrower in good faith);

(c) by reason of customary provisions restricting assignments, subletting, or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business;

(d) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement;

(e) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Subsidiary;

(f) restrictions applicable to Non-Credit Parties or the assets of Non-Credit Parties (including Capital Stock held by non-Credit Parties) pursuant to Indebtedness permitted under Section 6.1 and pursuant to restrictions in agreements related to Investments and acquisitions permitted by Section 6.6;

(g) restrictions on Persons or property at the time such Person or property is acquired; *provided* such restrictions were existing at the time of such acquisition and were not created in anticipation or contemplation thereof;

(h) under licensing, sub-licensing, leasing or sub-leasing agreements entered into by the Borrower or any Subsidiary, in each case entered into in the ordinary course of business, and provisions restricting assignment of any such agreement entered into by the Borrower or any Subsidiary in the ordinary course of business;

(i) restrictions that exist on the Closing Date;

(j) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder;

(k) negative pledges that are permitted pursuant to Section 6.3;

(l) customary provisions restricting assignment of any agreement of the type not covered by Section 6.5(h); and

(m) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business and restrictions that arise in connection with cash or other deposits permitted hereunder.

6.6 Investments. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) cash and Cash Equivalents; *provided* that any Investment which when made complies with the requirements of the definition of “Cash Equivalents” may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements;

(b) Investments by the Borrower in any Subsidiary and by any Subsidiary in the Borrower or any other Subsidiary; *provided* that to the extent any Investment is made by any Credit Party in any Non-Credit Party, the aggregate amount of all such Investments made after the Closing Date after giving effect to the Transactions and in reliance on this Section 6.6(b) shall not exceed, together with any Investments made in reliance on the proviso in clause (c) of the definition of “Permitted Acquisition” (in each case determined on a Pro Forma Basis giving effect to the making any such Investment, and after giving effect to clause (1) in the last paragraph of this Section 6.6), the greater of (x) \$50,000,000 and (y) an amount equal to 30% of LTM Consolidated Adjusted EBITDA;

(c) accounts receivable arising and trade credit granted in the ordinary course of business or consistent with past practice;

(d) Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors;

(e) deposits, prepayments and other credits to suppliers made in the ordinary course of business;

(f) capital expenditures in respect of the Borrower and the Subsidiaries in accordance with GAAP (other than any expenditure that involves the acquisition, whether by purchase, merger or otherwise, of all or a material portion of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person);

(g) (i) advances, loans or extensions of credit by the Borrower or any Subsidiary in compliance with applicable laws to officers, directors, and employees of the Borrower or any Subsidiary for reasonable and customary travel, entertainment or relocation, out-of-pocket or other business-related expenses, (ii) loans by the Borrower or any Subsidiary in compliance with applicable laws to officers, directors, and employees of the Borrower or any Subsidiary the proceeds of which are used to pay taxes owed in connection with the vesting of Capital Stock of the Borrower or any Subsidiary, and (iii) advances, loans or extensions of credit by the Borrower or any Subsidiary to officers, directors, and employees of the Borrower or any Subsidiary for any other purpose in an aggregate amount at any date of determination not to exceed \$1,000,000;

(h) Investments in the form of Indebtedness and/or loans and advances (a) arising from intercompany cash management or cash pooling arrangements, tax and accounting operations or related activities arising in the ordinary course of business by and among the Borrower and its Subsidiaries or (b) consisting of intercompany loans and advances by and among the Borrower and its Subsidiaries having a term not exceeding 364 days and made in the ordinary course of business (inclusive of any rollover or extensions of terms); *provided* that all such Indebtedness and/or other obligations owed by a Credit Party to a Non-Credit Party is subordinated in right of payment to the Obligations on terms no less favorable than the subordination provisions contained in the Global Intercompany Note attached as Exhibit J hereto;

(i) advances of payroll payments to employees in the ordinary course of business;

(j) Permitted Acquisitions;

(k) Investments in existence on the Closing Date in the Subsidiaries and other Investments in existence on the Closing Date as described on Schedule 6.6(k)(i) and any modification, replacement, renewal, reinvestment or extension of any of such Investments; *provided* that the amount of any Investment permitted pursuant to this Section 6.6(k) is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by another clause of this Section 6.6;

(l) Investments in an aggregate amount not to exceed the Available Amount as in effect immediately before such Investment; *provided* that (i) no Event of Default has occurred and is continuing or would result therefrom and (ii) the Total Net Leverage Ratio on a Pro Forma Basis would be less than or equal to 3.50:1.00;

(m) Investments of any Person that becomes a Subsidiary on or after the Closing Date; *provided* that (i) such Investments exist at the time such Person is acquired and (ii) such Investments are not made in anticipation or contemplation of such Person becoming a Subsidiary (it being understood and agreed that any consideration paid by a Credit Party in connection with a Permitted Acquisition that may be allocable directly or indirectly to Investments in Persons that are not Credit Parties (as determined in good faith by the Borrower at the time of closing such Investment (or at the time an LCA Election is made with respect thereto, if applicable) and without taking into account purchase accounting adjustments) must be permitted by clause (c) of the proviso appearing in the definition of "Permitted Acquisition");

(n) Indebtedness permitted by Section 6.1 (other than Indebtedness permitted by Section 6.1(f)(ii), 6.1(t) or 6.1(y)(iii));

(o) bank deposits in the ordinary course of business;

(p) Investments made as a result of the receipt of non-cash consideration from a disposition made in compliance with Section 6.8;

(q) [reserved];

(r) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Investments made by the Borrower or any Subsidiary in exchange for Capital Stock (other than Disqualified Capital Stock) of the Borrower, in each case to the extent not otherwise used under this Agreement or applied to the Available Amount;

(s) [reserved];

(t) Guarantees by (i) the Borrower of obligations of any Subsidiary and (ii) any Subsidiary of obligations of the Borrower or any other Subsidiary, in each case which obligations do not constitute Indebtedness;

(u) Investments in Rate Contracts, so long as the same are entered into for non-speculative purposes;

(v) Investments made to effect the Transactions or in connection with the Transactions, including any Permitted Restructuring Transaction;

(w) Investments (including debt obligations and Capital Stock) (i) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, the issuer of such Investment or an Affiliate thereof, (ii) arising in the ordinary course of business or consistent with past practice or upon the foreclosure with respect to any secured Investment, (iii) received in satisfaction of judgments against any other Person or (iv) received as a result of the settlement, compromise or resolutions of litigation, arbitration or other disputes of the Borrower or any Subsidiary with Persons who are not Affiliates;

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

(y) to the extent constituting Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(z) Investments made in reliance on clause (1) of the last paragraph of Section 6.4.

(aa) Investments, so long as (i) no Event of Default has occurred and is continuing at such time or would result after giving effect to such Investment and (ii) the Total Net Leverage Ratio on a Pro Forma Basis is less than or equal 2.00:1.00; and

(bb) Investments that do not exceed, when taken together with all other Investments made pursuant to this clause (bb) at any time outstanding, in the aggregate at any date of determination, the greater of (i) \$50,000,000 and (ii) an amount equal to 30% of LTM Consolidated Adjusted EBITDA.

For purposes of determining compliance with this Section 6.6:

(1) except to the extent an Investment was made using the Available Amount, to the extent any Investment in any Person is made in compliance with this Section 6.6 in reliance on a clause above that is subject to a Cap and, subsequently, such Person returns to the Borrower, any other Credit Party or, to the extent applicable, any Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise but excluding intercompany Indebtedness), such return shall be deemed to be credited to the clause of this Section 6.6 against which the Investment is then charged, but in any event not in an amount that would result in the aggregate dollar amount able to be invested in reliance on such category to exceed such Cap;

(2) for purposes of determining compliance with any Cap on the making of Investments, the Dollar equivalent amount of the Investment denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Investment was made;

(3) for the avoidance of doubt, if the Borrower or any Subsidiary makes any Investment using a ratio-based test on the same date that it makes any Investment under any Dollar-based Cap, then the ratio-based test will be calculated with respect to such Investment under the ratio-based test without regard to any payment under the Dollar-based Cap;

(4) in the event that any Investment (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.6, the Borrower may, in its sole discretion, at the time of making such Investment, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this covenant; *provided* that any such Investment made under a Dollar-based Cap may not be reclassified as an Investment using a financial ratio-based test; and

(5) to the extent an Investment is permitted to be made by a Credit Party directly in any Subsidiary or any other Person who is not a Credit Party (each such Subsidiary or other Person, a “**Target Person**”) under any provision of this Section 6.6, such Investment may be made by advance, contribution or distribution by a Credit Party to a Subsidiary (and further advanced, contributed or distributed to another Subsidiary) for purposes of making the relevant Investment in (or effecting an acquisition of) the Target Person without constituting an Investment for purposes of this Section 6.6 (it being understood that such Investment in the Target Person must satisfy the requirements of, and shall count towards any thresholds in, a provision of this Section 6.6 as if made by the applicable Credit Party directly in the Target Person).

6.7 [Reserved].

6.8 Fundamental Changes; Disposition of Assets. The Borrower will not, nor will it permit any Subsidiary to, (i) consummate any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), (ii) convey, sell, lease, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired or leased or (iii) sell, assign or otherwise dispose of any Capital Stock of any Subsidiary (including, in each case in clauses (i) through (iii), pursuant to a Delaware LLC Division), except:

(a) any Subsidiary of the Borrower may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (x) the Borrower shall be the continuing or surviving Person and (y) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any State or Commonwealth thereof or the District of Columbia;

(b) (i) any Non-Credit Party may merge or consolidate with or into any other Non-Credit Party, (ii) any Subsidiary may merge or consolidate with or into any other Subsidiary that is a Credit Party, (iii) any merger or consolidation the sole purpose of which is to reincorporate or reorganize (x) a Credit Party in another jurisdiction in the United States or (y) a Non-Credit Party in another jurisdiction shall be permitted, (iv) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Subsidiaries and is not materially disadvantageous to the Lenders, *provided*, in the case of clauses (ii) through (iv), that (A) no Change of Control shall result therefrom and (B) the surviving Person (or, with respect to clause (iv), the Person who receives the assets of such dissolving or liquidated Subsidiary that is a Guarantor) shall be a Credit Party;

(c) any Subsidiary may dispose of all or substantially all of its assets to the Borrower or any other Subsidiary; *provided* that a Guarantor Subsidiary may not dispose of all or substantially all of its assets to a Non-Credit Party unless treated as an Investment that is permitted by Section 6.6.

(d) conveyances, sales, leases, licenses, exchanges, transfers or other dispositions that do not constitute Asset Sales;

(e) Asset Sales; *provided* that (i) the consideration received for such assets is in an amount at least equal to the fair market value thereof (determined in good faith by the Borrower), (ii) no less than 75% of which will be paid in cash or Cash Equivalents, and (iii) the Net Cash Proceeds thereof are applied as and to the extent required by Section 2.14(a); *provided, further* that for the purposes of clause (ii), (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower and its Subsidiaries, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Asset Sale and for which the Borrower and all of the Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any Designated Non-Cash Consideration received in respect of such Asset Sale having an aggregate fair market value as reasonably determined by the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (B) that is at that time outstanding, not in excess of the greater of (x) \$10,000,000 and (y) an amount equal to 5.0% of LTM Consolidated Adjusted EBITDA at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash; *provided, further* that the Borrower and the Subsidiaries may not sell or otherwise dispose of all or substantially all of their assets, taken as a whole, to any Person in reliance on this clause (e);

(f) the Borrower and the Subsidiaries may lease (as lessee) or license (as licensee) real or personal property so long as any such lease or license does not create a Capital Lease except to the extent permitted by Section 6.1(d);

(g) any transaction (other than an Asset Sale (determined without regard to the exceptions thereto in the definition thereof)) in connection with a Permitted Acquisition or other Investment permitted by Section 6.6; *provided* that (i) if the merging or consolidating Subsidiary is a Guarantor Subsidiary, the surviving entity is or becomes a Guarantor Subsidiary or (ii) if the merging or consolidating Credit Party is the Borrower, the surviving entity is the Borrower;

(h) [reserved];

(i) dispositions of Investments in Joint Ventures or Joint Venture Subsidiaries to the extent required by, or pursuant to, customary agreements between the joint venture parties set forth in binding agreements between such parties; and

(j) the Acquisition may be consummated on the Closing Date and any Permitted Restructuring Transactions.

To the extent any Collateral is disposed of as permitted by this Section 6.8 to any Person that is not a Credit Party, such Collateral shall be sold free and clear of the Liens created by the Credit Documents, and the Administrative Agent or the Collateral Agent, as applicable, shall, and shall be authorized to, take any actions deemed appropriate in order to effectuate the foregoing.

6.9 Transactions with Affiliates. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower, on terms that are less favorable to the Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such an Affiliate; *provided* that the foregoing restriction will not apply to:

(a) any transaction between or among any of the Credit Parties and/or any of their Subsidiaries (or any Person that becomes a Subsidiary as a result of such transaction) to the extent not otherwise prohibited by this Agreement;

(b) indemnity provided to and reasonable and customary fees and expense reimbursement paid to members of the board of directors (or similar governing body) of the Borrower or any Subsidiary;

(c) (i) compensation, benefits and indemnification arrangements (including the payment of bonuses and other deferred compensation) for directors, officers and other employees of the Borrower or any Subsidiary entered into in the ordinary course of business or approved by the board of directors of the Borrower or the applicable Subsidiary, (ii) employment and severance agreements between the Borrower or any Subsidiary and their employees, officers or directors, entered in the ordinary course of business, (iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans, including restricted stock plans, stock grants, directed share programs and other equity based plans and the granting and stockholder rights of registration rights approved by the Borrower's board of directors; and (iv) payments or loans (or cancellation of loans) to officers, directors and employees that are approved by a majority of the Borrower's board of directors, subject to the limitations set forth in Section 6.6;

(d) transactions described in Schedule 6.9 in existence on the Closing Date;

(e) the existence of, or the performance of obligations under the terms of, agreements entered into in connection with the Acquisition or a Permitted Acquisition or other Investment permitted by Section 6.6 (including payments of earnouts and other similar payments);

(f) Restricted Junior Payments permitted by Section 6.4, Investments permitted by Section 6.6, Indebtedness permitted by Section 6.1 and transactions permitted by Section 6.8 (including as a result of exceptions to the definition of "Asset Sale"); and

(g) transactions involving aggregate payments or consideration of less than \$5,000,000.

6.10 Conduct of Business. The Borrower will not, nor will it permit any Subsidiary to, engage in any material business other than the Business.

6.11 [Reserved].

6.12 Certain Amendments or Waivers. The Borrower will not, nor will it permit any Subsidiary to, (a) amend, supplement, waive or otherwise modify any provision of its Organizational Documents in a manner that would be materially adverse to the interests of the Lenders or (b) change or amend the terms of the documentation with regard to any Material Indebtedness that is Junior Financing in a manner that would be materially adverse to the interests of the Lenders (except to the extent such changes or amendments are otherwise permitted by any applicable intercreditor or subordination provisions applicable to such Junior Financing).

6.13 Fiscal Year. The Borrower will not make any change in fiscal year; *provided, however*, that the Borrower may, upon prior written notice to the Administrative Agent, change its fiscal year to another fiscal year, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any amendments, adjustments or other modifications to this Agreement that are necessary to reflect such change in fiscal year (*provided* that no such change shall be effective for purposes of this Agreement until such adjustments have been made).

SECTION 7. GUARANTY

7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent for the ratable benefit of the Secured Parties the due and punctual payment in full of all Guaranteed Obligations when the same will become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)).

7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the “**Contributing Guarantors**”), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a “**Funding Guarantor**”) under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor will be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor’s Aggregate Payments to equal its Fair Share as of such date. “**Fair Share**” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. “**Fair Share Contribution Amount**” means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; *provided* that, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder will not be considered as assets or liabilities of such Contributing Guarantor. “**Aggregate Payments**” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to the sum of (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), *minus* (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder will be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 will not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and will not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability;

(b) [reserved];

(c) the Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Secured Party with respect to whether such Event of Default has occurred and is continuing;

(d) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions;

(e) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment will not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment will not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(f) the Administrative Agent, on behalf of the Secured Parties, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of the Secured Parties in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that the Administrative Agent may have against any such security, in each case as the Administrative Agent in its discretion may determine consistent herewith or the applicable Secured Rate Contract or Bank Product Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against the Borrower or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents, the Secured Rate Contracts or the Bank Product Agreements; and

(g) this Guaranty and the obligations of Guarantors hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, the Secured Rate Contracts or the Bank Product Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Secured Rate Contracts, the Bank Product Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Secured Rate Contract, such Bank Product Agreements or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents, any of the Secured Rate Contracts, any Bank Product Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Secured Party might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Secured Party's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any Subsidiary and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which the Borrower may allege or assert against any Secured Party in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.4 Waivers by Guarantors. To the fullest extent permitted by law, each Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any credit on the books of any Secured Party in favor of the Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any rights to set-offs, recoupments and counterclaims, and (ii) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Secured Rate Contracts, the Bank Product Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 7.3 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.5 Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations will have been indefeasibly paid in full in cash, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Secured Party now has or may hereafter have against the Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Secured Party. In addition, until the Guaranteed Obligations will have been indefeasibly paid in full in cash, each Guarantor will withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, will be junior and subordinate to any rights any Secured Party may have against the Borrower, to all right, title and interest any Secured Party may have in any such collateral or security, and to any right any Secured Party may have against such other guarantor. If any amount will be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations will not have been finally and indefeasibly paid in full, such amount will be held in trust for the Administrative Agent on behalf of Secured Parties and will forthwith be paid over to the Administrative Agent for the benefit of Secured Parties to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof. Further, in accordance with Section 2856 of the California Civil Code, to the extent applicable, each Guarantor waives any and all rights and defenses available to it by reason of Sections 2787 to 2855, inclusive, of the California Civil Code (this sentence is included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Guaranty or to any of the Guaranteed Obligations).

7.6 Subordination of Other Obligations. Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any Guarantor (the “**Obligee Guarantor**”) is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing will be held in trust for the Administrative Agent on behalf of Secured Parties and will forthwith be paid over to the Administrative Agent for the benefit of Secured Parties to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.7 Continuing Guaranty. This Guaranty is a continuing guaranty and will remain in effect until all of the Guaranteed Obligations (other than obligations under any Secured Rate Contract or Bank Product Obligation) will have been paid in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.8 Authority of Guarantors or the Borrower. It is not necessary for any Secured Party to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.9 Financial Condition of the Borrower. Any Credit Extension may be made to the Borrower or continued from time to time, and any Rate Contracts may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation or at the time such Rate Contracts is entered into, as the case may be. No Secured Party will have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor’s assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and their ability to perform their obligations under the Credit Documents and the Rate Contracts, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Secured Party.

7.10 Bankruptcy, etc.

(a) The obligations of the Guarantors hereunder will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) will be included in the Guaranteed Obligations because it is the intention of the Guarantors and Secured Parties that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower, the obligations of Guarantors hereunder will continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Secured Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered will constitute Guaranteed Obligations for all purposes hereunder.

7.11 Discharge of Guaranty upon Sale of Guarantor. If, in compliance with the terms and provisions of the Credit Documents, (a) all of the Capital Stock of any Guarantor or any of its successors in interest hereunder or (b) all or substantially all of the property of any Guarantor is sold, disposed of or otherwise transferred (such Guarantor, a “**Transferred Guarantor**”) to any Person (other than any other Credit Party), such Transferred Guarantor will, upon the consummation of such sale, disposition or other transfer (including by merger or consolidation), automatically be discharged and released, without any further action by any Secured Party or any other Person, effective as of the time of such sale, disposition or other transfer, from its obligations under this Agreement (including under Sections 10.2 and 10.3) and the other Credit Documents, including its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of the sale of all of the Capital Stock of such Transferred Guarantor, the pledge of such Capital Stock to the Collateral Agent pursuant to the Collateral Documents will be released, and the Collateral Agent will take, and the Secured Parties hereby irrevocably authorize the Collateral Agent to take, such actions as are necessary or desirable to effect each discharge and release described in this Section 7.11 in accordance with the relevant provisions of the Collateral Documents.

7.12 [Reserved].

7.13 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.1 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.1, then, notwithstanding any other provision to the contrary, the amount of such liability will, without any further action by such Guarantor, any Credit Party or any other Person, be automatically limited and reduced to the highest amount (after giving effect to the rights of subrogation and contribution established in Section 7.5) that is valid and enforceable, not void or voidable and not subordinated to the claims of other creditors as determined in such action or proceeding.

7.14 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (*provided, however*, that each Qualified ECP Guarantor will only be liable under this Section 7.14 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.14, or otherwise under this Guaranty, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.14 will remain in full force and effect until the Guaranteed Obligations have been paid in full. Each Qualified ECP Guarantor intends that this Section 7.14 constitute, and this Section 7.14 will be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 8. EVENTS OF DEFAULT

8.1 Events of Default. Each of the events referred to in clauses (a) through (m) of this Section 8.1 shall constitute an “**Event of Default**”:

(a) Failure to Make Payments When Due. Failure by the Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within five (5) Business Days after the date due; *provided* that a Term C Loan Payment Event of Default shall not constitute an Event of Default with respect to Term Lenders (in their capacities as such) which do not hold Term C Loan Exposure or Term Loans or Term Loan Exposure (other than Term C Loans and Term C Loan Exposure, respectively) unless and until the date occurring 90 days after the occurrence of such Term C Loan Payment Event of Default (a “**Term C Loan Payment Cross Default**”); or

(b) Default in Other Agreements.

(i) Failure of the Borrower or any other Credit Party to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) constituting Material Indebtedness, in each case beyond the grace period, if any, provided therefor; or

(ii) a breach or default by any Credit Party with respect to any other material term of (1) one or more items of Indebtedness constituting Material Indebtedness or (2) any loan agreement, mortgage, indenture or other agreement relating to Material Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee or agent on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity;

provided that (x) Section 8.1(b)(ii) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness and (y) such failure is unremedied or is not duly waived or cured prior to any termination of commitments or acceleration hereunder; or

(c) Breach of Negative Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 6;

or

(d) Breach of Representations, Etc.

(i) Any Specified Representation was false in any material respect (except for those representations and warranties that are conditioned by materiality, which will proved to be false in any respect) or any Merger Agreement Representation was false as of the Closing Date; or

(ii) Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any certificate at any time given by any Credit Party or any Subsidiary in writing pursuant to the terms of the Credit Documents (other than a Specified Representation or an Merger Agreement Representation) was false in any material respect (or, to the extent such representation and warranty contains qualifications as to materiality, it was false in any respect) as of the date made or deemed made; or

(e) Breach of Other Covenants. Any Credit Party defaults in the performance of or compliance with (i) any covenant contained in Section 5.1(h) or Section 5.2 (as applicable only to the existence of the Borrower), or (ii) any other covenant in this Agreement or in any of the other Credit Documents, other than any such covenant referred to in subclause (i) above or any other provision of this Section 8.1, and such default is not remedied, cured or waived within thirty (30) days after the earlier to occur of the date on which a Responsible Officer has knowledge of such default and the date of receipt by the Borrower of notice from the Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction enters a decree or order for relief in respect of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief is granted under any applicable law; or (ii) an involuntary case is commenced against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower or any Subsidiary (other than an Immaterial Subsidiary), or over all or a substantial part of its property, is entered; or there occurs the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) for all or a substantial part of its property; or a warrant of attachment, execution or similar process is issued against any substantial part of the property of the Borrower or any Subsidiary (other than an Immaterial Subsidiary), and any such event described in this clause (ii) continues for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The Borrower or any Subsidiary (other than an Immaterial Subsidiary) has an order for relief entered with respect to it or commences a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Borrower or any Subsidiary (other than an Immaterial Subsidiary) makes any assignment for the benefit of creditors; or (ii) the Borrower or any Subsidiary (other than an Immaterial Subsidiary) becomes unable, or fails generally, or admits in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) the Borrower or any Subsidiary (other than an Immaterial Subsidiary) (or any committee thereof) adopts any resolution or otherwise authorizes any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in any individual case in an amount in excess of \$30,000,000 (to the extent not covered by insurance (as to which a solvent and unaffiliated insurance company has acknowledged and not denied coverage)) is entered or filed against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) or any of their respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of sixty (60) consecutive days; or

(i) Dissolution. Any order, judgment or decree is entered against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) decreeing the involuntary dissolution or split up of such Credit Party and such order remains undischarged or unstayed for a period in excess of sixty (60) consecutive days; or

(j) Employee Benefit Plans. There occurs one or more ERISA Events, or, with respect to a Foreign Plan, a termination, withdrawal or noncompliance with applicable Law or plan terms, that individually or in the aggregate results in or could reasonably be expected to result in a Material Adverse Effect; or

(k) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof:

(i) the Guaranty for any reason, other than the satisfaction in full of all Guaranteed Obligations, ceases to be in full force and effect (other than in accordance with its terms) or is declared to be null and void or any Guarantor repudiates its obligations thereunder;

(ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or is declared null and void, or the Collateral Agent does not have or ceases to have a valid and perfected Lien in a material portion of the Collateral purported to be covered by the Collateral Documents (except to the extent not required to be valid or perfected by the Credit Documents) with the priority required by the relevant Collateral Document, in each case, for any reason other than actions taken by or on behalf of the Collateral Agent or any Secured Party or the failure of the Collateral Agent or any Secured Party to take any action within its control and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy; or

(iii) any Credit Party contests the validity or enforceability of any Credit Document in writing or denies in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party; or

(l) Change of Control. A Change of Control occurs.

8.2 Remedies upon an Event of Default.

(a) Upon the occurrence of any Event of Default (other than pursuant to Section 8.1(f), 8.1(g) or a Term C Loan Payment Event of Default or, solely with respect to the Borrower, Section 8.1(i)), at the request of the Required Lenders, upon notice to the Borrower by the Administrative Agent:

(i) the applicable Commitments will immediately terminate or be reduced (as specified by the Administrative Agent);

(ii) the aggregate principal of all applicable Loans, all accrued and unpaid interest thereon and all fees and all other Obligations under this Agreement and the other Credit Documents will become due and payable immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Credit Party; and

(iii) the Administrative Agent may, and may cause the Collateral Agent to, exercise any and all of its other rights and remedies under applicable law (including any applicable UCC) or at equity, hereunder and under the other Credit Documents.

provided that upon an Event of Default pursuant Section 8.1(f), 8.1(g) or, solely with respect to the Borrower, 8.1(i), the Commitments of each Lender shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent, the Collateral Agent or any Lender.

(b) Upon the occurrence of an Event of Default under Section 8.1(a) solely with respect to the repayment of the Term C Loans (if any) on the applicable Term Loan Maturity Date (a “**Term C Loan Payment Event of Default**”), (i) the Required Term C Loan Lenders may take any of the actions specified in Section 8.2(a) in respect of the Term C Loans and Term C Loan Commitments and (ii) the Required Lenders may take any of the actions specified in Section 8.2(a) in respect of any Term C Loan Payment Event of Default that has occurred and is continuing upon the occurrence of a Term C Loan Payment Cross Default.

8.3 Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, upon the occurrence and during the continuance of an Event of Default and after the acceleration of the principal amount of any of the Loans hereunder:

(a) each Credit Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by the Administrative Agent or the Collateral Agent from or on behalf of any Credit Party, and, as between each Credit Party on the one hand and the Administrative Agent, the Collateral Agent and the Lenders on the other, the Administrative Agent will have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as the Administrative Agent may deem advisable and consistent with this Agreement notwithstanding any previous application by Administrative Agent; and

(b) subject to Section 2.15(d), any and all payments received by any Secured Party (other than through the Administrative Agent), including proceeds of Collateral, will be applied:

(i) *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to the Administrative Agent or the Collateral Agent with respect to this Agreement, the other Credit Documents or the Collateral;

(ii) *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Credit Documents or the Collateral;

(iii) *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts);

(iv) *fourth*, (A) to the principal amount of the Obligations, (B) to any Obligations under any Secured Rate Contract and (C) to any Obligation under any Bank Product Agreement for which the Administrative Agent has received written notice of such Obligations as being outstanding;

(v) *fifth*, to any other Indebtedness or obligations of any Credit Party owing to the Administrative Agent, the Collateral Agent, any Lender or any other Secured Party under the Credit Documents or any Bank Product Agreement for which the Administrative Agent has received written notice of such Obligations as being outstanding under such Bank Product Agreement; and

(vi) *sixth*, to the Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

In carrying out the foregoing, (a) amounts received will be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (b) each of the Persons entitled to receive a payment in any particular category will receive an amount equal to its *pro rata* share of amounts available to be applied pursuant thereto for such category.

SECTION 9. AGENTS

9.1 Appointment and Duties.

(a) Appointment of Agent. Each Lender hereby appoints DBNY (together with any successor Agent pursuant to Section 9.9) as the Administrative Agent and the Collateral Agent hereunder and authorizes each such Agent to (i) execute and deliver the Credit Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to such Agent under such Credit Documents and (iii) exercise such powers as are reasonably incidental thereto. In furtherance of the foregoing, each of the Lenders (including in its capacity as a potential Secured Swap Provider or a Bank Product Provider) hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.4 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), will be entitled to the benefits of all provisions of this Section 9 (including Section 9.8(b), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Credit Documents) as if set forth in full herein with respect thereto. The provisions of this Section 9 are solely for the benefit of the Agents and the Lenders and no Credit Party will have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent will act solely as an agent of the Lenders and does not assume and will not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any Subsidiary.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, each of the Administrative Agent and the Collateral Agent, as applicable, will each have the right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Credit Documents (including in any proceeding described in Section 8.1(f), (g) or (i) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Credit Document to any Secured Party is hereby authorized to make such payment to such Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 8.1(f), (g) or (i) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Credit Documents, (vi) except as may be otherwise specified in any Credit Document, exercise all remedies given to such Agent and the other Secured Parties with respect to the Credit Parties and/or the Collateral, whether under the Credit Documents, applicable Law or otherwise and (vii) execute any amendment, consent or waiver under the Credit Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; *provided, however*, that each such Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for such Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to such Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Credit Documents, each of the Administrative Agent and the Collateral Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 2.7(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined terms “Administrative Agent,” “Collateral Agent,” “Agent,” the terms “agent” and “collateral agent” and similar terms in any Credit Document to refer to such Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Credit Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or other Person and (iii) will have no implied functions, responsibilities, duties, obligations or other liabilities under any Credit Document, and each Secured Party, by accepting the benefits of the Credit Documents, hereby waives and agrees not to assert any claim against such Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Without limiting the generality of the foregoing, the use of the term “agent” in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

9.2 Binding Effect. Each Secured Party, by accepting the benefits of the Credit Documents, agrees that (a) any action taken by the Administrative Agent, the Collateral Agent, the Required Lenders, or the Required Term C Loan Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Credit Documents, (b) any action taken by the Administrative Agent or the Collateral Agent in reliance upon the instructions of Required Lenders, of Required Term C Loan Lenders (or, where so required, such greater proportion) and (c) the exercise by the Administrative Agent, the Collateral Agent, the Required Lenders or the Required Term C Loan Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, will be authorized and binding upon all of the Secured Parties.

9.3 Use of Discretion.

(a) **No Action without Instructions.** Neither the Administrative Agent nor the Collateral Agent will be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Credit Document or (ii) pursuant to instructions from the Required Lenders or the Required Term C Loan Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders). Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Borrower and the Subsidiaries), accountants, experts and other professional advisors selected by it. No Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of the Required Lenders or the Required Term C Loan Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding clause (a) above, neither the Administrative Agent nor the Collateral Agent will be required to take, or to omit to take, any action in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder (i) unless, upon demand, such Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to such Agent, any other Person) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against such Agent or any Related Person thereof or (ii) that is, in the opinion of such Agent or its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable Law including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Proceeding or under the Bankruptcy Code, and no Agent will have any duty to disclose or will be liable for the failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

(c) **Exclusive Right to Enforce Rights and Remedies.** Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them will be vested exclusively in, and all actions and proceedings in equity or at law in connection with such enforcement will be instituted and maintained exclusively by, the Administrative Agent and the Collateral Agent in accordance with the Credit Documents for the benefit of all the Lenders; *provided* that the foregoing will not prohibit (i) each of the Administrative Agent and the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as such Agent) hereunder and under the other Credit Documents, (ii) any Lender from exercising setoff rights in accordance with Section 10.4 or (iii) 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 Credit Party under any bankruptcy or other debtor relief law; *provided, further* that if at any time there is no Person acting as the Administrative Agent hereunder and under the other Credit Documents, then (A) the Required Lenders will have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.1, (B) in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 10.4, 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, and (C) notwithstanding the foregoing clauses (A) and (B), only the Required Term C Loan Lenders may take any action with respect to a Term C Loan Payment Event of Default pursuant to Section 8.2(b) until a Term C Loan Payment Cross Default has occurred.

9.4 Delegation of Rights and Duties. Each of the Administrative Agent and the Collateral Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Credit Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person will benefit from this Section 9 to the extent provided by such Agent.

9.5 Reliance and Liability.

(a) Each of the Administrative Agent and the Collateral Agent may, without incurring any liability hereunder, (i) treat the payee of any Term Loan Note as its holder until such Term Loan Note has been assigned in accordance with Section 10.6, (ii) rely on the Register to the extent set forth in Section 10.6, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of the Administrative Agent, the Collateral Agent and their respective Related Persons will be liable for any action taken or omitted to be taken by any of them under or in connection with any Credit Document, and each Secured Party, the Borrower and each other Credit Party hereby waive and will not assert (and the Borrower will cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of such Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, neither the Administrative Agent nor the Collateral Agent:

(i) will be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or the Required Term C Loan Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of such Agent, when acting on behalf of such Agent);

(ii) will be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Credit Document;

(iii) makes any warranty or representation, or will be responsible, to any Lender or other Person for (A) any statement, document, information, including any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, (B) any representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection herewith or with any Credit Document or any transaction contemplated herein or therein or any other document, certificate or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Credit Document to be transmitted to the Lenders by such party) omitted to be transmitted by such Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by such Agent in connection with the Credit Documents, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Credit Document or the occurrence of any Default, (D) the execution, effectiveness, genuineness, validity, enforceability, collectability, sufficiency or genuineness hereof or of any Credit Document or any other agreement, instrument or document or (E) the satisfaction of any condition set forth in Section 3 or elsewhere in any Credit Document; *provided* that, for each of the items set forth in clauses (A) through (E) hereof, each Lender hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent or the Collateral Agent based thereon; and

(iv) will have any duty to ascertain or to inquire as to the performance or observance of any provision of any Credit Document, whether any condition set forth in any Credit Document is satisfied or waived, as to the financial condition of any Credit Party or as to the occurrence or continuation or possible occurrence or continuation of any Default or Event of Default or will be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower or any Lender describing such Default or Event of Default clearly labeled “notice of default” (in which case such Agent will promptly give notice of such receipt to all Lenders).

(c) Each party to this Agreement acknowledges and agrees that the Administrative Agent may from time to time use one or more outside service providers for the tracking of all Uniform Commercial Code financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to the Credit Documents and the notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof. No Agent will be liable for any action taken or not taken by any such service provider.

9.6 Agent Individually. Each of the Administrative Agent and the Collateral Agent and their Affiliates may make loans and other extensions of credit to, acquire Capital Stock of, engage in any kind of business, including but not limited to any type of financial advisory business, with any Credit Party or Affiliate thereof as though it were not acting as an Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent, the Collateral Agent or any of their respective Affiliates makes any Loan or otherwise becomes a Lender hereunder, it will have and may exercise the same rights and powers hereunder and will be subject to the same obligations and liabilities as any other Lender and the terms “Lender,” “Required Lenders,” “Required Term C Loan Lenders” and any similar terms will, except where otherwise expressly provided in any Credit Document, include such Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders or Required Term C Loan Lenders, respectively.

9.7 Lender Credit Decision.

(a) Each Lender acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any Lender or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by such Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Credit Document or with respect to any transaction contemplated in any Credit Document, in each case based on such documents and information as it will deem appropriate. Each Lender further represents and warrants that it has reviewed the confidential information memorandum and each other document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof (including any such terms and conditions set forth, or otherwise maintained, on the Platform with respect thereto). Except for documents expressly required by any Credit Document to be transmitted by the Administrative Agent or the Collateral Agent to the Lenders, no such Agent will have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of such Agent or any of its Related Persons.

(b) If any Lender has elected to abstain from receiving Nonpublic Information concerning the Credit Parties or their Affiliates, such Lender acknowledges that, notwithstanding such election, the Administrative Agent and/or the Credit Parties will, from time to time, make available syndicate-information (which may contain Nonpublic Information) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender's administrative questionnaire who are able to receive and use all syndicate-level information (which may contain Nonpublic Information) in accordance with such Lender's compliance policies and contractual obligations and applicable Law, including federal and state securities laws; *provided* that if such contact is not so identified in such questionnaire, the relevant Lender hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to the Administrative Agent and the Credit Parties upon request therefor by the Administrative Agent or the Credit Parties. Notwithstanding such Lender's election to abstain from receiving material non-public information, such Lender acknowledges that if such Lender chooses to communicate with the Administrative Agent, it assumes the risk of receiving Nonpublic Information concerning the Credit Parties or their Affiliates. In the event that any Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

(c) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Initial Term B Loan or Term C Loan, will be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, the Required Lenders or the Lenders, as applicable, on the Closing Date.

9.8 Expenses; Indemnities; Withholding.

(a) Each Lender agrees to reimburse the Administrative Agent, the Collateral Agent and each of their respective Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally (but not jointly) and in accordance with its Pro Rata Share, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by such Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Credit Document.

(b) Each Lender further agrees to indemnify the Administrative Agent, the Collateral Agent and each of their respective Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, in proportion to its Pro Rata Share, from and against Liabilities (including, to the extent not indemnified pursuant to Section 9.8(c), taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against such Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Credit Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by such Agent or any of its Related Persons under or with respect to any of the foregoing **(IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY AGENT OR RELATED PERSON)**; *provided, however*, that no Lender will be liable to the Administrative Agent, the Collateral Agent or any of their respective Related Persons to the extent such liability has resulted solely and directly for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, claims, suits, judgments, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements which have resulted from the gross negligence or willful misconduct of such Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. No Lender shall be liable under this Section or otherwise for any failure of another Lender to satisfy such other Lender's obligations under the Credit Documents.

(c) To the extent required by any applicable law, the Administrative Agent and the Collateral Agent may withhold from any payment to any Lender under a Credit Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that such Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify such Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or such Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender will promptly indemnify such Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by such Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Each of the Administrative Agent and the Collateral Agent may offset against any payment to any Lender under a Credit Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which such Agent is entitled to indemnification from such Lender under this Section 9.8(c).

9.9 Resignation of Administrative Agent or Collateral Agent.

(a) Each of the Administrative Agent and the Collateral Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice will be effective, in accordance with the terms of this Section 9.9. If such Agent delivers any such notice, the Required Lenders will have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), at all times other than during the continuation of an Event of Default, to appoint a successor Administrative Agent or Collateral Agent, as applicable. The Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the appointment of a successor Administrative Agent by the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. If, after 30 days after the date of such retiring Agent's notice of resignation, no successor Administrative Agent or Collateral Agent, as applicable, has been appointed by the Required Lenders that has accepted such appointment, then such retiring Agent may, on behalf of the Lenders, appoint a successor Administrative Agent or Collateral Agent, as applicable, from among the Lenders or a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least \$500,000,000. Each appointment under this clause (a) will be subject to the prior consent of the Borrower, which will not be unreasonably withheld but will not be required during the continuance of an Event of Default.

(b) Effective immediately upon its resignation, (i) any retiring Administrative Agent or Collateral Agent will be discharged from its duties and obligations under the Credit Documents, (ii) the Lenders will assume and perform all of the duties of such Agent until a successor Administrative Agent or Collateral Agent, as applicable, will have accepted a valid appointment hereunder, (iii) such retiring Agent and its Related Persons will no longer have the benefit of any provision of any Credit Document as Administrative Agent or Collateral Agent, as applicable, other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Administrative Agent or Collateral Agent, as applicable, under the Credit Documents and (iv) subject to its rights under Section 9.3, such retiring Agent will take such action as may be reasonably necessary to assign to the applicable successor Administrative Agent or Collateral Agent its rights as Administrative Agent or Collateral Agent, as applicable, under the Credit Documents. After any retiring Administrative Agent's or Collateral Agent's resignation hereunder as the Administrative Agent, the provisions of this Section 9 and Sections 10.2, 10.3, 10.4, 10.10, 10.14, 10.15, and 10.16 will inure to its benefit, its sub-agents and their respective affiliates benefit as to any actions taken or omitted to be taken by any of them while it was Administrative Agent or Collateral Agent hereunder. Effective immediately upon the acceptance of a valid appointment as Administrative Agent or Collateral Agent by a successor Administrative Agent or Collateral Agent, such successor Administrative Agent or Collateral Agent will succeed to, and become vested with, all the rights, powers, privileges and duties of such retiring Agent under the Credit Documents and the retiring Administrative Agent or Collateral Agent will promptly (A) transfer to its successor all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent or Collateral Agent under the Credit Documents, and (B) execute and deliver to such successor Administrative Agent or Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent or Collateral Agent of the security interests created under the Collateral Documents.

9.10 Release of Collateral or Guarantors(a)

(a) Each Lender hereby consents to the automatic release and hereby directs the Administrative Agent and the Collateral Agent to release automatically, without further action(or, in the case of clause (b)(ii) below, release or subordinate) the following:

(i) any Guarantor Subsidiary from its guaranty of any Obligation pursuant to Section 7.11 or if such Guarantor Subsidiary ceases to be a Subsidiary (including as a result of its designation as an Unrestricted Subsidiary in accordance with the terms of this Agreement), and such Guarantor Subsidiary will be automatically released from its Obligations thereunder; *provided* that no such release shall occur if such Guarantor Subsidiary continues to be a guarantor in respect of any Incremental Equivalent Debt, any Permitted Ratio Debt, any Credit Agreement Refinancing Indebtedness, any Material Indebtedness of the Borrower or any Subsidiary that is Junior Financing or any Permitted Refinancing in respect of any of the foregoing;

(ii) any Guarantor from its guaranty upon payment and satisfaction in full of all Loans, all other Obligations under the Credit Documents (excluding amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or as to which no claim has been asserted) and all Obligations arising under Secured Rate Contracts and Bank Product Agreements that the Administrative Agent has theretofore been notified in writing by the holder of such Obligations are then due and payable;

(iii) any Lien held by the Collateral Agent for the benefit of the Secured Parties against any Guarantor Subsidiary upon the release of such Guarantor Subsidiary from its guaranty pursuant to clause (i) above; and

(iv) any Lien held by the Collateral Agent for the benefit of the Secured Parties against (1) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Credit Documents (including pursuant to a valid waiver or consent), (2) any property subject to a Lien permitted hereunder in reliance upon Section 6.1(d) and (3) all of the Collateral and all Credit Parties, upon (A) termination of all Incremental Revolving Credit Commitments (if any), (B) payment and satisfaction in full of all Loans, all other Obligations under the Credit Documents (excluding amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or as to which no claim has been asserted) and all Obligations arising under Secured Rate Contracts and Bank Product Agreements that the Administrative Agent has theretofore been notified in writing by the holder of such Obligations are then due and payable and (C) to the extent requested by the Administrative Agent, receipt by the Administrative Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance acceptable to the Administrative Agent.

(b) Each Lender hereby directs the Administrative Agent and the Collateral Agent, and each of the Administrative Agent and the Collateral Agent hereby agrees, upon receipt of reasonable notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 9.10, subject to receipt by the Administrative Agent of a certification of the Borrower as to such matters as are reasonably required by the Administrative Agent. To the extent any Collateral is disposed of as permitted by this Section to any Person other than a Credit Party, such Collateral will be sold or disposed of free and clear of Liens created by the Credit Documents and the Administrative Agent will be authorized to take any actions deemed appropriate in order to effect the foregoing.

(c) In the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent (at the direction of the Required Lenders) or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders will otherwise agree in writing), at the direction of the Required Lenders, will be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code). Any release of guarantee obligations will be deemed subject to the provision that such guarantee obligations will be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby will be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made. The Collateral Agent will 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 Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor will the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 [Reserved].

9.12 Lead Arranger and Bookrunner. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Credit Document, neither the Lead Arranger nor the Bookrunner will have any duties or responsibilities, nor will any of such Agents have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities will be read into this Agreement or any other Credit Document or otherwise exist against any of such Agents. At any time that any Lender serving (or whose Affiliate is serving) as Lead Arranger or Bookrunner will have transferred to any other Person (other than any Affiliates) all of its interests in the Loans, such Lender (or an Affiliate of such Lender acting as Lead Arranger or Bookrunner) will be deemed to have concurrently resigned as such Lead Arranger or Bookrunner.

9.13 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In the case of pendency of any proceeding under any Bankruptcy Proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan will then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent will have made any demand on the Borrower) will be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due the Administrative Agent under Section 2, Section 10.2 and Section 10.3) allowed in such judicial proceeding; and

(c) 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 to make such payments to the Administrative Agent and, in the event that the Administrative Agent will consent to the making of such payments directly to the Lenders, 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 this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under this Agreement out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a Lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein will be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.14 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 the Lead Arranger and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit 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 Employee Benefit Plans in connection with the Loans, or the Commitments,

(ii) 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 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 Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, 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 Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and the Lead Arranger and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that none of the Administrative Agent, or the Lead Arranger or any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related to hereto or thereto).

SECTION 10. MISCELLANEOUS

10.1 Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement will be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on Appendix B or otherwise indicated to the Borrower and the Administrative Agent in writing, (ii) posted to the Platform (to the extent such system is available and set up by or at the direction of the Administrative Agent prior to posting), (iii) posted to any other E-System approved by or set up by or at the direction of the Administrative Agent or (iv) addressed to such other address as will be notified in writing (A) in the case of the Borrower, the Administrative Agent and the Collateral Agent, to the other parties hereto and (B) in the case of all other parties, to the Borrower, the Administrative Agent and the Collateral Agent. Transmissions made by electronic mail or E-Fax to the Administrative Agent will be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of the Administrative Agent applicable at the time and previously communicated to the Borrower, and (z) if receipt of such transmission is acknowledged by the Administrative Agent.

(b) Effectiveness. (i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement will be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; *provided, however*, that no communications to the Administrative Agent pursuant to this Section 10.1 will be effective until received by the Administrative Agent.

(ii) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System will constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Credit Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete except as expressly noted in such communication or E-System.

(c) Each Lender will notify the Administrative Agent and the Collateral Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent will reasonably request.

(d) Electronic Transmissions.

(i) Authorization. Subject to the provisions of Section 10.1(a), each of the Administrative Agent, the Collateral Agent, the Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Credit Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(ii) Signatures. Subject to the provisions of Section 10.1(a), (i)(A) no posting to any E-System will be denied legal effect merely because it is made electronically, (B) each E Signature on any such posting will be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting will be deemed sufficient to satisfy any requirement for a "writing," in each case including pursuant to any Credit Document, any applicable provision of any applicable UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and will be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which the Administrative Agent, the Collateral Agent, each other Secured Party and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature will, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Law requiring certain documents to be in writing or signed; *provided, however*, that nothing herein will limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(iii) Separate Agreements. All uses of an E-System will be governed by and subject to, in addition to Section 10.1, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by the Administrative Agent and Credit Parties in connection with the use of such E-System.

(iv) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS WILL BE PROVIDED "AS IS" AND "AS AVAILABLE." NONE OF THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY (WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN CONTRACT, TORT OR OTHERWISE)) FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. The Borrower, each other Credit Party executing this Agreement and each Secured Party agrees that the Administrative Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

(e) Each Credit Party agrees that the Administrative Agent may make the communications described in clause (a) above available to the other Agents or the Lenders by posting such communications on any Platform.

(f) Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the “Public Side Information” portion of the Platform and that may contain Nonpublic Information with respect to the Borrower, the Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Public Lender’s decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

10.2 Expenses. The Borrower agrees to pay promptly, in each case for which an invoice has been delivered to the Borrower, (a) all reasonable and documented out-of-pocket fees and expenses of the Administrative Agent, the Collateral Agent and DBSI in the preparation, negotiation, execution, delivery and enforcement of the Credit Documents and any consents, amendments, waivers or other modifications thereto (limited, in the case of legal fees and expenses, to the fees, expenses and disbursements of one primary counsel to such Persons taken as a whole and one local counsel in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) as may be necessary or advisable in the judgment of such Persons); (b) all the costs of furnishing all opinions by counsel for the Borrower and the other Credit Parties; (c) the reasonable and documented out-of-pocket fees, expenses and disbursements of counsel to the Administrative Agent, the Collateral Agent and the Lead Arranger in connection with the negotiation, preparation, execution, administration and enforcement of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by the Borrower, limited to fees, expenses and disbursements of one primary counsel to such Persons taken as a whole and one local counsel in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) as may be necessary or advisable in the judgment of such Persons; (d) all the reasonable and documented out-of-pocket fees and expenses of creating, perfecting and recording Liens in favor of the Collateral Agent, for the benefit of the Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and actual, reasonable documented out-of-pocket fees, expenses and disbursements of counsel to each of the Administrative Agent and the Collateral Agent and of counsel providing any opinions that the Administrative Agent and the Collateral Agent or the Required Lenders may reasonably request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the reasonable and documented out-of-pocket fees and expenses and disbursements of any auditors, accountants, consultants or appraisers reasonably engaged by the Administrative Agent and the Collateral Agent; (f) all the reasonable and documented out-of-pocket fees and expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other reasonable and documented out-of-pocket fees and expenses incurred by the Administrative Agent and the Lead Arranger in connection with its due diligence efforts and the syndication of the Loans and Commitments and the transactions contemplated by the Credit Documents and any consents, amendments, waivers or other modifications thereto; (h) without duplication of payments described in Section 2.20(c), all Other Taxes; and (i) after the occurrence and during the continuance of an Event of Default, all reasonable and documented out-of-pocket fees and expenses, including reasonable attorneys’ fees and costs of settlement, incurred by any Agent and the Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or preservation of any right or remedy under any Credit Document or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out” or pursuant to any insolvency or bankruptcy cases or proceedings, limited, in the case of legal fees and expenses, to fees, disbursements and expenses of one counsel to the Agents and the Lenders taken as a whole (and one local counsel in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) as may be necessary or advisable in the judgment of such Persons) and, solely in the event of an actual or potential conflict of interest between any Agent and the Lenders, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole. For the avoidance of doubt, no payment or expense reimbursement shall be made pursuant to this Section 10.2 in respect of Excluded Taxes.

10.3 Indemnity; Certain Waivers.

(a) **Indemnity.** In addition to the payment of expenses pursuant to Section 10.2, each Credit Party agrees to indemnify, pay and hold harmless, each Agent, each Lender and each of their respective Related Persons (each, an “**Indemnitee**”), from and against any and all Indemnified Liabilities; *provided* that no Credit Party will have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities (i) arise from (A) the bad faith, gross negligence or willful misconduct of that Indemnitee or its Related Persons as determined by a court of competent jurisdiction in a final non-appealable judgment or (B) any material breach of the obligations of that Indemnitee or its Related Persons under this Agreement or any other Credit Document as determined by a court of competent jurisdiction in a final non-appealable judgment or (ii) relate to any dispute solely among Indemnitees other than (A) claims against an Agent, in its capacity as such or in fulfilling its role as an Agent, and (B) claims arising out of any act or omission on the part of any Credit Party or any Subsidiary or Affiliates; *provided, further* that, subject to paragraph (c) below, no Indemnitee or any Credit Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Credit Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Credit Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.3); *provided, further* that the Credit Parties, taken as a whole, shall be responsible hereunder for the fees and expenses of only one counsel for each similarly situated group of affected Indemnitees in connection with Indemnified Liabilities arising out of the same facts or circumstances and, if reasonably necessary or advisable in the judgment of the Agents, a single local or foreign counsel to the Indemnitees taken as a whole in each relevant jurisdiction and, solely in the case of an actual or perceived conflict of interest, one additional primary counsel and one additional local or foreign counsel in each applicable jurisdiction, in each case, to each similarly situated group of affected Indemnitees. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. Notwithstanding anything to the contrary herein, the Credit Parties shall not be liable for any settlement of a claim in respect of which indemnification could have been sought by an Indemnitee under this Section 10.3(a) if such settlement is effected without the written consent of the Credit Parties (which consent shall not be unreasonably withheld or delayed), but if settled with the written consent of the Credit Parties or if there is a final and non-appealable judgment by a court of competent jurisdiction with respect to any such claim, the Credit Parties agree to indemnify and hold harmless each Indemnitee from and against any and all losses and reasonable and documented or invoiced legal or other out-of-pocket expenses by reason of such settlement or judgment in accordance with and to the extent provided in the other provisions of this Section 10.3. If the Credit Parties have reimbursed any Indemnitee for any legal or other expenses in accordance with such request and there is a final and non-appealable judicial determination that the Indemnitee was not entitled to indemnification or contribution rights with respect to such payment pursuant to this Section 10.3, then the Indemnitee shall promptly refund such amount. This Section 10.3 will not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) To the extent that the Credit Parties fail to indefeasibly pay any amount required to be paid by them to the Agents under Sections 10.3(a) in accordance with Section 9.8(b), each Lender severally agrees to pay to the applicable Agent such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity will be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed claim was incurred by or asserted against any of the Agents.

(c) No Indemnitee will be liable for any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems (including the Platform) and neither any Indemnitee nor any Credit Party (or any of their respective directors, officers, employees, controlling Persons, controlled affiliates or agents) will be liable for any indirect, special, punitive or consequential damages in connection with the Transactions, this Agreement or any other Credit Document (including the Facilities and the use of proceeds hereunder), or with respect to any activities or other transactions related to the Facilities; *provided* that nothing contained in this sentence limits the Credit Parties' indemnity and reimbursement obligations to the extent such special, indirect, punitive or consequential damages are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder or with any other Credit Document, irrespective of whether or not (a) such Lender will have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder will have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. Notwithstanding the foregoing, nothing contained in this Section 10.4 shall provide any Lender with any recourse against Excluded Assets (as defined in the Pledge and Security Agreement).

10.5 Amendments and Waivers.

(a) Required Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, will in any event be effective without the written concurrence of the Required Lenders (or, solely in the case of the proviso in Section 8.1(a), Section 8.2(b) and the related rights and remedies upon the occurrence of a Term C Loan Payment Event of Default, the Required Term C Loan Lenders), except that (i) this Agreement and the other Credit Documents may be amended, modified or supplemented with the consent of the Borrower and the Administrative Agent to cure any ambiguity, omission, obvious error, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender, *provided* that no such amendment will become effective until the fifth Business Day after it has been posted to the Lenders, and then only if the Required Lenders (or, solely in the case of the proviso in Section 8.1(a), Section 8.2(b) and the related rights and remedies upon the occurrence of a Term C Loan Payment Event of Default, the Required Term C Loan Lenders) have not objected in writing within such five (5) Business Day period, (ii) the Borrower and the Administrative Agent may enter into additional or supplemental Collateral Documents, (iii) the Administrative Agent may release Collateral or Guarantors in accordance with Section 9 of this Agreement and the Collateral Documents, (iv) this Agreement and the other Credit Documents may be amended, modified or supplemented with the consent of the Borrower (and any Lenders providing any such financing) to implement any Incremental Amendment in accordance with Section 2.24, any Refinancing Amendment in accordance with Section 2.26 or any Extension Amendment in accordance with Section 10.5(g)(iii), or any amendment entered into in connection with any Replacement Term Loans in accordance with Section 10.5(f)(ii), (v) this Agreement may be amended with the consent of the Borrower and the Administrative Agent to implement any amendment to the definition of "Eurodollar Rate" and related provisions pursuant to, and in accordance with requirements of, Section 2.18(b), (vi) this Agreement may be amended with the consent of the Borrower and the Administrative Agent to implement any amendment, adjustments or other modifications to reflect a change in fiscal year pursuant to Section 6.13 and (vii) the Agency Fee Letter may be amended by the parties thereto without the consent of any other Person.

(b) Affected Lenders' Consent. No amendment, modification, termination, or consent of any provision of the Credit Documents will be effective if the effect thereof would:

(i) extend the scheduled final maturity date of any Loan of any Lender without the written consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default (other than a Default or Event of Default resulting from non-payment on the scheduled final maturity date) will constitute an extension of a final maturity date;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment or mandatory prepayment pursuant to Section 2.14, which will be governed by Section 10.5(a)) of any Term Loan held by any Lender pursuant to Section 2.12 without the written consent of such Lender;

(iii) reduce the rate of interest on any Loan held by any Lender (other than (x) any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10 and (y) any amendment to the definition of “Eurodollar Rate” and related provisions pursuant to Section 2.18(b)) or any fee payable to a Lender under this Agreement without the written consent of such Lender;

(iv) waive or postpone any date scheduled for the payment of interest on any Loan held by any Lender or any fee or other amount (excluding the principal amount of any Loan held by a Lender) payable to a Lender under this Agreement (it being understood that the waiver of any mandatory prepayment pursuant to Section 2.14 will not constitute a waiver or postponement for the payment of interest);

(v) reduce the principal amount of any Loan held by a Lender without the written consent of such Lender;

(vi) amend, modify, terminate or waive any provision of Section 10.5(a), this Section 10.5(b) or Section 10.5(c) without the written consent of all Lenders;

(vii) amend the definition of “Required Lenders” or “Pro Rata Share” without the written consent of all Lenders, or amend the definition of “Required Term C Loan Lenders” without the written consent of all Lenders with Term C Loan Exposure; *provided* that, with the consent of the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of “Required Lenders” or “Pro Rata Share” on substantially the same basis as the Initial Term B Loan Commitments, the Initial Term B Loans, the Term C Loan Commitments and the Term C Loans are included on the Closing Date; *provided, further* that such definitions may also be amended in furtherance of any amendment permitted by another subsection of this Section 10.5(b) with the consent of such Persons as are required by such subsection (it being understood, however, that nothing in this clause (vii) shall be construed to limit changes to such definitions otherwise permitted by Section 10.5(a)(iv));

(viii) amend, modify, terminate or waive any provision of Section 10.6(j) without the written consent of all Lenders;

(ix) release, or subordinate the Collateral Agent’s Liens on, all or substantially all of the Collateral or release all or substantially all of the Guarantors from the Guaranty, except as expressly provided in this Agreement or any of the Collateral Documents, or in connection with securing additional secured obligations equally and ratably with the other Obligations in accordance with the Credit Documents, without the written consent of all Lenders;

(x) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document without the written consent of all Lenders;

(xi) [reserved];

(xii) subordinate the Obligations under the Credit Documents to any other Indebtedness without the written consent of all Lenders;

or

(xiii) amend or modify the definition of “Secured Swap Provider”, “Obligations”, “Secured Rate Contracts”, “Bank Products” and “Bank Product Provider”, in each case, in a manner materially adverse to any Secured Swap Provider or Bank Product Provider (as applicable) holding outstanding Obligations under Secured Rate Contracts or Bank Products (as applicable) at such time without the written consent of such Person;

provided that the Required Lenders may waive any increase in the interest rate applicable to any Loan or other Obligation pursuant to Section 2.10.

(c) Other Consents. No amendment, waiver or consent will, unless in writing and signed by the Administrative Agent or the Collateral Agent, as applicable, in addition to the Required Lenders, the Required Term C Loan Lenders or all Lenders directly affected thereby, as the case may be (or by Administrative Agent with the consent of the Required Lenders, the Required Term C Loan Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of the Administrative Agent or the Collateral Agent, as applicable, in its capacity as such, under this Agreement or any other Credit Document. Further, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, will:

(i) increase or extend any Term Loan Commitment or Incremental Revolving Credit Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default will constitute an increase in or extension of any Commitment of any Lender;

(ii) [reserved];

(iii) alter the required application of any repayments or prepayments (including payments made from proceeds of Collateral) as between Classes pursuant to Section 2.15 or Section 8.3 or modify Section 2.17 without the consent of all Lenders, Bank Product Providers and Secured Swap Providers of each class which is being allocated a lesser repayment or prepayment (including payments made from proceeds of Collateral) as a result thereof; *provided* that Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Classes, of any portion of such prepayment which is still required to be made is not altered; or

(iv) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

Notwithstanding the foregoing, unless and until a Term C Loan Payment Cross Default has occurred and remains continuing, only the consent of the Required Term C Loan Lenders shall be necessary to, and upon the occurrence of a Term C Loan Payment Cross Default, the consent of the Required Lenders shall be necessary to (i) exercise any rights or remedies or take any action specified in Section 8.2(a) in respect of any Term C Loan Payment Event of Default and (ii) amend or modify this sentence, the proviso appearing in Section 8.1(a), Section 8.2(b) or the related provisions in Sections 9.3(c), 10.7 and 10.12(b) (including the related definitions as used in such Sections, but not as used in other Sections of this Agreement) and no such exercise, action, amendment or modification shall be permitted (x) without the consent of the Required Term C Loan Lenders (unless and until a Term C Loan Payment Cross Default has occurred) and (y) without the consent of the Required Lenders (upon the occurrence and during the continuance of a Term C Loan Payment Cross Default). For the avoidance of doubt, no amendment, modification, waiver or consent to any Term C Loan Payment Event of Default shall be permitted without the consent of each Lender with Term C Loan Exposure.

(d) Execution of Amendments, etc. The Administrative Agent may, but will have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent will be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case will entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 will be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party. Without limiting the generality of the foregoing, the making of a Loan will not be construed as a waiver of any Default, regardless of whether any Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or any other Credit Party in any case will entitle the Borrower or any other Credit Party to any other or further notice or demand in similar or other circumstances.

(e) Intercreditor Agreements and Subordination Agreements. Notwithstanding anything to the contrary in this Agreement, no Lender consent is required to enter into, amend or supplement any Pari Passu Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Subordination Agreement, in any such case that is (i) for the purpose of adding the holders of Pari Passu Lien Indebtedness, Junior Lien Indebtedness or Subordinated Debt (or a Debt Representative with respect thereto), as applicable, permitted hereunder as parties thereto (regardless of whether also constituting Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness, Permitted Ratio Debt or other category of Indebtedness hereunder), as expressly contemplated by the terms of such Pari Passu Lien Intercreditor Agreement, such Junior Lien Intercreditor Agreement or such Subordination Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor or subordination agreement as determined by the Administrative Agent, are required to effectuate the foregoing; *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) expressly contemplated by any Pari Passu Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Subordination Agreement.

(f) Additional Amendments Provisions.

(i) Nothing herein will be deemed to prohibit an amendment and/or amendment and restatement of this Agreement consented to by the Required Lenders, the Borrower and the Administrative Agent (A) to add one or more additional credit facilities to this Agreement (it being understood that no Lender will have any obligation to provide or to commit to provide all or any portion of any such additional credit facility) and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans and the accrued interest and fees in respect thereof and (B) to effect the amendments contemplated by the proviso in Section 10.5(b)(vii) and to make such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of the Administrative Agent to provide for such additional credit facility.

(ii) In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing or exchange of all outstanding Term Loans (other than Term C Loans) of any tranche (“**Refinanced Term Loans**”) with a replacement term loan tranche hereunder (“**Replacement Term Loans**”); *provided* that (A) the aggregate principal amount of such Replacement Term Loans will not exceed the aggregate principal amount of such Refinanced Term Loans plus any interest, premium or other amounts due with respect to such Refinanced Term Loans, (B) the scheduled final maturity of such Replacement Term Loans will not be sooner than the scheduled final maturity of such Refinanced Term Loans at the time of such refinancing, (C) the Weighted Average Life to Maturity of such Replacement Term Loans will not be shorter than the Weighted Average Life to Maturity of such Refinanced Term Loans at the time of such refinancing, and (D) the other terms applicable to such Indebtedness are substantially identical to, or (taken as a whole as determined by the Borrower in good faith) are no more favorable to the lenders providing such Replacement Term Loans than, those applicable to the Refinanced Term Loans; *provided* that this clause (D) will not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans existing at the time of incurrence of such Replacement Term Loans (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness; *provided, further*, a certificate of the Borrower delivered to the Administrative Agent stating that the Borrower has reasonably determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that the terms and conditions satisfy the foregoing requirement.

(g) Extension.

(i) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders holding Term Loans (other than Term C Loans) with a like maturity date, in each case on a *pro rata* basis (based on the aggregate outstanding principal amount of such respective Term Loans) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date and/or commitment termination of each such Lender’s Term Loans of such class, and, subject to the terms hereof, otherwise modify the terms of such Term Loans pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate and/or fees payable in respect of such Term Loans (and related outstandings) and/or modifying the amortization schedule in respect of such Lender’s Term Loans) (each, an “**Extension**” and each group of Term Loans, in each case as so extended, as well as the original Term Loans, being a separate “**tranche**”), so long as the following terms are satisfied:

- (1) no Default or Event of Default will have occurred and be continuing at the time the Extension Offer is delivered to the Lenders or at the time of such Extension;

(2) except as to interest rates, rate floors, fees, amortization, final maturity date, Weighted Average Life to Maturity, premium, required prepayment dates and participation in prepayments (which will, subject to the immediately succeeding clauses (3), (4), and (5), be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the Extended Term Lenders), the Term Loans of any Lender that agrees to an Extension with respect to such Term Loans owed to it (an “**Extended Term Lender**”) extended pursuant to any Extension (“**Extended Term Loans**”) will have the same terms as the tranche of Term Loans subject to such Extension Offer (except for covenants or other provisions contained therein or other provisions contained therein applicable only to periods after the then Latest Term Loan Maturity Date);

(3) the final maturity date of any Extended Term Loans will be no earlier than the Latest Term Loan Maturity Date of the Term Loans extended thereby;

(4) the Weighted Average Life to Maturity of any Extended Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans extended thereby;

(5) any Extended Term Loans may participate on a *pro rata* basis, a less than *pro rata* basis or a greater than *pro rata* basis (except that such Extended Term Loans may not participate on a greater than *pro rata* basis as compared to any earlier or equivalent maturing Class of Term Loans (other than pursuant to a refinancing)) with non-extending tranches of Term Loans in any mandatory prepayments hereunder, in each case as specified in the respective Extension Offer;

(6) there will be no more than three (3) Extended Term Loan tranches at any time during the term of this Agreement; and

(ii) if the aggregate principal amount of Term Loans (calculated on the outstanding principal amount thereof) in respect of which a Lender will have accepted the relevant Extension Offer will exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Lender will be extended ratably up to such maximum amount based on the respective principal or commitment amounts with respect to which such Lender have accepted such Extension Offer. With respect to all Extensions consummated by the Borrower pursuant to this Section 10.5(g), (i) such Extensions will not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.13 or 2.14 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment; *provided* that the Borrower may at its election specify as a condition to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower’s sole discretion and may be waived by the Borrower) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent, the Collateral Agent and the Lenders hereby consent to the transactions contemplated by this Section (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement or any other Credit Document that may otherwise prohibit or conflict with any such Extension or any other transaction contemplated by this Section.

(iii) No consent of any Lender, the Collateral Agent or the Administrative Agent will be required to effectuate any Extension, other than the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans (or a portion thereof). All Extended Term Loans and all obligations in respect thereof will be Obligations under this Agreement and the other Credit Documents and secured by the same Liens on the Collateral that secure all other applicable Obligations. The Lenders hereby irrevocably authorize the Administrative Agent and the Collateral Agent to enter into amendments to this Agreement and the other Credit Documents with the Borrower (on behalf of all Credit Parties) as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section (any such amendment, an “**Extension Amendment**”). Without limiting the foregoing, in connection with any Extensions the applicable Credit Parties will (at their expense) amend (and the Collateral Agent is hereby directed by the Lenders to amend) any Mortgage that has a maturity date prior to the then latest maturity date so that such maturity date referenced therein is extended to the then latest maturity date (or such later date as may be advised by local counsel to the Collateral Agent). The Administrative Agent will promptly notify each Lender of the effectiveness of each such Extension Amendment.

(iv) In connection with any Extension, the Borrower will provide the Administrative Agent at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and will agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 10.5(g). This Section 10.5(g) will supersede any provisions of this Section 10.5 or Section 2.17 or 10.4 to the contrary

10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement will be binding upon the parties hereto and their respective successors and assigns and will inure to the benefit of the parties hereto and the successors and assigns of the Lenders. No Credit Party’s rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all of the Lenders. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Each Credit Party, the Administrative Agent and the Lenders will deem and treat the Persons listed as the Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan (whether or not evidenced by a Term Loan Note) will be effective, in each case, unless and until recorded in the Register following receipt of an Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment will be recorded in the Register on the Business Day the Assignment Agreement is received by the Administrative Agent, if received by 12:00 noon New York City time, and on the following Business Day if received after such time, prompt notice thereof will be provided to the Borrower and a copy of such Assignment Agreement will be maintained. The date of such recordation of a transfer will be referred to herein as the “**Assignment Effective Date**.” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender will be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender will have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (*provided that, pro rata assignments will not be required, but each such assignment will be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitment*):

(i) to any Person meeting the criteria of clause (a) or clause (c) of the definition of “Eligible Assignee” upon the giving of notice to the Borrower and the Administrative Agent; and

(ii) to any Person meeting the criteria of clause (b) of the definition of “Eligible Assignee” and consented to by each of the Borrower (except in the case of any assignment made in connection with the primary syndication of the Term Loan Commitments) and the Administrative Agent (each such consent not to be (x) unreasonably withheld, delayed or conditioned and (y) in the case of the Borrower, required at any time an Event of Default will have occurred and then be continuing); *provided that* (1) the Borrower’s refusal to accept an assignment to a Disqualified Lender will be deemed to be reasonable, (2) the Borrower’s consent will be required with respect to any assignments to Disqualified Lenders and (3) the Borrower will be deemed to have consented to any such assignment (other than to an assignment to a Disqualified Lender) of Term Loans unless it will object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice thereof; *provided, further* that each such assignment pursuant to this Section 10.6(c) (ii) will be in an aggregate amount of not less than (A) \$1,000,000 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as will constitute the aggregate amount of the Incremental Revolving Credit Commitments and Incremental Revolving Loans of the assigning Lender) with respect to the assignment of any Incremental Revolving Credit Commitments and Incremental Revolving Loans and (B) \$1,000,000 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as will constitute the aggregate amount of the Term Loan of the assigning Lender) with respect to the assignment of Term Loans.

Notwithstanding the foregoing, no assignment may be made (A) to a Natural Person or (B) to a Disqualified Lender and, to the extent that any assignment of any Loan and/or related Commitment is purported to be made to a Disqualified Lender, such Disqualified Lender shall be required immediately (and in any event within five (5) Business Days) to assign all Loans and Commitments then owned by such Disqualified Lender to another Lender, Eligible Assignee or, subject to Section 10.6(j), the Borrower at a purchase price equal to the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such Loans or Commitments, in each case, plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder (and the Borrower shall be entitled to seek specific performance in any applicable court of law or equity to enforce this sentence).

(d) Mechanics. Assignments and assumptions of Loans and Commitments will only be effected by manual execution and delivery to the Administrative Agent of an Assignment Agreement and will be effective as of the applicable Assignment Effective Date. In connection with all assignments there will be delivered to the Administrative Agent such forms, certificates or other evidence, if any, as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(f), together with payment to the Administrative Agent of a registration and processing fee of \$3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) (A) it is an Eligible Assignee and (B) it is not a Disqualified Lender, it being acknowledged by the Credit Parties, the Lenders and the other Secured Parties that the Administrative Agent will be entitled to rely on such representations and warranties set forth in this clause (i) without any diligence in respect to the accuracy of such representations and warranties and any breach of such representations and warranties by such Lender will not give rise to any liability on the part of the Administrative Agent; and (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be.

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder will have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and will thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder will, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender will cease to be a party hereto on the Assignment Effective Date; *provided* that anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender will continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments will be modified to reflect the Commitment of such assignee and any Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Term Loan Note hereunder, the assigning Lender will, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Term Loan Notes to the Administrative Agent for cancellation, and thereupon the Borrower will issue and deliver new Term Loan Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Loans of the assignee and/or the assigning Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with clauses (b) through (f) will be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (g).

(g) **Participations.** Each Lender will have the right at any time to sell one or more participations to any Person (other than to (x) a Disqualified Lender or (y) the Borrower or its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation; *provided* that (x) the Administrative Agent may provide a list of Disqualified Lenders to any Lender upon the request of such Lender pursuant to Section 2.7(c) and (y) with respect to any participation by a Lender to a Disqualified Lender or, to the extent the Borrower's consent is required under this Section 10.6, to any other Person, such participation will not be rendered void as a result but the Borrower shall be entitled to pursue any remedy available to them (whether at law or in equity, but excluding specific performance to unwind such participation) against the Lender and such Disqualified Lender, but in no case shall the Borrower or any other Person be entitled to pursue any remedy against the Administrative Agent. The holder of any such participation, other than an Affiliate of the Lender granting such participation, will not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the scheduled maturity of any Loan or Term Loan Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment will not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan will be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder or release all or substantially all of the guarantees in which such participant is participating. The Borrower agrees that each participant will be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; *provided* that (i) the participant agrees to be subject to the provisions of Sections 2.21 and 2.23 as if it were an assignee under Section 10.6(c), (ii) a participant will not be entitled to receive any greater payment under Sections 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Borrower's prior written consent to the participant and (iii) a participant that would be a Non-U.S. Lender if it were a Lender will not be entitled to the benefits of Section 2.20 unless the Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of the Borrower, to comply with Section 2.20 as though it were a Lender (it being understood that the documentation required under Section 2.20(f) or Section 2.20(g) will be delivered to the participant). 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 Sections 2.21 and 2.23 with respect to any participant. To the extent permitted by law, each participant also will be entitled to the benefits of Section 10.4 as though it were a Lender; *provided* that such participant agrees to be subject to Section 2.17 as though it were a Lender. Each Lender that sells a participation, acting solely for this purpose as a non-fiduciary agent of the Borrower, will maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans and Commitments (each, a "**Participant Register**"). The entries in the Participant Register will be conclusive absent manifest error, and such Lender, the Borrower and the Administrative Agent will treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such Loans and Commitments for all purposes of this Agreement, notwithstanding any notice to the contrary. No Lender will have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6, any Lender may assign and/or pledge all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Term Loan Notes, if any, to secure obligations of such Lender, including, without limitation, to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank or any central bank; *provided* that no Lender, as between the Borrower and such Lender, will be relieved of any of its obligations hereunder as a result of any such assignment and pledge; *provided, further*, in no event will the applicable Federal Reserve Bank, central bank, pledgee or trustee be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action hereunder. Without limiting the foregoing, in the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of the Borrower, the Administrative Agent or any other Person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Term Loan Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities. For the avoidance of doubt, the Administrative Agent (in its capacity as the Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(i) [Reserved].

(j) Any Lender may, so long as no Event of Default has occurred and is continuing or would result therefrom, assign all or a portion of its rights and obligations with respect to the Term Loans and the Term Loan Commitments (other than Term C Loans and Term C Loan Commitments) under this Agreement to the Borrower or any Subsidiary through (x) Dutch auctions open to all Lenders in accordance with procedures of the type described in Section 2.25 or (y) open market purchase on a non-*pro rata* basis, in each case subject to the following limitations; *provided* that:

(i) (x) if the assignee is the Borrower or any of its Subsidiaries, upon such assignment, transfer or contribution, the applicable assignee will automatically be deemed to have contributed or transferred the principal amount of such Term Loans, *plus* all accrued and unpaid interest thereon, to the Borrower; or (y) if the assignee is the Borrower (including through contribution or transfers set forth in clause (x)), (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower will be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders will reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower will promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, will reflect the cancellation of the applicable Term Loans in the Register; and

(ii) purchases of Term Loans pursuant to this subsection (j) may not be funded with the proceeds of Incremental Revolving Loans.

(k) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle (an “**SPC**”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein will constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender will be obligated to make such Loan pursuant to the terms hereof; *provided, further* that nothing herein will make the SPC a “Lender” for the purposes of this Agreement, obligate the Borrower or any other Credit Party or the Administrative Agent to deal with such SPC directly, obligate the Borrower or any other Credit Party in any manner to any greater extent than it was obligated to the Granting Lender, or increase costs or expenses of the Borrower. The Credit Parties and the Administrative Agent will be entitled to deal solely with, and obtain good discharge from, the Granting Lender and will not be required to investigate or otherwise seek the consent or approval of any SPC, including for the approval of any amendment, waiver or other modification of any provision of any Credit Document. The making of a Loan by an SPC hereunder will utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC will be liable for any indemnity or similar payment obligation under this Agreement (all liability for which will remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement will survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.6(k), any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(l) **Electronic Signatures, Etc.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement will be deemed to include electronic signatures or the keeping of records in electronic form, each of which will be of the same legal effect, validity or enforceability as a manually executed signature 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.

10.7 Independence of Covenants; Interpretation. All covenants hereunder will be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant will not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. Any dispute regarding the occurrence or continuance of a Default or Event of Default will be resolved by the Borrower and the Required Lenders (or Administrative Agent), and no Person other than the Required Lenders (or the Administrative Agent) will assert that a Default or Event of Default will have occurred and be continuing; *provided* that subject to the last paragraph of Section 10.5(c), solely in the case of Section 8.2(b) and provisions relating to any Term C Loan Payment Event of Default, references to “Required Lenders” in the immediately preceding text of this sentence will be replaced with “Required Term C Loan Lenders”. Any Default or Event of Default that has been cured (including by means of delivery or performance of an obligation after the date by which such delivery or performance was due) or waived will be deemed to no longer be continuing.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein will survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18, 2.19, 2.20, 10.2, 10.3, 10.14, 10.15 and 10.16 and the agreements of the Lenders set forth in Sections 2.17, 9.5, 9.6 and 9.8 will survive the termination of all Commitments and the termination hereof, and the payment in full of all other Obligations.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document will impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor will any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and will be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Secured Rate Contracts or any of the Bank Product Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. No Agent or any Lender will be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of the Lenders), or the Administrative Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law, any equitable cause or any intercreditor arrangement contemplated hereunder, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, will be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or any Term Loan Note will be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, will not in any way be affected or impaired thereby.

10.12 Obligations Several; Independent Nature of the Lenders' Rights.

(a) The obligations of the Lenders hereunder are several and no Lender will be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, will be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender will be a separate and independent debt, and each Lender will be entitled to protect and enforce its rights arising out hereof and it will not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

(b) Each Lender acknowledges and agrees that it will act collectively through the Administrative Agent and, without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders will direct the Administrative Agent with respect to the exercise of rights and remedies hereunder (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders), and such rights and remedies will not be exercised other than through the Administrative Agent; *provided* that subject to the last paragraph of Section 10.5(c), solely in the case of Section 8.2(b) and provisions relating to any Term C Loan Payment Event of Default, references to "Required Lenders" in the immediately preceding text of this sentence will be replaced with "Required Term C Loan Lenders".

10.13 Headings. Section headings herein are included herein for convenience of reference only and will not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 Applicable Law. This Agreement and the rights and obligations of the parties hereunder will be governed by, and will be construed and enforced in accordance with, the laws of the State of New York; provided that (x) the interpretation of the definition of Company Material Adverse Effect and whether there shall have occurred a Company Material Adverse Effect, (y) whether the representations and warranties made with respect to the Acquired Business in the Merger Agreement are accurate and whether as a result of a breach or inaccuracy thereof the Borrower (or its affiliate) has the right to terminate its obligations under the Merger Agreement, or refuse to consummate the transactions contemplated by the Merger Agreement and (z) whether the Acquisition has been consummated in accordance with the terms of the Merger Agreement, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than the State of Delaware; *provided further* that matters relating to the fiduciary duties of the Company Board (as defined in the Merger Agreement) and internal corporate affairs of the Closing Date Target shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the Commonwealth of Massachusetts.

10.15 Consent to Jurisdiction. All judicial proceedings brought against any Credit Party arising out of or relating hereto or any other Credit Document, or any of the Obligations, will be brought in any state or Federal court of competent jurisdiction in the State and County of New York, Borough of Manhattan, and appellate courts thereof (except to the extent the Administrative Agent requires submission to any other jurisdiction in connection with the exercise of any rights under any Credit Document or the enforcement of any judgement). By executing and delivering this Agreement, each Credit Party, for itself and in connection with its properties, irrevocably (a) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (b) waives any defense of forum non conveniens; (c) agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable Credit Party at its address provided in accordance with Section 10.1; (d) agrees that service as provided in clause (c) above is sufficient to confer personal jurisdiction over the applicable Credit Party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and (e) agrees that Agents and Lenders retain the right to serve process in any other manner permitted by law or to bring proceedings against any Credit Party in the courts of any other jurisdiction.

10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF THE PARTIES HERETO WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

10.17 Confidentiality; Tombstones; Etc.

(a) Confidentiality. Each Agent and each Lender will (A) not furnish any Nonpublic Information identified as such by the Borrower to any other Person and (B) treat all Nonpublic Information with the same degree of care as it treats its own confidential information, it being understood and agreed by the Borrower that, in any event, an Agent or a Lender may make (i) disclosures of such information to Affiliates of such Agent, or such Lender, to their and such Affiliates' shareholders, officers, directors, employees, legal counsel, independent auditors and other experts, advisors or agents who need to know such information in connection with the transactions contemplated hereby, are informed of the confidential nature of such information and are instructed to keep such information confidential other than any Disqualified Lender, (ii) disclosure to any rating agency when required by it, (iv) disclosures required or requested by any Governmental Authority or self-regulatory authority or representative thereof or by the NAIC or pursuant to legal or judicial process, including in connection with assignments or pledges made pursuant to Section 10.6(h); *provided* that, unless specifically prohibited by applicable law, court order or any Governmental Authority or representative thereof, each Agent and each Lender will notify the Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Agent or such Lender by such Governmental Authority or representative thereof or self-regulatory authority or any such request pursuant to the Right to Financial Privacy Act of 1978) for disclosure of any such Nonpublic Information prior to disclosure of such information, (v) disclosures in connection with the enforcement of its rights under any Credit Document, (vi) disclosures to any other party to this Agreement, (vii) disclosures to an actual or prospective assignee, participant or any potential counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of its Affiliates or any of their respective obligations (*provided* that such assignee, participant or counterparty is not a Disqualified Lender and is advised of and agrees to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17), (viii) disclosures with the consent of the Borrower and (ix) disclosures to the extent such Nonpublic Information (A) becomes publicly available other than as a result of a breach of this Section 10.17 or (B) becomes available to such Agent or such Lender on a non-confidential basis from a source other than the Borrower or any Subsidiary or any of their respective Affiliates that is not known by such Agent or such Lender to be subject to confidentiality obligations to the Borrower or any Subsidiary or their respective Affiliate. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Credit Documents. For the avoidance of doubt, in no event will any Agent or any Lender disclose Nonpublic Information to any Disqualified Lender unless such disclosure is otherwise consented to by the Borrower.

(b) Tombstones. Each Credit Party consents to the publication by the Lead Arranger of advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose, and the circulation of similar promotional materials, on and following the Closing Date in the form of a "tombstone" or otherwise, containing information customarily included in such advertisements and materials consisting of (i) the names of the Borrower and its Affiliates (or any of them), (ii) the Lead Arranger and its Affiliates' titles and roles in connection with the Transactions and (iii) the amount, type and closing date of the Commitments and the Loans.

10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law will not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder will bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower will pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess will be cancelled automatically and, if previously paid, will at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission will be as effective as delivery of a manually executed counterpart hereof.

10.20 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.21 Effectiveness; Entire Agreement. This Agreement will become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the Borrower and the Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.22 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), may have economic interests that conflict with those of the Credit Parties. Each Credit Party acknowledges and agrees:

(a) nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Lenders and each Credit Party, its stockholders or its affiliates;

(b) the transactions contemplated by the Credit Documents are arm's-length commercial transactions between the Lenders, on the one hand, and each Credit Party, on the other;

(c) in connection therewith and with the process leading to such transaction each of the Lenders is acting solely as a principal and not the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person;

(d) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Lender or any of its affiliates has advised or is currently advising any Credit Party on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents;

(e) each Credit Party has consulted its own legal and financial advisors to the extent it deemed appropriate;

(f) each Credit Party is responsible for making its own independent judgment with respect to such transactions and the process leading thereto; and

(g) no Credit Party will claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to any Credit Party, in connection with such transaction or the process leading thereto.

10.23 No Third Parties Benefit. This Agreement is made and entered into for the sole protection and legal benefit of the Borrower, the Lenders, party hereto, the Agents and each other Secured Party, and their permitted successors and assigns, and no other Person will be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Credit Documents. No Agent or any Lender will have any obligation to any Person not a party to this Agreement or the other Credit Documents.

10.24 PATRIOT Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the PATRIOT Act.

10.25 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

BORROWER:

COHU, INC.

By: /s/ Jeffrey D. Jones

Name: Jeffrey D. Jones

Title: Chief Financial Officer

[Project Xavier - Signature Page to Credit and Guaranty Agreement]

GUARANTOR SUBSIDIARIES:

**DELTA DESIGN, INC.
KITA USA, INC.
ROSENHEIM AUTOMATION SYSTEMS
CORPORATION
XCERRA CORPORATION
MULTITEST ELECTRONIC SYSTEMS INC.
EVERETT CHARLES TECHNOLOGIES LLC
XCERRA INTERNATIONAL INC.**

By: /s/ Jeffrey D. Jones
Name: Jeffrey D. Jones
Title: Chief Financial Officer

[Project Xavier - Signature Page to Credit and Guaranty Agreement]

DEUTSCHE BANK AG NEW YORK BRANCH, as
Administrative Agent, Collateral Agent and a Lender

By: /s/ Marguerite Sutton
Name: Marguerite Sutton
Title: Vice President

By: /s/ Alicia Schug
Name: Alicia Schug
Title: Vice President

[Project Xavier - Signature Page to Credit and Guaranty Agreement]

Initial Term B Loan Commitments

Lender	Initial Term B Loan Commitment	Pro Rata Share
Deutsche Bank AG New York Branch	\$350,000,000	100.000000000%
Total:	\$350,000,000	100.000000000%

Appendix A-1-1

Term C Loan Commitments

Lender	Term C Loan Commitment	Pro Rata Share
Deutsche Bank AG New York Branch	\$0	N/A
Total:	\$0	N/A

Appendix A-2-1

Notice Addresses

- (i) if to the Borrower or any other Credit Party:

Cohu, Inc.
Chief Financial Officer
12367 Crosthwaite Circle
Poway, CA 92064
Attention: Jeffrey D. Jones (jjones@cohu.com)

and

Cohu, Inc.
General Counsel
12367 Crosthwaite Circle
Poway, CA 92064
Attention: Tom Kampfner (TKampfner@cohu.com)

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

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Attention: Duane McLaughlin (dmclaughlin@cgsh.com)

- (ii) if to the Administrative Agent or the Collateral Agent:

Deutsche Bank AG New York Branch
60 Wall Street
New York, New York 10005
Attention: Agency Transactions (Agency.Transactions@db.com)

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

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020-1095
Attention: Eric F. Leicht (eleicht@whitecase.com)

PLEDGE AND SECURITY AGREEMENT

dated as of October 1, 2018

by and among

COHU, INC.,

EACH OF THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

and

DEUTSCHE BANK AG NEW YORK BRANCH,
as Collateral Agent

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Exhibits*

Exhibit A	Form of Pledge Supplement
Exhibit B	Form of Copyright Security Agreement
Exhibit C	Form of Patent Security Agreement
Exhibit D	Form of Trademark Security Agreement

* The Form of Counterpart Agreement (for purposes of joining additional Persons as Guarantors under the Credit Agreement and as Additional Grantors pursuant to Section 7.2 of this Agreement) is set forth as Exhibit H to the Credit Agreement.

PLEDGE AND SECURITY AGREEMENT

This **PLEDGE AND SECURITY AGREEMENT**, dated as of October 1, 2018 (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), by and among **COHU, INC.**, a Delaware corporation (the “**Borrower**”), each of the Subsidiaries party hereto from time to time, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each (including the Borrower), a “**Grantor**”), and **DEUTSCHE BANK AG NEW YORK BRANCH** (“**DBNY**”), as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns, the “**Collateral Agent**”).

RECITALS:

WHEREAS, reference is made to that certain Credit and Guaranty Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among the Borrower, the Subsidiaries from time to time party thereto, the Lenders and other parties from time to time party thereto, and DBNY, as Administrative Agent and as Collateral Agent;

WHEREAS, subject to the terms and conditions of the Credit Agreement, the Borrower or any Subsidiary may enter into one or more Bank Product Agreements with one or more Bank Product Providers and/or enter into one or more Secured Rate Contracts with one or more Secured Swap Providers; and

WHEREAS, in consideration of the extensions of credit and other accommodations of the Lenders, the Bank Product Providers and the Secured Swap Providers as set forth in the Credit Agreement, the Bank Product Agreements and the Secured Rate Contracts, respectively, each Grantor has agreed to secure the Secured Obligations (as defined below) as set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Collateral Agent agree as follows:

SECTION 1. DEFINITIONS; INTERPRETATION

1.1 GENERAL DEFINITIONS. IN THIS AGREEMENT, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

“**Additional Grantors**” has the meaning assigned thereto in Section 7.2.

“**Agreement**” has the meaning set forth in the preamble.

“**Borrower**” has the meaning set forth in the preamble.

“**Cash Proceeds**” has the meaning assigned thereto in Section 9.7.

“**Collateral**” has the meaning assigned thereto in Section 2.1.

“**Collateral Account**” means any deposit account established by the Collateral Agent.

“**Collateral Agent**” has the meaning set forth in the preamble.

“Collateral Records” means books, records, ledger cards, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer Software and related documentation, computer printouts, tapes, disks and other electronic storage media and related data processing Software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or useful in the collection thereof or realization thereupon.

“Collateral Support” means all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“Control” means (a) with respect to any Deposit Accounts, control within the meaning of Section 9-104 of the UCC, (b) with respect to any Securities Accounts, Security Entitlements, Commodity Contract or Commodity Account, control within the meaning of Section 9-106 of the UCC, (c) with respect to any Uncertificated Securities, control within the meaning of Section 8-106(c) of the UCC, (d) with respect to any Certificated Security, control within the meaning of Section 8-106(a) or (b) of the UCC, (e) with respect to any Electronic Chattel Paper, control within the meaning of Section 9-105 of the UCC, (f) with respect to Letter of Credit Rights, control within the meaning of Section 9-107 of the UCC and (g) with respect to any “transferable record” (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), control within the meaning of Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in the jurisdiction relevant to such transferable record.

“Copyright Licenses” means any and all written agreements and licenses providing for the granting of any right in or to Copyrights (whether the applicable Grantor is licensee or licensor thereunder), in each case to the extent not an Excluded Asset.

“Copyright Security Agreement” means a Copyright Security Agreement substantially in the form of Exhibit B, with such amendments or modifications as may be approved by the Collateral Agent.

“Copyrights” means, with respect to any Grantor, all of such Grantor’s right, title and interest in and to all United States copyrights, including copyrights in Software and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and applications for any of the foregoing, including: (a) all registrations and applications therefor including the registrations required to be listed in Schedule 5.2 under the heading “Registered U.S. Copyrights and Copyright Applications” (as such schedule may be amended or supplemented from time to time), (b) all extensions and renewals thereof, (c) all rights corresponding thereto throughout the world, (d) all rights to sue for past, present and future infringements thereof and (e) all Proceeds of the foregoing, including license fees, royalties, income, payments, claims, damages and proceeds of suit, in each case to the extent not an Excluded Asset.

“Credit Agreement” has the meaning set forth in the recitals.

“DBNY” has the meaning set forth in the preamble.

“Excluded Account” means any payroll account, employee wage and benefit account, tax account, escrow account, fiduciary account or trust account.

“Excluded Asset” means any asset of any Grantor excluded from the security interest hereunder by virtue of Section 2.2 but only to the extent, and for so long as, so excluded thereunder.

“**Grantor**” has the meaning set forth in the preamble.

“**Insurance**” means all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof).

“**Intellectual Property**” means, with respect to any Grantor, collectively, the Copyrights, the Patents, the Trademarks and the Trade Secrets.

“**Intellectual Property Licenses**” means, collectively, the Copyright Licenses, Patent Licenses, Trademark Licenses and Trade Secret Licenses.

“**Intercreditor Agreements**” means, as of any date of determination, any Pari Passu Lien Intercreditor Agreement and/or any Junior Lien Intercreditor Agreement to which the Collateral Agent is a party and which is in effect as of such date.

“**Investment Accounts**” means the Collateral Account, Securities Accounts, Commodities Accounts and Deposit Accounts, in each case to the extent not an Excluded Asset.

“**Investment Related Property**” means (a) all “investment property” (as such term is defined in Article 9 of the UCC) and (b) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt and the Investment Accounts.

“**Knowledge**” means the actual knowledge of an Executive Officer of the applicable Grantor.

“**Material Intellectual Property**” means any Intellectual Property included in the Collateral that is material to the business of the Grantors, taken as a whole.

“**Patent Licenses**” means all written agreements and licenses providing for the granting of any right in or to Patents (whether the applicable Grantor is licensee or licensor thereunder), in each case to the extent not an Excluded Asset.

“**Patent Security Agreement**” means a Patent Security Agreement substantially in the form of Exhibit C, with such amendments or modifications as may be approved by the Collateral Agent.

“**Patents**” means, with respect to any Grantor, all of such Grantor’s right, title and interest in and to, all United States patents and equivalents thereof in any other country, and applications for any of the foregoing, including: (a) each patent and patent application required to be listed in Schedule 5.2 under the heading “U.S. Patents and Patent Applications” (as such schedule may be amended or supplemented from time to time), (b) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof, (c) all rights corresponding thereto throughout the world, (d) all inventions and improvements claimed therein, (e) all rights to sue for past, present and future infringements thereof and (f) all Proceeds of the foregoing, including license fees, royalties, income, payments, claims, damages and proceeds of suit, in each case to the extent not an Excluded Asset.

“**Pledge Supplement**” means any supplement to this Agreement substantially in the form of Exhibit A.

“**Pledged Debt**” means all Indebtedness for borrowed money owed to any Grantor, whether or not evidenced by any Instrument, including all intercompany loans and advances and all Indebtedness described on Schedule 5.2 under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the Instruments, if any, evidencing such any of the foregoing, and all interest, cash, Instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing, in each case to the extent not an Excluded Asset.

“Pledged Equity Interests” means all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and any other participation or interests in any equity or profits of any Person or business entity including any trust, all Capital Stock described on Schedule 5.2 under the heading “Other Pledged Equity Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such interests and Capital Stock and any interest of any Grantor on the books and records of such Person or on the books and records of any Securities Intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, Instruments, Securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such interests and Capital Stock, in each case to the extent not an Excluded Asset.

“Pledged LLC Interests” means all interests in any limited liability company and each series thereof including all limited liability company interests listed on Schedule 5.2 under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of any Grantor on the books and records of such limited liability company or on the books and records of any Securities Intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, Instruments, Securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests and all rights as a member of the related limited liability company, in each case to the extent not an Excluded Asset.

“Pledged Partnership Interests” means all interests in any general partnership, limited partnership, limited liability partnership or other partnership including all partnership interests listed on Schedule 5.2 under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of any Grantor on the books and records of such partnership or on the books and records of any Securities Intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, Instruments, Securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests and all rights as a partner of the related partnership, in each case to the extent not an Excluded Asset.

“Pledged Stock” means all shares of capital stock owned by any Grantor in a corporation, including all shares of capital stock described on Schedule 5.2 under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of any Grantor in the entries on the books of the issuer of such shares or on the books of any Securities Intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, Instruments, Securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares, in each case to the extent not an Excluded Asset.

“Receivables” means all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of each Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records, in each case to the extent not an Excluded Asset.

“Receivables Records” means (a) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (b) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices and other papers relating to Receivables, including all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for such Grantor or otherwise, (c) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors, secured parties or agents thereof, and certificates, acknowledgments, or other writings, including lien search reports, from filing or other registration officers, (d) all credit information, reports and memoranda relating thereto and (e) all other written or non-written forms of information related in any way to the foregoing or any Receivable, in each case to the extent not an Excluded Asset.

“Secured Obligations” has the meaning assigned in Section 3.1.

“Software” means computer programs, object code, source code and supporting documentation, including, without limitation, “software” as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York and computer programs that may be construed as included in the definition of “goods” in the Uniform Commercial Code as in effect on the date hereof in the State of New York, including any licensed rights to Software, and all media that may contain Software or recorded data of any kind.

“Trademark Licenses” means any and all written agreements and licenses providing for the granting of any right in or to Trademarks (other than such licenses that are ancillary to other commercial agreements) or permitting co-existence (whether the applicable Grantor is licensee or licensor thereunder), in each case to the extent not an Excluded Asset.

“Trademark Security Agreement” means a Trademark Security Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by the Collateral Agent.

“Trademarks” means, with respect to any Grantor, all of such Grantor’s right, title and interest in and to, all United States trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers of a like nature, all registrations and applications for any of the foregoing including: (a) the registrations and applications referred to in Schedule 5.2 under the heading “U.S. Trademark Registrations and Trademark Applications” (as such schedule may be amended or supplemented from time to time), (b) all extensions or renewals of any of the foregoing, (c) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (d) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill and (e) all Proceeds of the foregoing, including license fees, royalties, income, payments, claims, damages and proceeds of suit, in each case to the extent not an Excluded Asset.

“Trade Secret Licenses” means any and all written agreements providing for the granting of any right in or to Trade Secrets (whether the applicable Grantor is licensee or licensor thereunder).

“**Trade Secrets**” means, with respect to any Grantor, all of such Grantor’s right, title and interest in and to, all trade secrets and all other confidential or proprietary information and know-how whether or not the foregoing has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to the foregoing, including: (a) the right to sue for past, present and future misappropriation or other violation thereof and (b) all Proceeds of the foregoing, including license fees, royalties, income, payments, claims, damages and proceeds of suit, in each case to the extent not an Excluded Asset.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if by reason of mandatory provisions of law the perfection, the effect of perfection or non-perfection, the priority of, or remedies with respect to, the security interests of the Collateral Agent in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, the term “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority or remedies.

“**United States**” or “**U.S.**” means the United States of America.

1.2 UCC Definitions. The following capitalized terms have the respective meanings set forth in the UCC: Account, Account Debtor, Bank, Certificated Security, Chattel Paper, Commercial Tort Claims, Commodity Account, Commodity Contract, Deposit Account, Document, Electronic Chattel Paper, Entitlement Order, Equipment, Fixtures, General Intangibles, Goods, Inventory, Letter of Credit Right, Money, Payment Intangible, Proceeds, Record, Securities Account, Securities Intermediary, Security, Security Certificate, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security. In addition, the capitalized term Instrument has the meaning assigned thereto in Article 9 of the UCC.

1.3 Credit Agreement Definitions; Interpretation. All other capitalized or non-capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein have the meanings ascribed thereto in the Credit Agreement. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References to “hereof” or “herein” mean of or in this Agreement, as applicable. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document). The words “asset” and “property” shall be construed to have the same meaning and effect. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Any reference to any law or regulation shall (a) include all statutory and regulatory provisions consolidating, replacing or interpreting or supplementing such law or regulation and (b) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article or Division of the UCC.

SECTION 2. GRANT OF SECURITY

2.1 Grant of Security. Each Grantor hereby grants and pledges to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and continuing lien on all of such Grantor's right, title and interest in, to and under all personal property of such Grantor including the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the "Collateral"):

- (a) each and every Account;
- (b) Chattel Paper;
- (c) Documents;
- (d) General Intangibles;
- (e) Goods, including Inventory and Equipment;
- (f) Instruments;
- (g) Intellectual Property and Intellectual Property Licenses;
- (h) Software;
- (i) Investment Related Property (including Deposit Accounts and Securities Accounts);
- (j) Letter of Credit Rights;
- (k) Receivables and Receivable Records;
- (l) Commercial Tort Claims described on Schedule 5.2;
- (m) all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing; and
- (n) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing;

provided that, notwithstanding any other provision set forth in this Agreement, this Agreement shall not, at any time, constitute a grant of a security interest or Lien upon any property that is, at such time, an Excluded Asset, and the term "Collateral" shall not include any Excluded Asset.

2.2 Certain Limited Exclusions. Notwithstanding anything herein or in any other Credit Document to the contrary, in no event shall the Collateral include, or the security interest granted, assigned and pledged under Section 2.1, attach to:

(a) any license, sublicense, instrument, contract or other agreement to which any Credit Party is a party, and any of its rights or interest thereunder, and any assets to the extent that a security interest therein:

(i) is prohibited by or in violation of any law, rule or regulation or agreement with any Governmental Authority applicable to such Credit Party or requires governmental (including regulatory) consent, approval, license or authorization,

(ii) is prohibited by or in violation of the terms of any such license, sublicense, instrument, contract or other agreement or would create a right of termination in favor of any unaffiliated third party; *provided* that any such prohibition in any license, sublicense instrument, contract or agreement was not entered into for the purpose of qualifying for the exclusion in this clause (a)(ii),

(iii) in the case of assets subject to liens securing permitted acquired debt (limited to the acquired assets), sale and leaseback transactions, purchase money debt or capital lease obligations permitted under the Credit Agreement, to the extent and for so long as the agreements governing such debt or capital lease obligations do not permit the grant of a security interest in such assets or require the consent of any person (other than a Credit Party) as a condition to the creation of any other security interest on such asset or if the granting of a security interest in such assets would create a right of termination in favor of any other party thereto, and, in each case, such prohibition or requirement is permitted under the Credit Agreement, or

(iv) in the case of assets acquired after the Closing Date, to the extent and for so long as the grant of a security interest in such asset is not permitted pursuant to the terms of a contract binding on such asset at the time of acquisition thereof and was not entered into in contemplation of such acquisition;

in each case of clauses (i) through (iii), after giving effect to the applicable anti-assignment provisions of the UCC and other applicable Laws, other than proceeds and receivables thereof the assignment of which is expressly deemed effective under the UCC or other applicable laws notwithstanding such prohibition; *provided* that such license, sublicense, instrument, contract or other agreement or other asset shall cease to be an Excluded Asset and the security interest granted under Section 2.1 shall attach immediately at such time as the applicable limitation set forth herein shall cease to be in effect;

(b) any asset, to the extent that a security interest therein reasonably would be expected to result in material adverse tax consequences to the Borrower or its Subsidiaries (including, for the avoidance of doubt, any tax consequences to any such entity in respect of which a tax payment may be made) as reasonably determined by the Borrower in consultation with the Administrative Agent;

(c) the outstanding stock of any Excluded Foreign Subsidiary, with the exception of (i) Voting Capital Stock not in excess of 65% of the voting power of all classes of Voting Capital Stock then outstanding of an Excluded Foreign Subsidiary owned directly by the Borrower or by any Guarantor Subsidiary or (ii) stock of an Excluded Foreign Subsidiary owned directly by the Borrower or by any Guarantor Subsidiary that is not Voting Capital Stock;

(d) (A) any “intent-to-use” trademark or service mark application, filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing and acceptance of a “Statement of Use” and issuance of a “Certificate of Registration” pursuant to Section 1(d) of the Lanham Act or an accepted filing of an “Amendment to Allege Use” whereby such intent-to-use trademark application is converted to a “use in commerce” application pursuant to Section 1(c) of the Lanham Act with respect thereto (it being understood that after such period such application shall be automatically subject to the security interest granted herein and deemed to be included in the Collateral) or (B) and any other Intellectual Property in any jurisdiction where such pledge or security interest would cause the invalidation or abandonment of such Intellectual Property under applicable Law;

(e) (A) any Capital Stock of any joint venture or any non-wholly owned Subsidiary, in each case to the extent that a security interest is not permitted by the terms of such Person's organizational or joint venture documents or other agreements with holders of such Capital Stock, other than to the extent that any such term would be rendered ineffective under the UCC of any relevant jurisdiction or any other applicable Law (including the Bankruptcy Code), in each case after giving effect to the applicable anti-assignment provisions of the UCC and other applicable Law; *provided* that such Capital Stock shall cease to be an Excluded Asset and the security interest granted under Section 2.1 shall attach immediately at such time as such prohibition ceases to be in effect; and (B) any Margin Stock;

(f) any Excluded Real Estate Assets;

(g) any Excluded Accounts;

(h) to the extent a security interest therein could not be perfected by the filing of a UCC-1 financing statement:

(i) motor vehicles, airplanes and any other assets subject to certificates of title, including aircraft engines, or helicopters or other assets constituting a part thereof;

(ii) any Letter of Credit Rights with a value of less than \$1,000,000;

(iii) Commercial Tort Claims with a value equal to or less than \$5,000,000; and

(i) any property or asset with respect to which the Collateral Agent and the Borrower reasonably agree in writing that the cost, burden, difficulty or consequence (including adverse tax consequences) of obtaining, perfecting or maintaining a security interest in such property or asset outweighs the benefits of the security afforded thereby.

Notwithstanding anything contained herein or in any other Credit Document to the contrary (other than as provided in this Section 2.2), no Grantor shall be required to take any action intended to cause any Excluded Asset to constitute Collateral and none of the covenants, representations and warranties or other agreements of any Grantor with respect to any Collateral shall be deemed to apply to any property or asset constituting an Excluded Asset unless and until such property or asset ceases to constitute an Excluded Asset.

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE

3.1 Security for Obligations. This Agreement and the grant of the security interest in Section 2.1 secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a) (and any successor provision thereof) (including interest, fees, premium, expenses and other charges accruing on or after the commencement of any Bankruptcy Proceeding at the rate provided for in the Credit Documents or as otherwise required by the relevant court, in a final and non-appealable decision, whether or not such interest, fees, premium, expenses or other charges are allowed or allowable in any such Bankruptcy Proceeding)), of all Obligations other than with respect to a Grantor, any Excluded Swap Obligations of such Grantor (the "**Secured Obligations**").

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (a) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party, (b) each Grantor shall remain liable under each of the agreements included in the Collateral, including any agreements relating to Pledged Partnership Interests, Pledged Stock, Pledged LLC Interests or other Pledged Equity Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto and neither the Collateral Agent nor any other Secured Party shall have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including any agreements relating to Pledged Partnership Interests, Pledged Stock, Pledged LLC Interests or other Pledged Equity Interests, and (c) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. CERTAIN PERFECTION REQUIREMENTS

4.1 Delivery Requirements.

(a) With respect to any Certificated Securities included in the Collateral, each Grantor shall (on the Closing Date or with respect to Certificated Securities acquired or created after the date hereof) deliver to the Collateral Agent the Security Certificates evidencing such Certificated Securities duly indorsed by an effective indorsement (within the meaning of Section 8-107 of the UCC) or accompanied by transfer powers or other instruments of transfer duly endorsed by such an effective endorsement, in each case, to the Collateral Agent or in blank along with irrevocable proxies in form and substance satisfactory to the Collateral Agent, by the later of (x) thirty (30) days after the acquisition thereof, or (y) the timing required pursuant to Section 4.6(b), or such longer time as the Collateral Agent may agree in its reasonable discretion.

(b) With respect to any Instrument (other than any Instrument deposited or to be deposited for collection in the ordinary course of business) or Tangible Chattel Paper included in the Collateral with a face amount in excess of \$500,000 individually (provided that there shall not be Tangible Chattel Paper worth more than \$1,000,000 in the aggregate that shall remain undelivered to Collateral Agent at any time), each Grantor shall (on the Closing Date or with respect to Instruments or Tangible Chattel Paper acquired or created after the date hereof, deliver to the Collateral Agent all such Instruments or Tangible Chattel Paper duly indorsed in blank, by the later of (x) thirty (30) days after the acquisition thereof, or (y) the timing required pursuant to Section 4.6(b), or such longer time as the Collateral Agent may agree in its reasonable discretion.

4.2 Intellectual Property Recording Requirements.

(a) In the case of any Collateral consisting of U.S. registered Copyrights and applications therefor, the applicable Grantor shall execute and deliver to the Collateral Agent a Copyright Security Agreement substantially in the form of Exhibit B hereto (or a supplement thereto) for recordation with the U.S. Copyright Office covering all such Copyrights with respect to the security interest of the Collateral Agent.

(b) In the case of any Collateral consisting of issued U.S. Patents and applications therefor, the applicable Grantor shall execute and deliver to the Collateral Agent a Patent Security Agreement substantially in the form of Exhibit C hereto (or a supplement thereto) for recordation with the U.S. Patent and Trademark Office covering all such Patents with respect to the security interest of the Collateral Agent.

(c) In the case of any Collateral consisting of U.S. registered Trademarks and applications therefor, the applicable Grantor shall execute and deliver to the Collateral Agent a Trademark Security Agreement substantially in the form of Exhibit D hereto (or a supplement thereto) for recordation with the U.S. Patent and Trademark Office covering all such Trademarks with respect to the security interest of the Collateral Agent.

(d) Notwithstanding anything in this Agreement to the contrary, other than the filings set forth in the foregoing Sections 4.2(a)-(c), no Grantor shall be obligated to take any other steps or actions in connection with the grant or perfection of the security interest of the Collateral Agent in any Collateral consisting of Intellectual Property.

4.3 Pledged Partnership Interests and Pledged LLC Interests. With respect to any Pledged Partnership Interests and Pledged LLC Interests included in the Collateral, if any Grantor owns less than 100% of the Capital Stock in any issuer of such Pledged Partnership Interests or Pledged LLC Interests, such Grantor shall use commercially reasonable efforts to obtain the consent of each other holder of the partnership interests or limited liability company interests in such issuer only if such other holder is another Grantor or a Subsidiary of any Grantor to the security interest of the Collateral Agent hereunder and, at any time during the continuance of an Event of Default, the transfer of such Pledged Partnership Interests and Pledged LLC Interests to the Collateral Agent or its designee and the substitution of such Grantor by the Collateral Agent or its designee as a partner or member with all the rights and powers related thereto. Each Grantor consents to the grant by each other Grantor of a Lien in all Investment Related Property to the Collateral Agent and without limiting the generality of the foregoing consents to the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Collateral Agent or its designee during the continuance of an Event of Default and to the substitution of the Collateral Agent or its designee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

4.4 Commercial Tort Claims. If any Grantor shall at any time after the date of this Agreement file in a court a competent jurisdiction a Commercial Tort Claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) or \$5,000,000 or more, such Assignor shall deliver to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with a supplement to Schedule 5.2, identifying such Commercial Tort Claim, to be completed in accordance with Section 4.6(b).

4.5 Control. No control agreements shall be required hereunder or under any other Credit Document at any time with respect to any Investment Account.

4.6 Timing.

(a) Notwithstanding anything herein to the contrary, to the extent that any Grantor party to this Agreement on the Closing Date does not or cannot create or perfect, after use of commercially reasonable efforts to do so, on the Closing Date the Collateral Agent's security interest in any Collateral required to be created or perfected by this Agreement or deliver any Collateral other than, in each case, the creation, perfection and delivery required by Section 3.1(m) of the Credit Agreement (other than to the extent that a Lien on such Collateral may be perfected by (i) the filing of a financing statement under the UCC or (ii) the delivery of Certificated Securities representing the equity interests of the Borrower's direct Subsidiaries), such Grantor will not be required to create or perfect the Collateral Agent's security interest in such Collateral or deliver such Collateral until the date that is, with respect to any other Collateral owned by such Grantor on the Closing Date immediately following the Transactions, ninety (90) days after the Closing Date (or such longer period as the Collateral Agent may agree in its reasonable discretion).

(b) Except as otherwise set forth in this Agreement or the Credit Agreement, with respect to any Collateral acquired after the Closing Date and Collateral of any Person that becomes a Grantor after the Closing Date, such Grantor shall comply with the requirements of this Section 4 on or prior to the date on which the next quarterly Compliance Certificate, or in the case of Intellectual Property, annual compliance certificate, is due pursuant to Section 5.1(e) of the Credit Agreement (or in each case, such later date agreed to by the Collateral Agent in its reasonable discretion); *provided* that, (i) each Grantor shall use commercially reasonable efforts to comply with the requirements of this Section 4 in the case of Intellectual Property on or prior to the date on which the next quarterly Compliance Certificate is due pursuant to Section 5.1(e) of the Credit Agreement and (ii) with respect to any Person that becomes a Grantor after the Closing Date, such Person shall have thirty (30) days from the date of becoming a Grantor (or such later date agreed to by the Collateral Agent in its reasonable discretion) to comply with the requirements of this Section 4.

SECTION 5. CERTAIN REPRESENTATIONS AND WARRANTIES

Each Grantor hereby represents and warrants, on the Closing Date and on each Credit Date, that:

5.1 Grantor Information and Status.

(a) As of the Closing Date, Schedule 5.1(A) sets forth under the appropriate headings with respect to each Grantor: (1) the full legal name of such Grantor, (2) its type of organization, (3) its jurisdiction of organization, (4) the jurisdiction where its chief executive office or its sole place of business is located and (5) its organizational identification number, if any.

(b) As of the Closing Date, Schedule 5.1(B) sets forth under the appropriate headings with respect to each applicable Grantor, if any, all trade names or other names under which such Grantor currently conducts business.

(c) Except as provided on Schedule 5.1(C), no Grantor has changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise), in each case, within the five (5) years preceding the Closing Date.

(d) As of the Closing Date, Schedule 5.1(D) sets forth (i) the appropriate filing offices for the financing statements attached hereto with respect to each Grantor and (ii) the appropriate filing offices for the filings described in Section 4.2. No other filings are required in the United States to perfect the security interests in the Collateral granted to the Collateral Agent pursuant to the Collateral Documents.

5.2 Collateral Identification, Special Collateral.

(a) Schedule 5.2 sets forth, as of the Closing Date, under the appropriate headings all of each Grantor's: (i) Investment Related Property comprised of (x) Pledged Equity Interests and (y) Pledged Debt having an aggregate principal amount outstanding on the Closing Date in excess of \$1,000,000, (ii) Intellectual Property comprised of United States Copyright registrations and United States registrations of and applications for Patents and Trademarks, in each case, owned by such Grantor, (iii) Commercial Tort Claims filed in a court of competent jurisdiction with a value in excess of \$5,000,000 and (iv) Letter of Credit Rights with a value in excess of \$1,000,000.

(b) All information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

5.3 Status of Security Interest.

(a) Upon the filing of financing statements naming each Grantor as "debtor" and the Collateral Agent as "secured party" and describing the Collateral (which may include "all assets" or words of similar effect) in the filing offices set forth opposite such Grantor's name on Schedule 5.1(D) (as such schedule may be amended or supplemented from time to time), the security interests of the Collateral Agent in all Collateral of such Grantor that can be perfected by the filing of a financing statement under the UCC as in effect in any jurisdiction will constitute valid, perfected, first priority Liens, subject to any Permitted Liens. Each agreement purporting to give the Collateral Agent Control over any Collateral is effective to establish the Collateral Agent's Control of the Collateral subject thereto to the extent required under Section 4.1.

(b) To the extent perfection or priority of the security interest therein is not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in U.S. registered Copyrights and Copyright applications, U.S. issued Patents and Patent applications or U.S. registered Trademarks and applications therefor, in each case owned by such Grantor, in the United States Copyright Office or the United States Patent and Trademark Office, as applicable, the security interests granted to the Collateral Agent hereunder in such Intellectual Property shall constitute valid, perfected, first priority Liens, subject to any Permitted Liens, to the extent a security interest may be perfected by such recording.

(c) No authorization, consent, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other Person is required for either (i) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder or (ii) to such Grantor's Knowledge, the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable Law), except (A) for the filings contemplated by clauses (a) and (b) above and (B) as may be required, in connection with the disposition of any Investment Related Property, by Laws generally affecting the offering and sale of Securities.

(d) Notwithstanding anything herein to the contrary, no Grantor makes any representation or warranty as to the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to this Agreement.

5.4 Pledged Equity Interests, Investment Related Property.

(a) The applicable Grantor is the record and beneficial owner of the Pledged Equity Interests purported to be owned by it, free of all Liens, rights or claims of other Persons (other than Permitted Liens) and, except as permitted by the Credit Agreement, there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests.

(b) No consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary in connection with the creation, perfection or first priority (subject to Permitted Liens) Lien status of the security interest of the Collateral Agent in any Pledged Equity Interests or the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof except such as have been obtained.

(c) None of the Pledged LLC Interests and Pledged Partnership Interests represents interests that by their terms provide that they are Securities governed by the UCC of an applicable jurisdiction unless such Pledged LLC Interests or Pledged Partnership Interests are represented by a certificate and the applicable Grantor complies with the requirements of Section 4.1(a) with respect thereto.

5.5 Intellectual Property.

(a) The U.S. Copyrights, Patents and Trademarks listed on Schedule 5.2 include all material U.S. Copyrights, Patents and Trademarks included in the Collateral that such Grantor owns as of the Closing Date that are registered or applied for at the United States Patent and Trademark Office, or registered at the United States Copyright Office. The applicable Grantor is the sole and exclusive owner of all such Intellectual Property listed on Schedule 5.2 (as such schedule may be amended or supplemented from time to time), except for such property disposed of in accordance with the Credit Agreement. Each Grantor owns, licenses, or otherwise has the right to use all Intellectual Property used in or otherwise necessary for the operation of such Grantor's business substantially as currently conducted, except where the failure of the foregoing could not reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 5.2, all of the material registrations and applications for Intellectual Property owned by such Grantor and included in the Collateral are subsisting and have not been adjudged invalid or unenforceable by any Governmental Authority, in whole or in part, nor, in the case of Patents, are any of the material issued Patents constituting Intellectual Property that are included in the Collateral the subject of a reexamination proceeding.

(c) All material Copyright registrations and applications for Copyrights, all material Patents and Patent applications and all material registered Trademarks and applications for registered Trademarks listed in Schedule 5.2 (as may be amended or supplemented from time to time) are recorded in the name of the applicable Grantor, except for such property disposed of in accordance with the Credit Agreement.

(d) Except as set forth on Schedule 5.2, (i) the conduct of such Grantor's business does not infringe upon or misappropriate or otherwise violate any material intellectual property rights of any other Person and (ii) no written claim has been received by such Grantor that has not been resolved that the use of any Intellectual Property owned or used by such Grantor (or any of its respective licensees) infringes upon, misappropriates or otherwise violates the asserted intellectual property rights of any other Person, except in each case of this clause (d) as could not reasonably be expected to result in a Material Adverse Effect.

(e) Except as set forth on Schedule 5.2, to the Knowledge of each Grantor, no other Person is infringing upon, misappropriating or otherwise violating any rights in any material Intellectual Property owned by such Grantor.

SECTION 6. CERTAIN COVENANTS

Each Grantor hereby covenants and agrees that:

6.1 Grantor Information and Status. Without limiting any prohibitions or restrictions on mergers or other transactions set forth in the Credit Agreement, each Grantor agrees to, within thirty (30) days following such event (or such later date as the Collateral Agent may agree in its reasonable discretion), notify the Collateral Agent of any change in any Grantor's legal name, type of organization, chief executive office or jurisdiction of organization, and shall, subject to Section 6.3(b), have taken all actions necessary or reasonably requested by the Collateral Agent to maintain the continuous validity, perfection and the same priority of the Collateral Agent's security interest in the Collateral granted or intended to be granted and agreed to hereby, which in the case of any change in corporate structure shall include (to the extent applicable) executing and delivering to the Collateral Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, upon completion of such change in corporate structure confirming the grant of the security interest hereunder.

6.2 Defense of Collateral; Notice of Impairment of Collateral.

(a) Each Grantor shall use commercially reasonable efforts to defend the Collateral against all Liens (other than Permitted Liens).

(b) Upon any Executive Officer of any Grantor obtaining Knowledge thereof, such Grantor shall promptly notify the Collateral Agent in writing of any event reasonably expected to have a Material Adverse Effect on the aggregate value of the Collateral, the ability of any Grantor or the Collateral Agent to dispose of a material portion of the Collateral or the rights and remedies of the Collateral Agent in relation thereto, including the levy of any legal process against a material portion of the Collateral.

(c) No Grantor shall sell, transfer or assign (by operation of Law or otherwise) or exclusively license to another Person any Collateral except as otherwise permitted by the Credit Agreement.

6.3 Status of Security Interest.

(a) Subject to the limitations set forth in clause (b) below, each Grantor shall maintain the security interest of the Collateral Agent hereunder in all Collateral as valid, perfected, first priority (subject to Permitted Liens) Liens.

(b) Notwithstanding anything in this Agreement or any other Credit Document to the contrary, (i) no Grantor shall be required to take any action to perfect any Collateral that can only be perfected by (A) Control, except as and to the extent specified in Section 4 and (B) foreign filings with respect to Intellectual Property, (ii) other than the filing of a UCC-1 financing statement in the applicable Grantor's jurisdiction of organization, no actions will be required to perfect the Collateral Agent's security interest in any Letter of Credit Rights, (iii) no Grantor shall be required to (A) execute any agreement, instrument or other document, complete any filings or take any other action with respect to the creation, perfection or maintenance of the Collateral Agent's security interest in any Collateral in each case, located in, governed by or arising or existing under the laws of any jurisdiction outside of the United States or any State or territory thereof or the District of Columbia (in each case, other than the delivery of Pledged Equity Interests if such Pledged Equity Interests are certificated or Pledged Debt if in physical form) or (B) deliver landlord, bailee or warehouseman waivers or collateral access agreements in any circumstances and (iv) other than the actions required under Section 4.2, no Grantor shall be obligated to take any other steps or actions in connection with the grant or perfection of the security interest of the Collateral Agent in any Collateral consisting of Intellectual Property.

6.4 Receivables.

(a) Following and during the continuation of an Event of Default, no Grantor shall (i) grant any extension or renewal of the time of payment of any Receivable, (ii) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof, (iii) release, wholly or partially, any Person liable for the payment thereof or (iv) allow any credit or discount thereon, in each case of (i) through (iv), other than in the ordinary course of business, as permitted under the Credit Agreement.

(b) Following the occurrence and during the continuation of an Event of Default, the Collateral Agent has the right at any time, upon three (3) Business Days' prior written notice to the Borrower and the applicable Grantor to (i) notify, or require any Grantor to notify, any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation; (ii) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent; (iii) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent; and (iv) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent so notifies the Borrower and such applicable Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of such Receivables received by such Grantor shall be, within two (2) Business Days (or such longer period as the Collateral Agent may agree in its reasonable discretion), deposited by the applicable Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in the Collateral Account maintained under the sole dominion and control of the Collateral Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and, except as the Collateral Agent may otherwise agree, such Grantor shall not adjust, settle or compromise the amount or payment of any Receivables, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon.

6.5 Pledged Equity Interests, Investment Related Property.

(a) Dividends, Interest or Distributions Prior to an Event of Default. Except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Pledged Equity Interest or other Investment Related Property (other than Deposit Accounts), then (i) such dividends, interest or distributions and Securities or other property shall be included in the definition of Collateral without further action (except to the extent such property otherwise constitutes an Excluded Asset) and (ii) such Grantor shall comply with the requirements of Section 4 to the extent applicable to such property. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, the Collateral Agent authorizes each Grantor to retain all dividends and distributions paid by the issuer and all payments of interest to the extent such dividends, distributions and interest is permitted and otherwise paid or distributed in accordance with the Credit Agreement.

(b) Voting Prior to an Event of Default. So long as no Event of Default has occurred and is continuing, except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or in the Credit Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Credit Agreement.

(c) Dividends and Voting After an Event of Default. (i) Upon the occurrence and during the continuation of an Event of Default and upon two (2) Business Days' prior written notice from the Collateral Agent to the Borrower and such Grantor to exercise such rights:

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise such voting and other consensual rights;

(B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies (including irrevocable proxies in form and substance reasonably satisfactory to the Collateral Agent), dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (2) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney as set forth in Section 8.1; and

(C) all rights of each Grantor to receive dividends, distributions or interest pursuant to Section 6.5(a) or otherwise shall immediately cease and be vested with the Collateral Agent, which shall thereupon have the sole right to hold as Collateral such dividends, distributions and interests thereof.

(ii) All distributions, dividends, interest and other amounts which are received by any Grantor contrary to the provisions of this Section 6.5(c) shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Grantor and shall immediately be paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

6.6 Intellectual Property.

(a) Except (i) as permitted by the Credit Agreement or (ii) as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, such Grantor shall not knowingly do any act or knowingly omit to do any commercially reasonable act whereby any of the Intellectual Property owned by such Grantor that is included in the Collateral may lapse, or become abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein.

(b) Except (i) as permitted by the Credit Agreement or (ii) as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, such Grantor shall not, with respect to any Trademarks constituting Intellectual Property that is included in the Collateral, cease the use of any of such Trademarks (unless continued use of such Trademarks would be commercially unreasonable) or fail to use commercially reasonable steps to control the quality of its products sold and its services rendered under any of such Trademark consistent with industry standards and each Grantor shall take commercially reasonable steps to insure that licensees of such Trademarks comply with such industry standards.

(c) Except as permitted by the Credit Agreement, such Grantor shall take commercially reasonable steps in the United States Copyright Office or the United States Patent and Trademark Office to pursue any application and maintain any registration of each Copyright, Patent and Trademark constituting Material Intellectual Property owned by such Grantor (to the extent permitted by law) including those items on Schedule 5.2 (as each may be amended or supplemented from time to time).

6.7 Uncertificated Securities.

No Grantor shall permit any of its Subsidiaries that is an issuer of Uncertificated Securities included in the Collateral to allow such Uncertificated Securities to become Certificated Securities unless such Grantor complies with the procedures set forth in Section 4.1(a) above.

SECTION 7. FURTHER ASSURANCES; ADDITIONAL GRANTORS

7.1 Further Assurances.

(a) Subject to Section 4.2(d) and Section 6.3(b), each Grantor agrees that from time to time, at the expense of such Grantor, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary (in the reasonable determination of the Collateral Agent) or that the Collateral Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, record security interests in Intellectual Property and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary (in the reasonable determination of the Collateral Agent) or as the Collateral Agent may reasonably request, in order to effect, reflect, perfect and preserve the security interests granted or purported to be granted hereby, subject to Section 6.3(b);

(ii) at the Collateral Agent's reasonable request, appear in and defend any action or proceeding that, if determined adversely to the Grantor or the Collateral Agent, would directly and adversely affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral; and

(iii) furnish the Collateral Agent with such information regarding the Collateral, including the location thereof, as the Collateral Agent may reasonably request from time to time.

(b) Subject to Section 6.3(b), each Grantor hereby authorizes the Collateral Agent to file a Record or Records, including financing or continuation statements, intellectual property security agreements and amendments to any of the foregoing, in any applicable U.S. jurisdictions and with any U.S. filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect or otherwise protect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired."

7.2 Additional Grantors. From time to time subsequent to the date hereof, additional Subsidiaries of the Borrower (other than any Excluded Subsidiaries) may, in accordance with Section 5.10 of the Credit Agreement or the definition of "Guarantor Subsidiary" in Section 1.1 of the Credit Agreement, become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Counterpart Agreement substantially in the form of Exhibit H to the Credit Agreement. Upon delivery of any such Counterpart Agreement to the Collateral Agent, each Additional Grantor shall be a Grantor hereunder and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Collateral Agent not to cause any Subsidiary of Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

SECTION 8. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT

8.1 Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion, only upon the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) to obtain and adjust Insurance required to be maintained by such Grantor or paid to the Collateral Agent pursuant to the Credit Agreement;

(b) to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for Moneys due and to become due under or in respect of any of the Collateral;

(c) to receive, endorse and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (b) above;

(d) to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(e) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand;

(f) to pay or discharge taxes or Liens levied or placed on or threatened against the Collateral; and

(g) to generally to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Collateral Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

8.2 No Duty on the Part of Collateral Agent or Secured Parties. The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 9. REMEDIES

9.1 Generally.

(a) If any Event of Default has occurred and is continuing, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at Law or in equity, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon written request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or non-exclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Collateral Agent, as collateral agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable Law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of Law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by Law, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof solely by virtue of using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, the Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at Law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives (to the extent permitted by applicable Law) and agrees (to the extent permitted by applicable Law) not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way limit the rights of the Collateral Agent hereunder.

(c) In connection with its exercise of remedies hereunder, the Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent has no obligation to marshal any of the Collateral.

9.2 Application of Proceeds. Subject to any Intercreditor Agreements, except as expressly provided elsewhere in this Agreement, all proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Collateral Agent against the Secured Obligations in the order of priority set forth in Section 8.3 of the Credit Agreement.

9.3 Sales on Credit. If the Collateral Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

9.4 Investment Related Property. Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities Laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities Laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale made in compliance with the UCC shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent has no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities Laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer (or use commercially reasonable efforts to cause any issuer that is not a Subsidiary of such Grantor) of any Investment Related Property to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may reasonably request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the U.S. Securities and Exchange Commission thereunder, as the same are from time to time in effect.

9.5 Grant of Intellectual Property License. Subject to Section 9.6, upon the occurrence and during the continuance of an Event of Default, for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 9 at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to the Collateral Agent, to the extent of such Grantor's rights therein and to the extent permitted by the applicable Law, licenses or other agreements relating thereto, an irrevocable (during the continuation of an Event of Default) non-exclusive, non-transferrable, limited license, subject, in the case of Trademarks constituting Collateral, to sufficient rights in favor of such Grantor to quality control and inspection relating to the nature and quality of goods and services to be offered in connection with such Trademarks to avoid the risk of invalidation of such Trademarks and subject, in the case of Trade Secrets, to standard confidentiality obligations, to use or sublicense any of the Intellectual Property included in the Collateral now owned or hereafter acquired by such Grantor, wherever the same may be located, such license being exercisable without payment of royalty or other compensation to such Grantor; *provided* that all goodwill arising from any licensed or sublicensed use of any such Trademarks constituting Collateral shall inure to the benefit of the applicable Grantor and provided further that upon termination of the Event of Default and so long as no other Event of Default has occurred and is continuing, any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall immediately terminate. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

9.6 Intellectual Property. Anything contained herein to the contrary notwithstanding, in addition to the other rights and remedies provided herein, upon the occurrence and during the continuation of an Event of Default:

(a) the Collateral Agent has the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's sole discretion, to enforce any Intellectual Property included in the Collateral and rights under Intellectual Property Licenses included in the Collateral in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement;

(b) other than any use of a Trademark included in the Collateral that is required to maintain the validity of such Trademark, the Collateral Agent has the right to direct such Grantor to refrain, in which event such Grantor shall refrain, from using the Intellectual Property included in the Collateral in any manner whatsoever, directly or indirectly; and

(c) the Collateral Agent has the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property included in the Collateral, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done.

9.7 Cash Proceeds; Collateral Account. If any Event of Default has occurred and is continuing, in addition to the rights of the Collateral Agent specified in Section 6.4 with respect to payments of Receivables, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other near-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, upon written request of the Collateral Agent, promptly (but in any event within two (2) Business Days or such longer period as the Collateral Agent may agree in its reasonable discretion) following receipt by such Grantor, be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in the Collateral Account. Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise) may, at the sole discretion of the Collateral Agent, (a) be held by the Collateral Agent for the benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (b) then or at any time thereafter may be held by the Collateral Agent and applied by the Administrative Agent to the Secured Obligations then due and owing pursuant to the terms of the Credit Agreement. Upon the cure or waiver of all continuing Events of Default certified in writing by the Borrower, all Cash Proceeds held by the Collateral Agent that have not been otherwise applied shall be returned to the applicable Grantor or as the Borrower may otherwise direct in writing.

SECTION 10. COLLATERAL AGENT

The Collateral Agent has been appointed to act as Collateral Agent hereunder by the Lenders and, by their acceptance of the benefits hereof, the other Secured Parties. The Collateral Agent shall be obligated, and has the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Collateral), solely in accordance with this Agreement and the Credit Agreement. In furtherance of the foregoing provisions of this Section 10, each Secured Party (other than the Collateral Agent and Administrative Agent), by its acceptance of the benefits hereof, agrees that it has no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of Secured Parties in accordance with the terms of this Section. The provisions of the Credit Agreement relating to the Collateral Agent including the provisions relating to resignation or removal of the Collateral Agent and the powers and duties and immunities of the Collateral Agent are incorporated herein by this reference and shall survive any termination of the Credit Agreement to the extent provided therein.

SECTION 11. CONTINUING SECURITY INTEREST; REINSTATEMENT.

Each Grantor agrees that, if any payment made by any Credit Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Secured Party to such Credit Party, its estate, trustee, receiver or any other party, including any Grantor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, (a) any Lien or other Collateral securing such Grantor's liability hereunder shall have been released or terminated by virtue of the foregoing or (b) any provision of the Guaranty under the Credit Agreement shall have been terminated, cancelled or surrendered, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Grantor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

SECTION 12. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. The Collateral Agent shall not be responsible for any failure to exercise any such powers or any delay in so doing. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for Moneys actually received by it hereunder, the Collateral Agent has no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise.

SECTION 13. INTERCREDITOR AGREEMENTS

Notwithstanding anything herein to the contrary, (a) the liens and security interests granted to the Collateral Agent pursuant to this Agreement and (b) the exercise of any right or remedy by the Collateral Agent hereunder is subject to the limitations and the provisions of any Intercreditor Agreements. In the event of any conflict between the terms of any Intercreditor Agreement and the terms of this Agreement, the terms of such Intercreditor Agreement shall govern.

SECTION 14. MORTGAGES

In the case of a conflict between this Agreement and any Mortgage with respect to any Material Real Estate Asset that is also subject to a valid and enforceable Lien under the terms of such Mortgage (including Fixtures), the terms of such Mortgage shall govern.

SECTION 15. MISCELLANEOUS

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Credit Agreement. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Credit Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and the Grantors and their respective successors and assigns. Except as permitted under the Credit Agreement, no Grantor shall, without the prior written consent of the Collateral Agent given in accordance with the Credit Agreement, assign any right, duty or obligation hereunder. Accordingly, the Credit Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties pertaining to the subject matter hereof. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.5 of the Credit Agreement; *provided, however*, that (a) to the extent expressly required hereunder or under the Credit Agreement, schedules to this Agreement may be amended or supplemented through Pledge Supplements, substantially in the form of Exhibit A attached hereto, duly executed by the Collateral Agent and each applicable Grantor, and as otherwise expressly provided in this Agreement and (b) additional Grantors may join this Agreement in accordance with Section 7.2.

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND ALL CLAIMS AND CONTROVERSIES ARISING OUT OF THE SUBJECT MATTER HEREOF WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTEREST).

SECTIONS 10.15 (CONSENT TO JURISDICTION) AND 10.16 (WAIVER OF JURY TRIAL) OF THE CREDIT AGREEMENT ARE INCORPORATED HEREIN BY THIS REFERENCE AND SUCH INCORPORATION SHALL SURVIVE ANY TERMINATION OF THE CREDIT AGREEMENT.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

GRANTORS:

**COHU, INC.
DELTA DESIGN, INC.
KITA USA, INC.
ROSENHEIM AUTOMATION SYSTEMS
CORPORATION
XCERRA CORPORATION
MULTITEST ELECTRONIC SYSTEMS
INC.
EVERETT CHARLES TECHNOLOGIES
LLC
XCERRA INTERNATIONAL INC.**

By: /s/ Jeffrey D. Jones
Name: Jeffrey D. Jones
Title: Chief Financial Officer

**DEUTSCHE BANK AG NEW YORK
BRANCH,**
as Collateral Agent

By: /s/ Marguerite Sutton
Name: Marguerite Sutton
Title: Vice President

By: /s/ Alicia Schug
Name: Alicia Schug
Title: Vice President

COHU, INC.
SARBANES-OXLEY ACT SECTION 302(a)
CERTIFICATION

I, Luis A. Müller, certify that:

1. I have reviewed this Form 10-Q of Cohu, 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(s) 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(s) 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: November 7, 2018

/s/ Luis A. Müller

Luis A. Müller

President & Chief Executive Officer

COHU, INC.
SARBANES-OXLEY ACT SECTION 302(a)
CERTIFICATION

I, Jeffrey D. Jones, certify that:

1. I have reviewed this Form 10-Q of Cohu, 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(s) 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(s) 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: November 7, 2018

/s/ Jeffrey D. Jones

Jeffrey D. Jones
Vice President Finance & Chief Financial Officer

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002
(18 U.S.C. SECTION 1350)

In connection with the accompanying Quarterly Report of Cohu, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended September 29, 2018 (the "Report"), I, Luis A. Müller, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2018

/s/ Luis A. Müller

Luis A. Müller,
President & Chief Executive Officer

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002
(18 U.S.C. SECTION 1350)

In connection with the accompanying Quarterly Report of Cohu, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended September 29, 2018 (the "Report"), I, Jeffrey D. Jones, Vice President Finance & Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2018

/s/ Jeffrey D. Jones

Jeffrey D. Jones,
Vice President Finance & Chief Financial Officer