

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 March 31, 2024

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

For the Transition Period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-37397

**Rimini Street, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

**36-4880301**

(State or other jurisdiction of incorporation or  
organization)

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

**1700 S. Pavilion Center Drive , Suite 330 ,  
Las Vegas , NV**

**89135**

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

**(702) 839-9671**

**Not Applicable**

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

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

Title of each class:

Trading Symbol(s)

Name of each exchange on which  
registered:

**Common Stock, par value \$0.0001 per share**

**RMNI**

**The Nasdaq Global Market**

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

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

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

Large accelerated filer

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 Exchange Act).

Yes  No

The registrant had approximately 90,410,000 shares of its \$0.0001 par value common stock outstanding as of April 30, 2024.

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**RIMINI STREET, INC.**  
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## PART I - FINANCIAL INFORMATION

### ITEM 1. Financial Statements.

**RIMINI STREET, INC.**  
**Unaudited Condensed Consolidated Balance Sheets**  
(In thousands, except per share amounts)

	March 31, 2024	December 31, 2023
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 129,005	\$ 115,424
Restricted cash	428	428
Accounts receivable, net of allowance of \$ 629 and \$ 656 , respectively	78,785	119,430
Deferred contract costs, current	17,215	17,934
Short-term investments	—	9,826
Prepaid expenses and other	22,948	25,647
Total current assets	248,381	288,689
<b>Long-term assets:</b>		
Property and equipment, net of accumulated depreciation and amortization of \$ 19,030 and \$ 18,231 , respectively	10,713	10,496
Operating lease right-of-use assets	5,257	5,941
Deferred contract costs, noncurrent	21,769	23,559
Deposits and other	5,506	6,109
Deferred income taxes, net	59,569	59,002
Total assets	<u>\$ 351,195</u>	<u>\$ 393,796</u>
<b>LIABILITIES, REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT</b>		
<b>Current liabilities:</b>		
Current maturities of long-term debt	\$ 5,914	\$ 5,912
Accounts payable	3,612	5,997
Accrued compensation, benefits and commissions	31,005	38,961
Other accrued liabilities	17,959	18,128
Operating lease liabilities, current	4,357	4,321
Deferred revenue, current	229,988	263,115
Total current liabilities	292,835	336,434
<b>Long-term liabilities:</b>		
Long-term debt, net of current maturities	62,781	64,228
Deferred revenue, noncurrent	24,318	23,859
Operating lease liabilities, noncurrent	5,815	6,841
Other long-term liabilities	1,758	1,930
Total liabilities	<u>387,507</u>	<u>433,292</u>
<b>Commitments and contingencies (Note 8)</b>		
<b>Stockholders' deficit:</b>		
Preferred stock; \$ 0.0001 par value. Authorized 99,820 (excluding 180 shares of Series A Preferred Stock) no other series has been designated	—	—
Common stock; \$ 0.0001 par value. Authorized 1,000,000 shares; issued and outstanding 89,931 and 89,595 shares, respectively	9	9
Additional paid-in capital	170,546	167,988
Accumulated other comprehensive loss	( 4,858 )	( 4,167 )
Accumulated deficit	( 200,893 )	( 202,210 )
Treasury stock, at cost	( 1,116 )	( 1,116 )
Total stockholders' deficit	<u>( 36,312 )</u>	<u>( 39,496 )</u>
Total liabilities and stockholders' deficit	<u>\$ 351,195</u>	<u>\$ 393,796</u>

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

**RIMINI STREET, INC.**  
**Unaudited Condensed Consolidated Statements of Operations and Comprehensive Income**  
(In thousands, except per share amounts)

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Revenue	\$ 106,745	\$ 105,512
Cost of revenue	42,914	39,343
Gross profit	<u>63,831</u>	<u>66,169</u>
Operating expenses:		
Sales and marketing	39,141	34,479
General and administrative	18,401	18,227
Reorganization costs	—	59
Litigation costs and related recoveries:		
Professional fees and other costs of litigation	2,926	2,719
Litigation costs and related recoveries, net	<u>2,926</u>	<u>2,719</u>
Total operating expenses	<u>60,468</u>	<u>55,484</u>
Operating income	3,363	10,685
Non-operating income and (expenses):		
Interest expense	(1,341)	(1,339)
Other income (expenses), net	<u>964</u>	<u>528</u>
Income before income taxes	2,986	9,874
Income taxes	(1,669)	(4,235)
Net income	<u>1,317</u>	<u>5,639</u>
Other comprehensive income		
Foreign currency translation gain (loss)	(991)	139
Derivative instrument and other adjustments, net of tax	<u>300</u>	<u>(775)</u>
Comprehensive income	<u>\$ 626</u>	<u>\$ 5,003</u>
Net income attributable to common stockholders	<u>\$ 1,317</u>	<u>\$ 5,639</u>
Net income per share attributable to common stockholders:		
Basic	<u>\$ 0.01</u>	<u>\$ 0.06</u>
Diluted	<u>\$ 0.01</u>	<u>\$ 0.06</u>
Weighted average number of shares of Common Stock outstanding:		
Basic	<u>89,754</u>	<u>88,690</u>
Diluted	<u>90,560</u>	<u>89,061</u>

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

**RIMINI STREET, INC.**  
**Unaudited Condensed Consolidated Statements of Stockholders' Deficit**  
**(In thousands)**

	Three Months Ended March 31,	
	<u>2024</u>	<u>2023</u>
<b>Common Stock, Shares</b>		
Beginning of period	89,595	88,517
Exercise of stock options for cash	—	54
Restricted stock units vested	336	312
End of period	<u>89,931</u>	<u>88,883</u>
<b>Total Stockholders' Deficit, beginning of period</b>	<b>\$ ( 39,496 )</b>	<b>\$ ( 77,170 )</b>
<b>Common Stock, Amount</b>		
Beginning of period	9	9
Exercise of stock options for cash	—	—
Restricted stock units vested	—	—
End of period	<u>9</u>	<u>9</u>
<b>Additional Paid-in Capital</b>		
Beginning of period	167,988	156,401
Stock based compensation expense	2,558	1,976
Exercise of stock options for cash	—	72
Restricted stock units vested	—	—
End of period	<u>170,546</u>	<u>158,449</u>
<b>Accumulated Other Comprehensive Loss</b>		
Beginning of period	( 4,167 )	( 4,195 )
Other comprehensive loss	( 691 )	( 636 )
End of period	<u>( 4,858 )</u>	<u>( 4,831 )</u>
<b>Accumulated Deficit</b>		
Beginning of period	( 202,210 )	( 228,269 )
Net income	1,317	5,639
End of period	<u>( 200,893 )</u>	<u>( 222,630 )</u>
Treasury Stock	( 1,116 )	( 1,116 )
<b>Total Stockholders' Deficit, end of period</b>	<b>\$ ( 36,312 )</b>	<b>\$ ( 70,119 )</b>

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

**RIMINI STREET, INC.**  
**Unaudited Condensed Consolidated Statements of Cash Flows**  
**(In thousands)**

**Three Months Ended March  
31,**  
**2024** **2023**

**CASH FLOWS FROM OPERATING ACTIVITIES:**

Net income	\$ 1,317	\$ 5,639
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock-based compensation expense	2,558	1,976
Depreciation and amortization	873	613
Accretion and amortization of debt discount and issuance costs	243	240
Deferred income taxes	( 759 )	496
Amortization and accretion related to operating right of use assets	1,112	1,147
Changes in operating assets and liabilities:		
Accounts receivable	39,763	26,945
Prepaid expenses, deposits and other	3,517	( 425 )
Deferred contract costs	2,509	1,427
Accounts payable	( 2,342 )	( 2,087 )
Accrued compensation, benefits, commissions and other liabilities	( 8,422 )	( 14,844 )
Deferred revenue	( 29,281 )	( 12,484 )
Net cash provided by operating activities	11,088	8,643

**CASH FLOWS USED IN INVESTING ACTIVITIES:**

Capital expenditures	( 1,172 )	( 1,029 )
Payment for purchases of investments	( 7,458 )	( 7,713 )
Proceeds from sale of investments	17,284	8,396
Net cash provided by (used in) investing activities	8,654	( 346 )

**CASH FLOWS FROM FINANCING ACTIVITIES:**

Principal payments on the Original Credit Facility	( 1,688 )	( 1,125 )
Principal payments on capital leases	( 87 )	( 47 )
Proceeds from exercise of employee stock options	—	71
Net cash used in financing activities	( 1,775 )	( 1,101 )
Effect of foreign currency translation changes	( 4,386 )	( 35 )
Net change in cash, cash equivalents and restricted cash	13,581	7,161
Cash, cash equivalents and restricted cash at beginning of period	115,852	109,434
Cash, cash equivalents and restricted cash at end of period	<u>\$ 129,433</u>	<u>\$ 116,595</u>

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

**RIMINI STREET, INC.**  
**Unaudited Condensed Consolidated Statements of Cash Flows, Continued**  
**(In thousands)**

	Three Months Ended March 31,	
	2024	2023
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>		
Cash paid for interest	\$ 1,068	\$ 1,112
Cash paid for income taxes	502	2,794
<b>SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Increase in payables for capital expenditures	\$ 7	\$ —

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

**RIMINI STREET, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE 1 — NATURE OF BUSINESS AND BASIS OF PRESENTATION**

**Nature of Business**

Rimini Street, Inc. (the "Company") is a global provider of end-to-end enterprise software support, products and services. The Company offers a comprehensive family of unified solutions to run, manage, support, customize, configure, connect, protect, monitor, and optimize clients' enterprise application, database, and technology software platforms.

**Basis of Presentation and Consolidation**

The Unaudited Condensed Consolidated Financial Statements, which include the accounts of the Company and its wholly-owned subsidiaries, are prepared in conformity with generally accepted accounting principles in the United States of America ("U.S. GAAP"). All significant intercompany balances and transactions have been eliminated. The accompanying Unaudited Condensed Consolidated Financial Statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC") regarding interim financial reporting. Accordingly, certain information and footnote disclosures required by U.S. GAAP for complete financial statements have been condensed or omitted in accordance with such rules and regulations. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the Unaudited Condensed Consolidated Financial Statements have been included. These Unaudited Condensed Consolidated Financial Statements should be read in conjunction with the Company's Audited Consolidated Financial Statements for the year ended December 31, 2023, included in the Company's 2023 Annual Report on Form 10-K as filed with the SEC on February 28, 2024 (the "2023 Form 10-K").

The accompanying Unaudited Condensed Balance Sheet and related disclosures as of December 31, 2023 have been derived from the Company's audited financial statements. The Company's financial condition as of March 31, 2024, and operating results for the three months ended March 31, 2024, are not necessarily indicative of the financial condition and results of operations that may be expected for any future interim period or for the year ending December 31, 2024.

**NOTE 2 — LIQUIDITY AND SIGNIFICANT ACCOUNTING POLICIES**

**Liquidity**

As of March 31, 2024, the Company's current liabilities exceeded its current assets by \$ 44.5 million, and the Company recorded net income of \$ 1.3 million for the three months ended March 31, 2024. As of March 31, 2024, the Company had available cash, cash equivalents and restricted cash of \$ 129.4 million. As of March 31, 2024, the Company's current liabilities included \$ 230.0 million of deferred revenue whereby the historical costs of fulfilling the Company's commitments to provide services to its clients was approximately 40 % of the related deferred revenue for the three months ended March 31, 2024.

In 2021, the Company entered into a five-year term loan of \$ 90 million (the "Original Credit Facility"). Annual minimum principal payments over the five-year term for the Original Credit Facility are 5 %, 5 %, 7.5 %, 7.5 % and 10 %, respectively, with the remaining balance due at the end of the term. See Note 5 for further information regarding the Company's Original Credit Facility.

Additionally, the Company is obligated to make operating and financing lease payments that are due within the next 12 months in the aggregate amount of \$ 5.5 million. During the first quarter of 2024, the global economy continued to experience interest rate and inflationary pressures, geopolitical conflicts, global supply chain issues, a rise in energy prices and the continuing effects of fiscal and monetary policies adopted by governments. Assuming the Company's ability to operate continues not to be significantly adversely impacted by the related changes in the macroeconomic environment, geopolitical pressures, or the litigation matters described in Note 8, the Company believes that current cash, cash equivalents, restricted cash, and future cash flow from operating activities will be sufficient to meet the Company's anticipated cash needs, including Original Credit Facility repayments, working capital needs, capital expenditures and other contractual obligations for at least 12 months from the issuance date of these financial statements.

**Use of Estimates**

The preparation of financial statements and related disclosures in conformity with U.S. GAAP requires the Company to make judgments, assumptions, and estimates that affect the amounts reported in its consolidated financial statements and accompanying notes. The Company bases its estimates and assumptions on current facts, historical experience, and various

**RIMINI STREET, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

other factors that it believes are reasonable under the circumstances to determine the carrying values of assets and liabilities that are not readily apparent from other sources. The Company's accounting estimates include, but are not necessarily limited to, valuation of accounts receivable, valuation assumptions for stock options and leases, deferred income taxes and the related valuation allowances, and the evaluation and measurement of contingencies. To the extent there are material differences between the Company's estimates and actual results, the Company's future consolidated results of operations may be affected.

**Recent Accounting Pronouncements**

*Recently Adopted Standards.* The following accounting standards will be adopted during fiscal year 2024:

In November 2023, the FASB issued ASU 2023-07, "Segment Reporting - Improvements to Reportable Segment Disclosures." The guidance expands annual and interim disclosure requirements for reportable segments, primarily through enhanced disclosures about significant segment expenses. ASU 2023-07 is effective for annual periods beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024. The Company will be adopting this guidance for the year ending December 31, 2024 and is still assessing the impact on the disclosures to its Consolidated Financial Statements.

**NOTE 3 - DEFERRED CONTRACT COSTS AND DEFERRED REVENUE**

Activity for deferred contract costs consisted of the following (in thousands):

	<b>Three Months Ended</b> <b>March 31,</b>	
	<b>2024</b>	<b>2023</b>
Deferred contract costs, current and noncurrent, as of the beginning of period	\$ 41,493	\$ 40,726
Capitalized commissions during the period	2,504	3,162
Amortized deferred contract costs during the period	( 5,013 )	( 4,589 )
Deferred contract costs, current and noncurrent, as of the end of period	<u>\$ 38,984</u>	<u>\$ 39,299</u>

Deferred revenue activity consisted of the following (in thousands):

	<b>Three Months Ended</b> <b>March 31,</b>	
	<b>2024</b>	<b>2023</b>
Deferred revenue, current and noncurrent, as of the beginning of period	\$ 286,974	\$ 299,921
Billings, net	74,077	92,972
Revenue recognized	( 106,745 )	( 105,512 )
Deferred revenue, current and noncurrent, as of the end of period	<u>\$ 254,306</u>	<u>\$ 287,381</u>

The Company's remaining performance obligations represent all future non-cancellable revenue under contract that has not yet been recognized as revenue and includes deferred revenue and unbilled amounts. As of March 31, 2024, remaining performance obligations amounted to \$ 556.9 million, of which \$ 254.3 million was billed and recorded as deferred revenue. As of March 31, 2023, remaining performance obligations amounted to \$ 556.1 million, of which \$ 287.4 million was billed and recorded as deferred revenue.

Deferred revenue is a contract liability that consists of billings issued that are non-cancellable and payments received in advance of revenue recognition. The Company typically invoices its customers at the beginning of the contract term, in annual and multi-year installments. Deferred revenue is recognized as the Company satisfies its performance obligations over the term of the contracted service period. The Company expects to recognize revenue on approximately \$ 230.0 million of the billed remaining performance obligations over the next 12 months, with the remaining deferred revenue balance recognized thereafter.

**NOTE 4 — OTHER FINANCIAL INFORMATION**

**Other Accrued Liabilities**

**RIMINI STREET, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

Other accrued liabilities consisted of the following (in thousands):

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Accrued sales and other taxes	\$ 7,158	\$ 7,963
Accrued professional fees	4,351	3,551
Current maturities of capital lease obligations	367	360
Income taxes payable	968	1,771
Accrued litigation settlement costs	82	82
Other accrued expenses	5,033	4,401
<b>Total other accrued liabilities</b>	<b>\$ 17,959</b>	<b>\$ 18,128</b>

**NOTE 5 — DEBT**

Debt is presented net of debt discounts and issuance costs in the Company's balance sheets and consisted of the following (in thousands):

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Original Credit Facility	\$ 68,695	\$ 70,140
Less current maturities	( 5,914 )	( 5,912 )
<b>Long-term debt, net of current maturities</b>	<b>\$ 62,781</b>	<b>\$ 64,228</b>

For the three months ended March 31, 2024 and 2023, the Company made quarterly principal payments under the Original Credit Facility totaling \$ 1.7 million and \$ 1.1 million, respectively.

In February 2023, the Company amended its Original Credit Facility. The amendment implemented, among other things, certain changes in the reference rate from the London Interbank Offered Rate ("LIBOR") to the Secured Overnight Financing Rate ("SOFR"). As of February 28, 2023, the Company has a choice of interest rates between (a) Adjusted Term SOFR and (b) Base Rate (as defined in the Original Credit Facility), in each case plus an applicable margin. The applicable margin remains the same as the existing Credit Agreement and is based on the Company's Consolidated Leverage Ratio (as defined in the Credit Agreement) and whether the Company elects Adjusted Term SOFR (ranging from 1.75 to 2.50 %) or Base Rate (ranging from 0.75 to 1.50 %).

For the three months ended March 31, 2024 and 2023, the average interest rate on the Original Credit Facility was 7.20 % and 6.31 %, respectively.

The fair value of the Original Credit Facility was \$ 73.5 million (Level 2 inputs) as of March 31, 2024 compared to the carrying value of \$ 70.6 million as of March 31, 2024. The fair value of the Original Credit Facility was \$ 73.1 million (Level 2 inputs) as of December 31, 2023 compared to the carrying value of \$ 72.3 million as of December 31, 2023.

The Original Credit Facility contains certain financial covenants, including a minimum fixed charge coverage ratio greater than 1.25 , a total leverage ratio less than 3.75 , and a minimum liquidity balance of at least \$ 20 million in U.S. cash. Annual minimum principal payments over the five-year term for the Original Credit Facility are 5 %, 5 %, 7.5 %, 7.5 %, and 10 %, respectively, with the remaining balance due at the end of the term.

Pursuant to a Guaranty and Security Agreement, dated July 2, 2021 (the "Guaranty and Security Agreement"), among the Credit Parties and Capital One, National Association, as agent, the obligations under the Original Credit Facility are guaranteed by certain of the Company's subsidiaries (the Company and the guarantors, collectively, the "Credit Parties") and are secured, subject to customary permitted liens and exceptions, by a lien on substantially all assets of the Credit Parties.

On May 18, 2022, the Company entered into an interest rate swap agreement with a notional value of \$ 40.0 million, with a fixed payer LIBOR rate of 2.9935 % and an initial floating LIBOR rate of 0.93557 %. The floating rate is reset at each month

**RIMINI STREET, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

end and had an embedded floor rate of 0.0 %. The term of the interest rate swap agreement coincides with that of the Original Credit Facility. See Note 11 for further information regarding the fair value accounting for the interest rate swap agreement. Effective February 28, 2023, the interest rate swap agreement was amended in connection with the amendment of the Original Credit Facility to implement certain changes in the reference rate from LIBOR to SOFR.

In May 2022, the Company also amended the Original Credit Facility to increase the aggregate value of the Common Stock shares that can be repurchased by the Company to \$ 50 million during the term of the Original Credit Facility.

In July 2021, the Company received \$ 89.3 million of net proceeds pursuant to the Original Credit Facility. The borrowings under the Original Credit Facility were discounted at 0.375 %. As part of the transaction, the Company incurred issuance costs of \$ 4.2 million, which were capitalized and are being amortized over the term of the Original Credit Facility.

Based on voluntary prepayments made to date under the Original Credit Facility, the Company currently has \$ 40 million in incremental borrowings available for future use, subject to the terms of the Original Credit Facility.

**Subsequent Event**

On April 30, 2024, the Company refinanced its Original Credit Facility, which had an outstanding principal balance of \$ 70.9 million, with a new five-year senior secured credit facility ("2024 Credit Facility") consisting of a \$ 75.0 million term loan and a \$ 35.0 million revolving line of credit. For the term loan, the Company has a choice of interest rates between (a) SOFR and (b) a Base Rate (as defined in the 2024 Credit Facility), in each case plus an applicable margin. The applicable margin is based on the Company's Consolidated Total Leverage Ratio (as defined in the 2024 Credit Facility) and whether the Company elects SOFR (ranging from 2.75 % to 3.5 %) or Base Rate (ranging from 1.75 % to 2.5 %). The revolving line of credit bears interest on the unused portion of the credit line at rates of 25 to 40 basis points, depending on the Company's Consolidated Total Leverage Ratio. Annual minimum principal payments over the five-year term for the 2024 Credit Facility are 5 %, 5 %, 7.5 %, 7.5 %, and 10 %, respectively, with the remaining balance due at the end of the original term.

Pursuant to a Guaranty and Security Agreement, dated April 30, 2024, among the Credit Parties and Capital One, National Association, as agent (the "2024 Guaranty and Security Agreement"), the obligations under the 2024 Credit Facility are guaranteed by certain of the Company's subsidiaries and are secured, subject to customary permitted liens and exceptions, by a lien on substantially all assets of the Credit Parties. Copies of the 2024 Credit Facility and the 2024 Guaranty and Security Agreement are filed as Exhibits 10.1 and 10.2, respectively, to this Report, the terms of which are incorporated herein by reference.

Effective April 30, 2024, the interest rate swap agreement was amended in connection with the 2024 Credit Facility to match the new five-year term.

**Interest Expense**

The components of interest expense are presented below (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Original Credit Facility:		
Interest expense	\$ 1,081	\$ 1,078
Accretion expense related to discount and issuance costs	243	240
Interest on finance leases	17	21
	<b>\$ 1,341</b>	<b>\$ 1,339</b>

For the three months ended March 31, 2024 and 2023, interest expense included a reduction related to interest rate swap payments received of \$ 0.2 million and \$ 0.2 million, respectively.

**NOTE 6 — COMMON STOCK OFFERING, RESTRICTED STOCK UNITS, STOCK OPTIONS AND WARRANTS**

**Common Stock Retired**

**RIMINI STREET, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

On May 28, 2022, the Board of Directors authorized an increase to the Company's previously announced Common Stock repurchase program to increase the value of the shares that could be acquired by the Company from up to \$ 15.0 million over two years to up to \$ 50.0 million over four years, subject to compliance with the Company's Original Credit Facility, provided that all other applicable conditions and legal requirements are satisfied.

On February 27, 2022, the Board of Directors approved the adoption of a stock repurchase program to acquire up to \$ 15.0 million of the Company's Common Stock both on the open market and in privately negotiated transactions, including through Rule 10b5-1 plans, through March 4, 2024, subject to compliance with the Company's Original Credit Facility, which was amended effective January 14, 2022 to increase the aggregate value of the shares of Common Stock that could be acquired by the Company to no greater than \$ 15.0 million during the term of the Original Credit Facility, provided that all other applicable conditions and legal requirements are satisfied.

During the three months ended March 31, 2024 and 2023, the Company did not acquire any shares of its Common Stock on the open market.

#### **Stock Plans**

The Company's stock plans consist of the 2007 Stock Plan (the "2007 Plan") and the 2013 Equity Incentive Plan, as amended and restated in July 2017 (the "2013 Plan"). The 2007 Plan and the 2013 Plan are collectively referred to as the "Stock Plans". On February 23, 2024, pursuant to the "evergreen" provisions of the 2013 Plan, the Board of Directors authorized an increase of approximately 3.6 million shares available for grant under the 2013 Plan.

On March 31, 2023, the Company's Board of Directors, approved the Company's 2023 Long-Term Incentive Plan (the "2023 LTI Plan"), consisting of awards of performance units ("PSUs"), restricted stock units ("RSUs") and stock options to purchase shares of the Company's Common Stock under the terms of the Company's 2013 Plan, as amended, effective April 3, 2023.

For additional information about the Stock Plans, please refer to Note 8 to the Company's Consolidated Financial Statements for the year ended December 31, 2023, included in Part II, Item 8 of the 2023 Form 10-K. The information presented below provides an update for activity under the Stock Plans for the three months ended March 31, 2024.

#### **Performance Units**

The PSUs awarded under the 2023 LTI Plan (the "Target PSUs") were measured over a performance period beginning on January 1, 2023 and ending on December 31, 2023 (the "Performance Period"), but will remain subject to a continued service-based vesting requirement. Half of the PSUs awarded are eligible to vest based on the Company's achievement against a target adjusted EBITDA goal for fiscal year 2023, and the remaining half of the PSUs awarded will be eligible to vest based on the Company's achievement against a target total revenue goal for fiscal year 2023. The ultimate number of PSUs that may vest (as calculated, the "Earned PSUs") range from zero to 200 % of the Target PSUs. The Earned PSUs under the April 3, 2023 grant were earned at 151 %. Under the terms of the 2023 LTI Plan, the Earned PSUs will vest in equal annual installments on the first, second and third anniversaries of the Date of Grant, generally subject to the awardee continuing to be a Service Provider through the applicable vesting date.

The Company granted no PSUs for the three months ended March 31, 2024. The Company recognized compensation expense related to PSUs of \$ 0.6 million for the three months ended March 31, 2024. As of March 31, 2024, the unrecognized expense of \$ 1.3 million net of forfeitures is expected to be charged to expense on a graded basis as the PSUs vest over a weighted-average period of approximately 1 year.

#### **Restricted Stock Units**

For the three months ended March 31, 2024, the Board of Directors granted RSUs under the 2013 Plan to employees for an aggregate of approximately 0.2 million shares of Common Stock. RSU grants vest over periods generally ranging from 12 to 36 months from the respective grant dates and the awards are subject to forfeiture upon termination of employment or service on the Board of Directors, as applicable. Based on the weighted average fair market value of the Common Stock on the date of grant of \$ 3.12 per share, the aggregate fair value for the shares underlying the RSUs amounted to \$ 0.8 million as of the grant date that will be recognized as compensation cost over the vesting period.

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For the three months ended March 31, 2024 and 2023, the Company recognized compensation expense related to RSUs of approximately \$ 1.2 million and \$ 1.4 million, respectively. As of March 31, 2024, the unrecognized expense of \$ 4.6 million net of forfeitures is expected to be charged to expense on a straight-line basis as the RSUs vest over a weighted-average period of approximately 1.4 years.

**Stock Options**

For the three months ended March 31, 2024, the Board of Directors granted stock options for the purchase of an aggregate of approximately 0.2 million shares of Common Stock at exercise prices that were equal to the fair market value of the Common Stock on the date of grant. Options granted to employees generally vest as to one-third of the shares subject to the award on each anniversary of the designated vesting commencement date, which may precede the grant date of such award, and expire ten years after the grant date.

The following table sets forth a summary of stock option activity under the Stock Plans for the three months ended March 31, 2024 (shares in thousands):

	Shares	Price (1)	Term (2)
Outstanding, December 31, 2023	7,800	\$ 5.77	5.9
Granted	184	3.11	
Forfeited	( 108 )	5.29	
Expired	( 406 )	5.35	
Outstanding, March 31, 2024 (3)(4)	<u>7,470</u>	<u>5.73</u>	6.0
Vested, March 31, 2024 (3)	<u>4,729</u>	<u>6.38</u>	4.4

(1) Represents the weighted average exercise price.

(2) Represents the weighted average remaining contractual term until the stock options expire in years.

(3) As of March 31, 2024, the aggregate intrinsic value of all stock options outstanding was \$ 0.1 million. As of March 31, 2024, the aggregate intrinsic value of vested stock options was \$ 5 thousand.

(4) The number of outstanding stock options that are not expected to ultimately vest due to forfeiture amounted to 0.3 million shares as of March 31, 2024.

The aggregate fair value of approximately 0.2 million stock options granted for the three months ended March 31, 2024 amounted to \$ 0.4 million, or \$ 1.92 per stock option as of the grant date utilizing the Black-Scholes-Merton ("BSM") method. The fair value derived under the BSM method will result in the recognition of compensation cost over the vesting period of the stock options. For the three months ended March 31, 2024, the fair value of each stock option grant under the Stock Plans was estimated on the date of grant using the BSM option-pricing model, with the following weighted-average assumptions:

Expected life (in years)	6.0
Volatility	64 %
Dividend yield	0 %
Risk-free interest rate	4.06 %
Fair value per share of Common Stock on date of grant	\$ 3.11

As of March 31, 2024 and December 31, 2023, total unrecognized compensation costs related to unvested stock options, net of estimated forfeitures, was \$ 4.0 million and \$ 4.6 million, respectively. As of March 31, 2024, the unrecognized costs are expected to be charged to expense on a straight-line basis over a weighted-average vesting period of approximately 1.8 years.

**Shares Available for Grant**

The following table presents activity affecting the total number of shares available for grant under the 2013 Plan for the three months ended March 31, 2024 (in thousands):

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Available, December 31, 2023	8,481
Newly authorized by Board of Directors	3,584
Stock options granted	( 184 )
RSUs and PSUs granted	( 248 )
Expired options under Stock Plans	406
Forfeited options under Stock Plans	108
Forfeited RSUs under Stock Plans	136
Available, March 31, 2024	<hr/> 12,283 <hr/>

**Stock-Based Compensation Expense**

Stock-based compensation expense attributable to RSUs and stock options is classified as follows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Cost of revenue	\$ 515	\$ 413
Sales and marketing	405	458
General and administrative	1,638	1,105
Total	<hr/> \$ 2,558	<hr/> \$ 1,976

**Warrants**

As of March 31, 2024, warrants were outstanding for an aggregate of 3.4 million shares of Common Stock exercisable at \$ 5.64 per share. For additional information about these warrants, please refer to Note 8 to the Company's Consolidated Financial Statements for the year ended December 31, 2023, included in Part II, Item 8 of the 2023 Form 10-K.

**NOTE 7 — INCOME TAXES**

For the three months ended March 31, 2024 and 2023, the Company's effective tax rate was 55.9 % and 42.9 %, respectively. The Company's income tax expense was primarily attributable to earnings in the foreign jurisdictions subject to income taxes and foreign withholding taxes. The Company did not have any material changes to its conclusions regarding valuation allowances for deferred income tax assets or uncertain tax positions for the three months ended March 31, 2024 and 2023.

For additional information about income taxes, please refer to Note 9 to the Company's Consolidated Financial Statements for the year ended December 31, 2023, included in Part II, Item 8 of the 2023 Form 10-K.

**NOTE 8 — COMMITMENTS AND CONTINGENCIES**

**Purchase Commitments**

During the fourth quarter of 2023, the Company entered into purchase commitments with a vendor which requires the Company to pay \$ 12.0 million over three years . At the end of three years , both parties have the right to terminate the agreements. As of March 31, 2024, there was \$ 11.0 million remaining to be paid.

**Retirement Plan**

The Company has defined contribution plans for both its U.S. and foreign employees. For certain of these plans, employees may contribute up to the statutory maximum, which is set by law each year. The plans also provide for employer contributions. For the three months ended March 31, 2024 and 2023, the Company's matching contributions to these plans totaled \$ 0.9 million and \$ 0.8 million, respectively.

**Rimini I Litigation**

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In January 2010, certain subsidiaries of Oracle Corporation (together with its subsidiaries individually and collectively, "Oracle") filed a lawsuit, *Oracle USA, Inc. et al. v. Rimini Street, Inc. et al.* (United States District Court for the District of Nevada) (the "District Court") ("Rimini I"), against the Company and its Chief Executive Officer, Chairman of the Board and President, Seth Ravin, alleging that certain of the Company's processes (Process 1.0) violated Oracle's license agreements with its customers and that the Company committed acts of copyright infringement and violated other federal and state laws. The litigation involved the Company's business processes and the manner in which the Company provided services to its clients.

After completion of a jury trial in 2015 and subsequent appeals, the final outcome of Rimini I was that Mr. Ravin was found not liable for any claims and the Company was found liable for only one claim: "innocent infringement," a jury finding that the Company did not know and had no reason to know that its former support processes were infringing. The jury also found that the infringement did not cause Oracle to suffer lost profits. The Company was ordered to pay a judgment of \$ 124.4 million in 2016, which the Company promptly paid and then pursued appeals. With interest, attorneys' fees and costs, the total judgment paid by the Company to Oracle after the completion of all appeals was approximately \$ 89.9 million. A portion of such judgment was paid by the Company's insurance carriers.

#### **Rimini I Injunction Proceedings**

Since November 2018, the Company has been subject to a permanent injunction (the "Rimini I Injunction") prohibiting it from using certain support processes that had been found in Rimini I to "innocently" infringe certain Oracle copyrights. The Rimini I Injunction does not prohibit the Company's provision of support services for any Oracle product lines, but rather defines the manner in which the Company can provide support services for certain Oracle product lines.

In July 2020, Oracle filed a motion to show cause with the District Court contending that the Company was in violation of the Rimini I Injunction, and the Company opposed this motion, disputing Oracle's claims. After completion of an evidentiary hearing in September 2021, findings and order by the District Court in January 2022 and a subsequent appeal by the Company to the Ninth Circuit Court of Appeals ("Court of Appeals"), the final outcome of the proceedings, which were resolved in October 2023 on remand to the District Court, was a finding that the Company had violated the Rimini I Injunction in four instances, entitling Oracle to \$ 0.5 million in sanctions (representing a \$ 0.1 million adjustment to the \$ 0.6 million sanctions award originally paid by the Company to Oracle in January 2022). In addition, the Company complied with the District Court's January 2022 order to quarantine certain computer files and provide proof of such quarantining to Oracle. Oracle reimbursed the Company \$ 0.1 million in November 2023 for the portion of the sanctions award that was reduced on appeal.

In its January 2022 findings and order, the District Court also ruled that Oracle could recover its reasonable attorneys' fees and costs relating to the Rimini I Injunction Proceedings. In December 2023, the District Court accepted a joint stipulation between Oracle and the Company (the "Stipulation") resolving the issue of Oracle's recovery of attorneys' fees and costs upon the Company's payment of approximately \$ 9.7 million to Oracle. Also per the Stipulation, the Company agreed that it would forego any remaining appellate rights with respect to this matter.

As a result of the Stipulation and the subsequent payment by the Company of the amount described above, all matters relating to the Rimini I Injunction Proceedings have been resolved. At this time, the Company believes that it is in substantial compliance with the Rimini I Injunction.

#### **Rimini II Litigation**

In October 2014, the Company filed a separate lawsuit, *Rimini Street Inc. v. Oracle Int'l Corp.*, in the District Court against Oracle seeking a declaratory judgment that the Company's revised "Process 2.0" support practices, in use since at least July 2014, did not infringe certain Oracle copyrights ("Rimini II"). The Company's operative complaint asserted declaratory judgment, tort, and statutory claims, including a request for injunctive relief against Oracle for unfair competition in violation of the California Unfair Competition Law. Oracle asserted counterclaims including copyright infringement claims, violations of the Digital Millennium Copyright Act ("DMCA") and Lanham Act, breach of contract and business tort violations with respect to PeopleSoft and other Oracle-branded products, including J.D. Edwards, Siebel, Oracle Database and Oracle E-Business Suite ("EBS").

In mid-October 2022, Oracle withdrew all of its monetary damages claims against the Company and the Company's Chief Executive Officer, Chairman of the Board and President, Mr. Ravin in Rimini II and moved to proceed with a bench trial instead of a jury trial for its claims for equitable relief.

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The District Court entered an order on October 24, 2022, dismissing with prejudice Oracle's claims in Rimini II "for monetary relief of any kind under any legal theory[,] including but not limited to claims for damages, restitution, unjust enrichment, and engorgement. . ." In addition, Oracle's claims for breach of contract, inducing breach of contract and an accounting, were dismissed with prejudice, meaning that the claims (including for monetary damages) were dismissed on their merits and the judgment rendered is final. Prior to the date of the District Court's order dismissing with prejudice all of Oracle's claims for monetary relief, no damages of any kind were awarded by the District Court in Rimini II. The parties each reserved the right to seek or object to any attorneys' fees and/or costs to the extent permissible by law.

Following a bench trial that concluded in December 2022, the parties submitted their proposed findings of fact and conclusions of law in Rimini II to the District Court in February 2023.

In July 2023, the District Court issued its findings of fact and conclusions of law in Rimini II, accompanied by a permanent injunction against the Company (the "Rimini II Injunction") which, as set forth in detail below, is subject to an administrative stay and is not currently effective. The District Court found infringement as to Oracle's PeopleSoft and Oracle Database products but did not find infringement as to Oracle's EBS, Siebel and J.D. Edwards products, further ordering that the Company was entitled to a declaration of non-infringement for Oracle's EBS product. The District Court also found in favor of Oracle on its DMCA and Lanham Act claims, enjoining the Company from making certain statements and prohibiting certain actions in connection with the manner of marketing, selling and providing services to clients of the Oracle products in question as further described below, and on indirect and vicarious copyright infringement claims against the Company's Chief Executive Officer, Chairman of the Board and President, Mr. Ravin. The District Court denied the Company's California Unfair Competition Law claim and other declaratory judgment claims.

In late July 2023, the Company filed a notice of appeal in the District Court, commencing an appeal of the District Court's July 2023 Rimini II judgment and Injunction. Shortly thereafter, the Company filed an emergency motion with the District Court to stay enforcement of the Rimini II Injunction pending the Company's appeal of the Rimini II judgment and Injunction.

In August 2023, the District Court issued an order denying the Company's emergency motion to stay the Rimini II Injunction pending the Company's appeal with the Court of Appeals, but it granted an administrative stay of the Rimini II Injunction pending the outcome of a motion to stay to be filed by the Company with the Court of Appeals. Shortly thereafter, the Company filed the separate motion to stay the Rimini II Injunction with the Court of Appeals, asserting that certain provisions of the Rimini II Injunction are vague and overbroad, that the District Court committed legal error, that certain provisions would require the Company to commit criminal acts to comply with its terms, and that the Rimini II Injunction would cause the Company and third parties "irreparable harm," among other grounds.

In September 2023, the Court of Appeals issued an order holding the Company's appeal of the District Court's decision in Rimini II in abeyance pending the District Court's resolution of a motion filed by Oracle in August 2023 to amend the Rimini II judgment pertaining to an update, technical specification and tool related to Oracle's EBS software product. The District Court denied Oracle's motion to amend on January 9, 2024.

On January 18, 2024, the Ninth Circuit issued an order lifting the stay of the Company's appeal. As of the date of this Report, the appeal is fully briefed before the Ninth Circuit, and a three-judge panel will hold oral argument on the Company's appeal on June 5, 2024.

As of the date of this Report, the Court of Appeals has not issued a decision on the Company's motion to stay the Rimini II Injunction. Accordingly, the Rimini II Injunction, as issued by the District Court, is currently stayed by the District Court, meaning that it is not currently effective. The Rimini II Injunction is primarily directed at Oracle's PeopleSoft software product and, if effective, would limit, but not fully prohibit, the support services the Company can provide its clients using Oracle's PeopleSoft software product.

Among other things, the Rimini II Injunction requires the Company to immediately and permanently delete certain PeopleSoft software environments, files and updates identified in the Rimini II Injunction, as well as to delete and immediately and permanently discontinue use of certain Company-created automated tools. The Rimini II Injunction also prohibits using, distributing, copying, or making derivative works from certain files, and it prohibits the transfer or copying of PeopleSoft files, updates, and modifications, and portions of PeopleSoft software that are developed, tested, or exist in one client's systems to the Company's systems or another client's systems.

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The Rimini II Injunction also specifies that the Company shall not remove, alter or omit any Oracle copyright notices or other Oracle copyright management information from any file that contains an Oracle copyright notice and prohibits the Company from publicly making statements or statements substantially similar to those the District Court found to be "false and misleading," which are listed in the Rimini II Injunction.

While the Company plans to continue to vigorously pursue a stay of the Rimini II Injunction pending appeal and its appeal of the Rimini II judgment and Injunction, it is unable to predict the timing or outcome of these matters. No assurance is or can be given that the Company will succeed in its efforts to stay the Rimini II Injunction in full or in part pending appeal or prevail in all or part of its Rimini II appeal.

There were no monetary damages included in the District Court's judgment in Rimini II.

In November 2023, Oracle filed a motion with the District Court requesting attorneys' fees and taxable costs of approximately \$ 70.6 million relating to the Rimini II litigation. The Company filed its opposition to Oracle's motion on February 20, 2024. In its opposition, the Company argued that the District Court should deny Oracle's motion in its entirety. The Company further argued that, should the District Court award any attorneys' fees to Oracle, such fees should not exceed \$ 14.5 million. Following Oracle's filing of a reply brief on March 15, 2024, the matter is under consideration for determination by the District Court. As of the date of this Report, a decision about whether to award any attorneys' fees and/or costs to Oracle, and, if so, the amounts, has not been made by the District Court.

Although the Company continues to evaluate its liability and exposure, it does not currently believe that it is probable that an award of attorneys' fees and costs to Oracle representing a material loss will occur. However, the Company's judgment on whether a loss is probable, reasonably possible, or remote, and its estimates of probable loss amounts, may differ from actual results due to the inherent uncertainties associated with predicting the outcome of a decision on Oracle's motion. It is reasonably possible that the District Court could award Oracle attorneys' fees and costs in an amount that could have a material adverse impact on the Company's financial position, results of operations and cash flows.

If the Rimini II Injunction becomes effective in its current form, it likely would impact the Company's delivery of PeopleSoft support services to clients in the future. However, the associated costs are not currently estimatable and are required to be recorded when incurred. Accordingly, the Company has made no accrual as of March 31, 2024. Any required changes to how support services are delivered to the Company's PeopleSoft clients could have a material adverse impact on the Company's financial position, results of operations and cash flows. The percentage of revenue derived from services the Company provides solely for Oracle's PeopleSoft software product was approximately 8 % of the Company's total revenue for the three months ended March 31, 2024.

The Company reserves all rights, including appellate rights, with respect to the District Court's rulings in Rimini II and the Rimini II Injunction, including any award of attorneys' fees and costs to Oracle.

#### **Other Litigation**

From time to time, the Company may be a party to litigation and subject to claims incident to the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, the Company currently believes that the final outcome of these ordinary course matters will not have a material adverse effect on its business. Regardless of the outcome, litigation can have an adverse impact on the Company because of judgment, defense and settlement costs, diversion of management resources and other factors. At each reporting period, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimatable under ASC 450, *Contingencies*. Legal fees are expensed as incurred.

#### **Liquidated Damages**

The Company enters into agreements with clients that contain provisions related to liquidated damages that would be triggered in the event that the Company is no longer able to provide services to these clients. The maximum cash payments related to these liquidated damages is approximately \$ 8.3 million and \$ 9.3 million as of March 31, 2024 and December 31, 2023, respectively. To date, the Company has not incurred any costs as a result of such provisions and has not accrued any liabilities related to such provisions in these Unaudited Condensed Consolidated Financial Statements.

#### **NOTE 9 — RELATED PARTY TRANSACTIONS**

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An affiliate of Adams Street Partners and its affiliates (collectively referred to as "ASP") is a member of the Company's Board of Directors. As of March 31, 2024, ASP owned approximately 26.2 % of the Company's issued and outstanding shares of Common Stock.

**NOTE 10 — EARNINGS PER SHARE**

The Company computes earnings per share in accordance with ASC Topic 260, *Earnings per Share*. Basic earnings per share of Common Stock is computed by dividing net income attributable to common stockholders by the weighted average number of shares of basic Common Stock outstanding. Diluted earnings per share of Common Stock is calculated by adjusting the basic earnings per share of Common Stock for the effects of potential dilutive Common Stock shares outstanding such as stock options, restricted stock units and warrants.

For the three months ended March 31, 2024 and 2023, basic and diluted net earnings per share of Common Stock were computed by dividing the net income attributable to common stockholders by the weighted average number of common shares outstanding during the respective periods. The following tables set forth the computation of basic and diluted net income attributable to common stockholders (in thousands, except per share amounts):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Income attributable to common stockholders:		
Net income	\$ 1,317	\$ 5,639
Weighted average number of shares of Common Stock outstanding:		
Basic	89,754	88,690
Stock options	—	49
PSUs	386	—
RSUs	420	322
Diluted	90,560	89,061
Net income per share attributable to common stockholders:		
Basic	\$ 0.01	\$ 0.06
Diluted	\$ 0.01	\$ 0.06

The following potential Common Stock equivalents were excluded from the computation of diluted net income per share for the respective periods ending on these dates, since the impact of inclusion was anti-dilutive (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
RSUs and PSUs	483	800
Stock options	7,473	6,968
Warrants	3,440	3,440
Total	11,396	11,208

**NOTE 11 — FINANCIAL INSTRUMENTS AND SIGNIFICANT CONCENTRATIONS**

**Fair Value Measurements**

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Fair value is defined as the price that would be received upon sale of an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date. When determining fair value, the Company considers the principal or most advantageous market in which it transacts and considers assumptions that market participants would use when pricing the asset or liability. Additional information on fair value measurements is included in Note 13 to the Company's Consolidated Financial Statements for the year ended December 31, 2023, included in Part II, Item 8 of the 2023 Form 10-K. The Company's policy is to recognize asset or liability transfers among Level 1, Level 2 and Level 3 as of the actual date of the events or change in circumstances that caused the transfer.

#### **Investments**

In 2022, the Company began investing some of its cash and cash equivalents into U.S. Federal agency bonds, U.S. government bonds, U.S. treasury notes and other securities. The Company considers all highly liquid interest-earning investments with a maturity of three months or less at the date of purchase to be cash equivalents. The fair values of these investments approximate their carrying values.

In general, investments with original maturities of greater than three months and remaining maturities of less than one year are classified as short-term investments. Debt investments are classified as available-for-sale and gains and losses are recorded using the specific identification method. Changes in fair value are recorded in the operating statement. Fair value is calculated based on publicly available market information.

During the three months ended March 31, 2024, the Company transferred its investments in U.S. Federal agency bonds and U.S. treasury notes into other highly liquid interest-earning investments with maturities of less than three months. All of the Company's investments as of March 31, 2024 are classified as cash equivalents.

Listed below are the cash equivalent and investment balances as of December 31, 2023 (in thousands):

	<b>Fair Value Level</b>		<b>Unrealized Gains (Losses)</b>		<b>Recorded Basis</b>		<b>Cash Equivalents</b>		<b>Short-term Investments</b>
Federal Agency Bonds	Level 2	\$ 10,491	\$ 44	\$ 10,535	\$ 4,590	\$ 5,945			
US Treasury notes	Level 2	4,324	55	4,379	498	3,881			
		<b>\$ 14,815</b>	<b>\$ 99</b>	<b>\$ 14,914</b>	<b>\$ 5,088</b>	<b>\$ 9,826</b>			

#### **Derivatives**

On May 18, 2022, the Company entered into an interest rate swap agreement for a notional value of \$ 40.0 million. The derivative was recognized in the accompanying Unaudited Condensed Consolidated Balance Sheets at its estimated fair value as of March 31, 2024. The Company uses derivatives to manage the risk associated with changes in interest rates. The Company does not enter into derivatives for speculative purposes.

To estimate fair value for the Company's interest rate swap agreement as of March 31, 2024, the Company utilized a present value of future cash flows, leveraging a model-derived valuation that uses Level 2 observable inputs such as interest rate yield curves. The Company estimated the fair value of the interest rate swap agreement to be \$ 1.3 million as of March 31, 2024.

Changes in the fair value of the derivatives that qualify as cash flow hedges are recorded in Accumulated other comprehensive loss in the accompanying Unaudited Condensed Consolidated Balance Sheets until earnings are affected by the variability of the cash flows.

The Company received interest swap payments of \$ 0.2 million and \$ 0.2 million during the three months ended March 31, 2024 and 2023, respectively, which were recorded as a reduction to interest expense.

The amounts recorded for the interest rate swap agreement are described below (in thousands):

**RIMINI STREET, INC.**  
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Derivative Instrument	Balance Sheet Classification	March 31, 2024	December 31, 2023
Interest rate swap	Deposits and other	\$ 1,275	\$ 891
	Accumulated other comprehensive loss	1,013	713
<b>Three Months Ended March 31,</b>			
Derivative Instrument	Income Statement Classification	2024	2023
Interest rate swap	Interest expense (benefit)	\$ (241)	\$ (157)

**Significant Concentrations**

The Company attributes revenues to geographic regions based on the location of its clients' contracting entities. The following table shows revenues by geographic region (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
	\$ 53,808	\$ 53,433
United States of America	\$ 52,937	\$ 52,079
International	\$ 106,745	\$ 105,512
<b>Total</b>	<b>106,745</b>	<b>105,512</b>

For the three months ended March 31, 2024, Japan represented 10 % of total revenue. No clients represented more than 10% of revenue for the three months ended March 31, 2024 and 2023. As of March 31, 2024 and December 31, 2023, no clients accounted for more than 10% of total net accounts receivable. The Company tracks its assets by physical location. As of March 31, 2024 and December 31, 2023, the net carrying value of the Company's property and equipment located outside of the United States amounted to approximately \$ 4.2 million and \$ 4.3 million respectively. As of March 31, 2024, the Company had operating lease right-of-use assets of \$ 2.8 million, \$ 1.6 million and \$ 0.9 million in the United States, India and the rest of the world, respectively. As of December 31, 2023, the Company had operating lease right-of-use assets of \$ 3.0 million, \$ 2.0 million and \$ 0.9 million in the United States, India and the rest of the world, respectively.

Financial instruments that subject the Company to concentrations of credit risk consist primarily of cash, cash equivalents, restricted cash, and accounts receivable. The Company maintains its cash, cash equivalents and restricted cash at high-quality financial institutions, primarily in the United States. Deposits, including those held in foreign branches of global banks, may exceed the amount of insurance provided on such deposits. As of March 31, 2024 and December 31, 2023, the Company had cash, cash equivalents and restricted cash with a single financial institution for an aggregate of \$ 48.4 million and \$ 48.9 million, respectively. In addition, as of March 31, 2024 and December 31, 2023, the Company had cash and cash equivalents with three other single financial institutions of \$ 59.3 million and \$ 51.7 million, respectively. As of March 31, 2024 and December 31, 2023, the Company had restricted cash of \$ 0.4 million. The Company has never experienced any losses related to these balances.

Generally, credit risk with respect to accounts receivable is diversified due to the number of entities comprising the Company's client base and their dispersion across different geographies and industries. The Company performs ongoing credit evaluations on certain clients and generally does not require collateral on accounts receivable. The Company maintains reserves for potential bad debts and historically such losses are generally not significant.

**NOTE 12 - LEASES**

The Company has operating leases for real estate and equipment with an option to renew the leases for up to one month to five years . Some of the leases include the option to terminate the leases upon 30 -days' notice with a penalty. The Company's leases have various remaining lease terms ranging from April 2024 to January 2029. The Company's lease agreements may include renewal or termination options for varying periods that are generally at the Company's discretion. The Company's lease terms only include those periods related to renewal options the Company believes are reasonably certain to exercise. The Company generally does not include these renewal options as it is not reasonably certain to renew at the lease commencement date. This determination is based on consideration of certain economic, strategic and other factors that the Company evaluates at lease commencement date and reevaluates throughout the lease term. Some leases also include options to terminate the leases and the

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Company only includes those periods beyond the termination date if it is reasonably certain not to exercise the termination option.

The Company uses a discount rate to calculate the right of use ("ROU") asset and lease liability. When the implicit rate is known or provided in the lease documents, the Company is required to use this rate. In cases in which the implicit rate is not known, the Company uses an estimated incremental borrowing rate.

Some leasing arrangements require variable payments that are dependent on usage or may vary for other reasons, such as payments for insurance and tax payments. The variable portion of lease payments is not included in the Company's ROU assets or lease liabilities. Rather, variable payments, other than those dependent upon an index or rate, are expensed when the obligation for those payments is incurred and are included in lease expenses recorded in selling and administrative expenses on the Consolidated Statements of Operations and Comprehensive Income.

The Company has lease agreements with both lease and non-lease components that are treated as a single lease component for all underlying asset classes. Accordingly, all expenses associated with a lease contract are accounted for as lease expenses.

The Company has elected to apply the short-term lease exception for all underlying asset classes. That is, leases with a term of 12 months or less are not recognized on the balance sheet, but rather expensed on a straight-line basis over the lease term. The Company's leases do not include significant restrictions or covenants, and residual value guarantees are generally not included within its operating leases. As of March 31, 2024, the Company did not have any additional material operating leases that had not yet commenced.

The components of lease expense and supplemental balance sheet information were as follows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Operating lease expense related to ROU assets and liabilities	\$ 1,112	\$ 1,147
Other lease expense	113	48
<b>Total lease expense</b>	<b>\$ 1,225</b>	<b>\$ 1,195</b>

Other information related to leases was as follows (in thousands):

<b>Supplemental Balance Sheet Information</b>	<b>March 31, 2024</b>	<b>December 31, 2023</b>
	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Operating lease right-of-use assets, noncurrent	\$ 5,257	\$ 5,941
Operating lease liabilities, current	\$ 4,357	\$ 4,321
Operating lease liabilities, noncurrent	5,815	6,841
<b>Total operating lease liabilities</b>	<b>\$ 10,172</b>	<b>\$ 11,162</b>
<b>Weighted Average Remaining Lease Term</b>	<b>Years</b>	
Operating leases	2.69	
<b>Weighted Average Discount Rate</b>	9.6 %	
Operating leases	9.6 %	

Maturities of operating lease liabilities as of March 31, 2024 were as follows (in thousands):

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<b>Year Ending March 31,</b>	
2025	\$ 5,095
2026	3,228
2027	2,486
2028	359
2029	307
Thereafter	—
<b>Total future undiscounted lease payments</b>	<b>11,475</b>
Less imputed interest	( 1,303 )
<b>Total</b>	<b>\$ 10,172</b>

For the three months ended March 31, 2024 and 2023, the Company paid \$ 1.4 million and \$ 1.1 million, respectively, for operating lease liabilities.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.****CAUTIONARY NOTE ABOUT FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q (this "Report") includes forward-looking statements. All statements other than statements of historical facts contained in this Report, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words "anticipate," "believe," "continue," "could," "currently," "estimate," "expect," "future," "intend," "may," "might," "outlook," "plan," "possible," "potential," "predict," "project," "seem," "seek," "should," "will," "would" and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements include, but are not limited to, information concerning:

- the evolution of the enterprise software management and support landscape facing our clients and prospects;
- our ability to educate the market regarding the advantages of our enterprise software management and support services and products;
- costs, including attorneys' fees, associated with defending intellectual property infringement and other claims, such as those claims discussed under "*Legal Proceedings*" in Part II, Item 1 of this Report, and our expectations with respect to such litigation, including the disposition of pending motions to appeal, and any new claims;
- any additional expenses to be incurred to comply with the Rimini II Injunction and the impact on future period revenue and costs;
- estimates of our total addressable market;
- expectations of client savings relative to use of other providers;
- the occurrence of catastrophic events, including terrorism and geopolitical actions specific to an international region, that may disrupt our business or that of our current and prospective clients;
- our ability to maintain an adequate rate of revenue growth;
- our ability to maintain sufficient cash flow and capital or raise additional capital necessary to fund our operations and invest in new services and products;
- the impact of the debt service obligations and financial and operational covenants under both our Original Credit Facility and our 2024 Credit Facility on our business and related interest rate risk;
- our business plan and our ability to effectively manage our growth and associated investments;
- the impact of any recessionary economic trends, including inflation, rising interest rates and changes in foreign exchange rates;
- beliefs and objectives for future operations;
- our ability to expand our leadership position in independent enterprise software support and to sell our application management services ("AMS") and Rimini ONE™ integrated services;
- our ability to attract and retain clients and our ability to further penetrate our existing client base;
- our ability to maintain our competitive technological advantages against new entrants in our industry;
- our ability to timely and effectively scale and adapt our existing technology;
- our ability to innovate new products and bring them to market in a timely manner;
- our ability to maintain, protect, and enhance our brand and intellectual property;
- our ability to capitalize on changing market conditions including a market shift to hybrid and cloud/SaaS offerings for information technology environments and retirement of certain software releases by software vendors;
- our ability to develop strategic partnerships;
- benefits associated with the use of our services;
- our ability to expand internationally;
- our need and ability to raise equity or debt financing on favorable terms and our ability to generate cash flows from operations to help fund increased investment in our growth initiatives;
- the effects of increased competition in our market and our ability to compete effectively;
- our intentions with respect to our pricing model;
- cost of revenue, including changes in costs associated with production and client support;
- changes in laws or regulations, including tax laws or unfavorable outcomes of tax positions we take, or a failure by us to establish adequate reserves for tax events;
- our ability to maintain our good standing with the United States and international governments and capture new contracts;
- economic and industry trends or trend analysis;
- our ability to prevent unauthorized access to our information technology systems and other cybersecurity threats, protect the confidential information of our employees and clients and comply with privacy and data protection regulations;

- the amount and timing of repurchases, if any, under our stock repurchase program and our ability to enhance stockholder value through such program or any other actions to provide value to stockholders;
- the attraction and retention of additional qualified personnel, including sales personnel, and the retention of key personnel;
- future acquisitions of or investments in complementary companies, products, subscriptions or technologies;
- uncertainty from the discontinuance of LIBOR and the transition to SOFR or other interest rate benchmarks;
- the effects of seasonal trends on our results of operations, including the contract renewal cycles for vendor-supplied software support and managed services;
- our ability to maintain an effective system of internal control over financial reporting and our ability to remediate any identified material weaknesses in our internal controls; and
- other risks and uncertainties, including those discussed under "Risk Factors" in Part II, Item 1A of this Report.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those referred to under "Risk Factors" in Part II, Item 1A of this Report. Moreover, we operate in very competitive and rapidly changing markets. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. The forward-looking statements in this Report are made as of the date of the filing, and except as required by law, we disclaim and do not undertake any obligation to update or revise publicly any forward-looking statements in this Report. You should read this Report and the documents that we reference in this Report and have filed with the SEC as exhibits with the understanding that our actual future results, levels of activity and performance, as well as other events and circumstances, may be materially different from what we expect.

## Overview

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the Unaudited Condensed Consolidated Financial Statements and the related notes to those statements included in Part I, Item 1 of this Report, and our Audited Consolidated Financial Statements for the year ended December 31, 2023, included in Part II, Item 8 of our 2023 Form 10-K.

Certain figures, such as interest rates and other percentages included in this section have been rounded for ease of presentation. Percentage figures included in this section have not in all cases been calculated based on such rounded figures but on the basis of such amounts prior to rounding. For this reason, percentage amounts in this section may vary slightly from those obtained by performing the same calculations using the figures in our Unaudited Condensed Consolidated Financial Statements or in the associated text. Certain other amounts that appear in this section may similarly not sum due to rounding.

Rimini Street, Inc. was formed in the State of Nevada in 2005 and, through a merger in 2017 with a public company, became Rimini Street, Inc., a Delaware corporation, trading on the Nasdaq Global Market under the ticker symbol "RMNI."

Rimini Street, Inc. and its subsidiaries (referred to as "Rimini Street", the "Company", "we" and "us") are global providers of end-to-end enterprise software support, products and services. The Company offers a comprehensive family of unified solutions to run, manage, support, customize, configure, connect, protect, monitor, and optimize clients' enterprise application, database, and technology software platforms.

Over the years, as our reputation for technical capability, value, innovation, responsiveness and trusted reliability grew, clients and prospects began asking us to expand the scope of our support, product and service offerings to meet other current and evolving needs and opportunities related to their enterprise software. We also heard from prospects and clients that their goals include reducing the number of IT vendors to more manageable numbers from a governance perspective, with a desire to select vendors who can provide a wider scope of IT services and become true trusted partners.

To meet the needs of our clients and prospects and to service what we believe is a significantly expanded addressable market opportunity, we designed, developed and are now delivering a new, expanded solutions portfolio (our "Solutions Portfolio") for a wider array of enterprise software – including an expanded list of supported software; managed services for Oracle, SAP, IBM, Salesforce and open-source database software; and new solutions for security, interoperability, observability and consulting. We also now offer an integrated package of our services as Rimini ONE™, a unique end-to-end, "turnkey" outsourcing option for Oracle and SAP landscapes designed to optimize our clients' existing technologies with a minimum of 15 extended years of operating lifespan and enable our clients to focus their IT talent and budget on potentially higher-value, innovative projects that will support competitive advantage and growth.

Enterprise software support, products and services is one of the largest categories of overall global information technology ("IT") spending. We believe enterprise resource planning ("ERP"), customer relationship management ("CRM"), product lifecycle management ("PLM") database and technology software systems have become increasingly important in the operation of mission-critical business processes over the last 30 years. Also the costs associated with running and supporting these systems, system failure and downtime, security exposure, system integration and monitoring, and maintaining the tax, legal and regulatory compliance of these software systems have each contributed to increases in both actual spend and as a percentage of the typical full IT budget. As a result, we believe that licensees often view enterprise software support, products and services as a mandatory cost of doing business. The majority of our revenue through March 31, 2024, was generated from our support solutions.

In a traditional licensing model, the customer typically procures a perpetual software license and pays for the license in a single upfront fee ("perpetual license"), and base software support services can be optionally procured from the software vendor for an annual fee that is typically 20-23% of the total cost of the software license. In a newer subscription-based licensing model, such as software as a service ("SaaS"), the customer generally pays for the usage of the software on a monthly or annual basis ("subscription license"). Under a subscription license, the product license and a base level of software support are generally bundled together as a single purchase, and the base level of software support is not procured separately nor is it an optional purchase.

When we provide our support solutions for a perpetual software license, we generally offer our clients service for a fee that is equal to approximately 50% of the annual fees charged by the software vendor for their base support. When providing supplemental software support for a perpetual license, where the client procures our support service in addition to retaining the software vendor's base support, we generally offer our clients service for a fee that is equal to approximately 25% of the annual fees charged by the software vendor for their base support. We also offer a special support service, Rimini Street Extra Secure Support, available to clients that require a more rigorous level of security background checks and/or government security clearance for engineers accessing a client's system than our standard employment security background check and requirements. Clients may be asked to pay an additional fee for Rimini Street Extra Secure Support.

In addition to our support services, we also offer a breadth of enterprise software support, products and services through our full portfolio of solutions at an additional fee that is calculated based on a variety of factors and metrics. Our solutions are designed to meet specific client needs and are designed to provide what we believe is exceptional value and return for the fees charged. For more details about our Solutions Portfolio, please see Item 1 "Business" included in Part I of our 2023 Form 10-K.

As of March 31, 2024, we employed over 2,130 professionals and supported approximately 3,040 active clients globally, including 70 Fortune 500 companies and 18 Fortune Global 100 companies across a broad range of industries. We define an active client as a distinct entity, such as a company, an educational or government institution, or a business unit of a company that purchases our services to support a specific product. For example, we count as two separate active clients instances where we provide support for two different products to the same entity.

Our subscription-based revenue provides a strong foundation for, and visibility into, future period results. For the three months ended March 31, 2024 and 2023, we generated revenue of \$106.7 million and \$105.5 million, respectively, representing an increase of 1%. During the three months ended March 31, 2024, we recorded net income of \$1.3 million, and as of March 31, 2024, we had an accumulated deficit of \$200.9 million. Approximately 50% and 51% of our revenue was generated in the United States for the three months ended March 31, 2024 and 2023, respectively. Approximately 50% and 49% of our revenue was generated in foreign jurisdictions for the three months ended March 31, 2024 and 2023, respectively.

Since our inception, we have financed our operations through cash collected from clients and net proceeds from equity financings and borrowings.

## **Global Economic Uncertainty**

We have experienced some clients not renewing our services due to the adverse impact on their businesses from current global economic uncertainty, as well as by the economic disruption continuing to be caused by the Israel-Hamas conflict, the Russian invasion of Ukraine in early 2022 and recent political and trade turmoil with China, amongst other global challenges. While we do not physically operate in Russia, the Ukraine or in mainland China, we do have operations in Israel. These global events, together with inflationary pressures, have negatively impacted the global economy, causing the U.S. Federal Reserve to raise interest rates in 2022. Despite these macroeconomic and geopolitical pressures, we expect to continue to be able to market, sell and provide our current and future products and services to clients globally. We also expect to continue investing in the development and improvement of new and existing products and services to address client needs. Further, although our operations are influenced by general economic conditions, we do not believe the impacts of economic disruptions described above had a significant net impact on our revenue or results of operations during the three months ended March 31, 2024.

The extent to which rising inflation, interest rate increases, continuing global economic and geopolitical uncertainty impact our business going forward, however, will depend on numerous evolving factors we cannot reliably predict, including continued governmental and business actions in response to increasing global economic and geopolitical uncertainty. As such, the effects of rising inflation, interest rate increases and other negative impacts on the global economy may not be fully reflected in our financial results until future periods. Refer to "Risk Factors" (Part II, Item 1A of this Report) for a discussion of these factors and other risks.

## **Recent Developments**

Reference is made to Notes 5 and 8 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report for a discussion of recent developments regarding our 2024 Credit Facility and litigation with Oracle.

## **Key Business Metrics**

### ***Number of clients***

Since we founded our company, we have made the expansion of our client base a priority. We believe that our ability to expand our client base is an indicator of the growth of our business, the success of our sales and marketing activities, and the value that our services bring to our clients. We define an active client as a distinct entity, such as a company, an educational or government institution, or a business unit of a company that purchases our services to support a specific product. For example, we count as two separate active clients when support for two different products is being provided to the same entity. As of March 31, 2024 and 2023, we had approximately 3,040 and 3,000 active clients, respectively.

We define a unique client as a distinct entity, such as a company, an educational or government institution or a subsidiary, division or business unit of a company that purchases one or more of our products or services. We count as two separate unique clients when two separate subsidiaries, divisions or business units of an entity purchase our products or services. As of March 31, 2024 and 2023, we had over 1,530 and 1,500 unique clients, respectively.

The increases in both our active and unique client counts have been a combination of new unique client wins as well as cross-sales of new support, products and services to existing clients. As noted previously, we intend to focus future growth on both new and existing clients. We believe that the growth in our number of clients is an indication of the increased adoption of our enterprise software products and services.

### ***Annualized recurring revenue***

We recognize subscription revenue on a daily basis. We define annualized recurring revenue as the amount of subscription revenue recognized during a quarter and multiplied by four. This gives us an indication of the revenue that can be earned in the following 12-month period from our existing client base assuming no cancellations or price changes occur during that period. Subscription revenue excludes any non-recurring revenue, which has been insignificant to date.

Our annualized recurring revenue was \$416 million and \$408 million as of March 31, 2024 and 2023, respectively. We believe the sequential increase in annualized recurring revenue demonstrates a growing client base, which is an indicator of stability in future subscription revenue.

#### **Revenue retention rate**

A key part of our business model is the recurring nature of our revenue. As a result, it is important that we retain clients after the completion of the non-cancellable portion of the support period. We believe that our revenue retention rate provides insight into the quality of our products and services and the value that our products and services provide our clients.

We define revenue retention rate as the actual subscription revenue (dollar-based) recognized in a 12-month period from clients that existed on the day prior to the start of the 12-month period divided by our annualized recurring revenue as of the day prior to the start of the 12-month period. Our revenue retention rate was 89% and 92% for the 12 months ended March 31, 2024 and 2023, respectively. The decline in our revenue retention rate for the 12 months ended March 31, 2024 was due to attrition during the trailing twelve months, as certain clients did not renew specific subscriptions; however, in some cases these clients maintained or added subscriptions for other products and services. Our net billings during the three months ended March 31, 2024 declined \$18.9 million compared to the three months ended March 31, 2023 primarily because we were unable to increase new client invoicing to offset the loss of some larger contracts.

#### **Gross profit margin**

We derive revenue through the provision of our enterprise software products and services. All the costs incurred in providing these products and services are recognized as part of the cost of revenue. The cost of revenue includes all direct product line expenses, as well as the expenses incurred by our shared services organization which supports all product lines.

We define gross profit as the difference between revenue and the costs incurred in providing the software products and services. Gross profit margin is the ratio of gross profit divided by revenue. Our gross profit margin was approximately 59.8% and 62.7% for the three months ended March 31, 2024 and 2023, respectively. While the gross profit margin declined for the three months ended March 31, 2024 compared to the three months ended March 31, 2023 due to our investments, we continue to drive efficiency and effectiveness while supporting our clients.

## Results of Operations

### Comparison of Three Months Ended March 31, 2024 and 2023

Our consolidated statements of operations for the three months ended March 31, 2024 and 2023, are presented below (in thousands):

	Three Months Ended March 31,		Variance	
	2024	2023	Amount	Percent
Revenue	\$ 106,745	\$ 105,512	\$ 1,233	1.2%
Cost of revenue:				
Employee compensation and benefits	27,783	25,138	2,645	10.5%
Engineering consulting costs	6,463	6,677	(214)	(3.2)%
Administrative allocations (1)	4,039	3,732	307	8.2%
All other costs	4,629	3,796	833	21.9%
Total cost of revenue	42,914	39,343	3,571	9.1%
Gross profit	63,831	66,169	(2,338)	(3.5)%
Gross profit margin	59.8 %	62.7 %		
Operating expenses:				
Sales and marketing	39,141	34,479	4,662	13.5%
General and administrative	18,401	18,227	174	1.0%
Reorganization costs	—	59	(59)	(100.0)%
Litigation costs and related recoveries, net	2,926	2,719	207	7.6%
Total operating expenses	60,468	55,484	4,984	9.0%
Operating income	3,363	10,685	(7,322)	(68.5)%
Non-operating income and (expenses):				
Interest expense	(1,341)	(1,339)	(2)	0.1%
Other income (expenses), net	964	528	436	82.6%
Income before income taxes	2,986	9,874	(6,888)	(69.8)%
Income taxes	(1,669)	(4,235)	2,566	(60.6)%
Net income	\$ 1,317	\$ 5,639	\$ (4,322)	(76.6)%

(1) Includes the portion of costs for IT, security services and facilities costs that are allocated to cost of revenue. In our Unaudited Condensed Consolidated Financial Statements, the total of such costs is allocated between cost of revenue, sales and marketing, and general and administrative expenses, based primarily on relative headcount, except for facilities which is based on occupancy.

**Revenue.** Revenue increased from \$105.5 million for the three months ended March 31, 2023 to \$106.7 million for the three months ended March 31, 2024, an increase of \$1.2 million or 1%. The increase was driven by a 2% increase in the average number of unique clients from 1,509 for the three months ended March 31, 2023 to 1,535 for the three months ended March 31, 2024. On a geographic basis, United States revenue grew from \$53.4 million for the three months ended March 31, 2023 to \$53.8 million for the three months ended March 31, 2024, an increase of \$0.4 million or 1%. Our international revenue grew from \$52.1 million for the three months ended March 31, 2023 to \$52.9 million for the three months ended March 31, 2024, an increase of \$0.9 million or 2%.

**Cost of revenue.** Cost of revenue increased from \$39.3 million for the three months ended March 31, 2023 to \$42.9 million for the three months ended March 31, 2024, an increase of \$3.6 million or 9%. The key drivers related to the cost of revenue increase were a \$2.6 million increase in employee compensation and benefits to support an average headcount increase of 22%, a \$0.3 million increase in administrative allocations and a \$0.8 million increase in all other costs. These cost increases were offset by a \$0.2 million decrease in engineering consulting costs.

As discussed in Note 8 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report, the District Court issued its findings of fact and conclusions of law in Rimini II, accompanied by the "Rimini II

Injunction" on July 24, 2023. The District Court found infringement as to Oracle's PeopleSoft and Oracle Database products. As a result of the findings, we are likely to incur additional expenses for incremental labor costs in order to comply with the District Court's Rimini II Injunction. At this time, we have yet to determine the impact on future period costs. Any adverse outcome in our ongoing judicial proceedings could have a material adverse effect on our results of operations.

**Gross profit.** Gross profit decreased from \$66.2 million for the three months ended March 31, 2023 to \$63.8 million for the three months ended March 31, 2024, a decrease of \$2.3 million or 4%. Gross profit margin for the three months ended March 31, 2023 was 62.7% compared to 59.8% for the three months ended March 31, 2024. For the three months ended March 31, 2024, the total cost of revenue increased by 9%, primarily due to an increase in average headcount of 22% compared to an increase in revenue of 1% for the three months ended March 31, 2024. As a result, our gross profit margin declined by 290 basis points period over period. We expect margin pressures in the short-term as we invest in our new offerings.

**Sales and marketing expenses.** As a percentage of our revenue, sales and marketing expenses were 37% and 33% for the three months ended March 31, 2024 and 2023, respectively. In dollar terms, sales and marketing expenses increased from \$34.5 million for the three months ended March 31, 2023 to \$39.1 million for the three months ended March 31, 2024, an increase of \$4.7 million or 14%. This increase was primarily due to an increase in travel and entertainment costs of \$4.4 million, primarily related to a sales training event held in January 2024. In addition, we incurred an increase in employee compensation and benefits of \$0.7 million and an increase of administrative allocations and all other costs of \$0.6 million. These increases were offset by declines in marketing and advertising costs of \$0.7 million and contract labor of \$0.5 million. We will continue to seek to accelerate our future revenue growth by investing in more resources.

The \$0.7 million increase in sales and marketing expense attributable to employee compensation and benefits for the three months ended March 31, 2024 was primarily due to an increase in salaries, wages and benefits of \$0.6 million and commissions of \$0.5 million offset by decreases in bonuses and all other compensation of \$0.4 million.

**General and administrative expenses.** General and administrative expenses increased from \$18.2 million for the three months ended March 31, 2023 to \$18.4 million for the three months ended March 31, 2024, an increase of \$0.2 million or 1%. This increase was comprised of several items, which included an increase in salaries, wages, bonuses and benefits of \$0.6 million, an increase in computer supplies and licenses of \$0.4 million and an increase in travel and entertainment costs of \$0.3 million. These incremental expenses were offset by a decline in other tax costs of \$0.5 million, a decline in professional service costs of \$0.5 million and a decline of recruitment costs of \$0.3 million.

Looking forward on a quarter-over-quarter basis, we are monitoring the demand for our services in light of current global economic conditions and will adjust our expenditures accordingly. However, we expect to incur higher expenses associated with supporting the growth of our business, both in terms of size and geographical diversity. Our company costs that are expected to increase in the future include costs relating to additional information systems costs, costs for additional personnel in our accounting, human resources, IT and legal functions, SEC and Nasdaq fees, and incremental professional, legal, audit and insurance costs. As a result, we expect our general and administrative expenses to increase in dollar terms in future periods.

**Litigation costs, net of related insurance recoveries.** Litigation costs, net of related insurance recoveries, consist of the following (in thousands):

	Three Months Ended March			Change	
	31,		2023		
	2024	2023			
Professional fees and other costs of litigation	\$ 2,926	\$ 2,719	\$ 207		
Litigation costs and related recoveries, net	\$ 2,926	\$ 2,719	\$ 207		

Professional fees and other costs associated with litigation increased from \$2.7 million for the three months ended March 31, 2023 to \$2.9 million for the three months ended March 31, 2024, an increase of \$0.2 million. This increase was primarily due to costs incurred for our appeal preparation of the Rimini II decision with the Ninth Circuit on June 5, 2024.

There were no insurance costs and related recoveries, net incurred for either the three months ended March 31, 2023 or for the three months ended March 31, 2024. We are self-insured for any costs related to any current or future intellectual property litigation. We currently believe our cash on hand, accounts receivable and contractually committed backlog provides us with sufficient liquidity to cover our ongoing attorneys' fees and related costs, such as travel, hotels and consultants, associated with ongoing litigation, including Rimini II. However, please refer to the litigation matters as disclosed in Note 8 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report for further information.

**Interest expense.** Interest expense was \$1.3 million for both the three months ended March 31, 2023 and the three months ended March 31, 2024. Interest expense slightly increased primarily due to rising interest rates on our five-year Original Credit Facility, which increased from an average interest rate of 6.3% for the three months ended March 31, 2023 to an average interest rate of 7.2% for the three months ended March 31, 2024. These rising interest rates were offset, in part, by a reduction of interest costs during the three months ended March 31, 2024, due to a net year over year increase in payments received from our interest rate swap of \$0.1 million.

**Other income (expenses), net.** Other income (expenses), net is primarily comprised of interest income, foreign exchange gains and losses, and other non-operating income and expenses. For the three months ended March 31, 2024, net other income of approximately \$1.0 million was comprised primarily of gains from cash equivalents and investments. For the three months ended March 31, 2023, net other expenses of approximately \$0.5 million was comprised primarily of gains from cash equivalents and investments of \$0.9 million which were offset, in part, by foreign exchange losses of approximately \$0.4 million.

**Income tax expense.** We had an income tax expense of \$4.2 million for the three months ended March 31, 2023 compared to an income tax expense of \$1.7 million for the three months ended March 31, 2024. For the three months ended March 31, 2024, the primary reason for the decrease in income tax expense was due to a decrease of income before taxes of \$6.9 million in the current year period compared to the prior year period as well as a decrease in foreign withholding taxes.

## Liquidity and Capital Resources

### Overview

As of March 31, 2024, we had a working capital deficit of \$44.5 million and an accumulated deficit of \$200.9 million. For the three months ended March 31, 2024, we recorded net income of \$1.3 million. As of March 31, 2024, we had available cash, cash equivalents and restricted cash of \$129.4 million.

On April 30, 2024, we refinanced our Original Credit Facility, which had an outstanding principal balance of \$70.9 million, with a new five-year senior secured credit facility ("2024 Credit Facility") consisting of a \$75.0 million term loan and a \$35.0 million revolving line of credit. On that date, we had outstanding term loan borrowings under our 2024 Credit Facility of \$75.0 million. In addition, we had availability of \$35.0 million under our new revolving line of credit. We have a choice of interest rates under the 2024 Credit Facility between (a) SOFR and (b) Base Rate, in each case plus an applicable margin. The applicable margin remains the same as the Original Credit Facility and is based on our Consolidated Total Leverage Ratio (as defined in the 2024 Credit Facility) and whether we elect SOFR (ranging from 2.75% to 3.50%) or a Base Rate (ranging from 1.75% to 2.5%). Interest on the unused portion of the revolving credit line is at rates of between 25 to 40 basis points, depending on our Consolidated Total Leverage Ratio. Annual minimum principal payments over the five-year term for the 2024 Credit Facility are 5%, 5%, 7.5%, 7.5%, and 10%, respectively, with the remaining balance due at the end of the original term.

Please refer to Note 5 to the Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report for information regarding our Original Credit Facility.

A key component of our business model requires that substantially all clients prepay us annually for the services we will provide over the following year or longer. As a result, we typically collect cash from our clients in advance of when the related service costs are incurred, which resulted in deferred revenue of \$230.0 million that is included in current liabilities as of March 31, 2024. Therefore, we believe that working capital deficit is not as meaningful in evaluating our liquidity since the historical costs of fulfilling our commitments to provide services to clients are currently limited to approximately 40% of the related deferred revenue based on our gross profit percentage of 60% for the three months ended March 31, 2024.

For the next year, assuming that our operations are not significantly impacted by rising inflation, interest rate increases, other global economic or geopolitical uncertainties, or the litigation matters as disclosed in Note 8 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report, we believe that cash, cash equivalents and restricted cash of \$129.4 million as of March 31, 2024, plus future cash flows from operating activities will be sufficient to meet our anticipated cash needs including working capital requirements, planned capital expenditures and our contractual obligations. Our future capital requirements depend on many factors, including client growth, number of employees, expansion of sales and marketing activities, and the introduction of new and enhanced services offerings. We may also enter into arrangements to acquire or invest in complementary businesses, services, technologies, or intellectual property rights in the future. We may choose to seek additional debt or equity financing to support these long-term capital requirements.

Alternatively, we may also consider reducing amounts outstanding under our 2024 Credit Facility to minimize our exposure to rising interest rates. If interest rates continue to increase as expected and adverse economic changes occur, we may not be able to access credit on terms favorable to us, impacting our ability to support these long-term capital requirements. In an economic downturn, we may also be unable to raise capital through debt or equity financings on terms acceptable to us or at all. Covenants in our 2024 Credit Facility could also have consequences on our operations, including restricting or delaying our ability to obtain additional financing, potentially limiting our ability to adjust to rapidly changing market conditions or respond to business opportunities. Additionally, in challenging and uncertain economic environments, we cannot predict when macroeconomic uncertainty may arise, whether or when such circumstances may improve or worsen or what impact such circumstances could have on our business and our liquidity requirements.

For the three months ended March 31, 2024, we generated cash flows from our operating activities of approximately \$11.1 million, which was derived from net income of \$1.3 million as well as adjustments to reconcile net income to net cash of approximately \$4.0 million and a favorable change in operating assets and liabilities of approximately \$5.7 million. We believe that our operating cash flows for the year ending December 31, 2024 will be sufficient to fund the portion of our contractual obligations that is not funded with existing capital resources.

#### **Cash Flows Summary**

Presented below is a summary of our operating, investing and financing cash flows (in thousands):

	<b>Three Months Ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Net cash provided by (used in):		
Operating activities	\$ 11,088	\$ 8,643
Investing activities	8,654	(346)
Financing activities	(1,775)	(1,101)

The effect of foreign currency translation was unfavorable by \$4.4 million and \$35 thousand for the three months ended March 31, 2024 and 2023, respectively, due to unfavorable foreign exchange impacts related to foreign cash. For the three months ended March 31, 2024, we experienced a significant change in foreign currency exchange rates as the U.S. dollar strengthened against the majority of foreign currencies where we operate. The unfavorable foreign currency impact was primarily related to our foreign cash held in Japan as the Japanese yen weakened significantly against the U.S. dollar.

#### *Cash Flows Provided by Operating Activities*

As clients typically prepay us annually for the services which we will provide over the following year or longer, we typically collect cash in advance of the date when the vast majority of the related services are provided.

For the three months ended March 31, 2024, cash flows provided by operating activities amounted to approximately \$11.1 million. The key drivers resulting in our cash provided by operating activities for the three months ended March 31, 2024, included net income of \$1.3 million and adjustments to reconcile net income to net cash totaling \$4.0 million, as well as favorable changes in operating assets and liabilities of \$5.7 million, resulting in net cash provided by operating activities of \$11.1 million.

For the three months ended March 31, 2024, adjustments to reconcile net income to net cash consisted primarily of stock-based compensation expense of \$2.6 million, amortization and accretion related to operating lease ROU assets of \$1.1 million, depreciation and amortization expense of \$0.9 million and accretion and amortization of debt discount and issuance costs of \$0.2 million. These favorable items were offset by deferred income taxes of \$0.8 million. For the three months ended March 31, 2024, the changes in operating assets and liabilities, net consisted of favorable changes to accounts receivable of \$39.8 million, prepaid expenses, deposits and other assets of \$3.5 million and deferred contract costs of \$2.5 million. The favorable change to accounts receivable was a result of collecting \$116.7 million during the three months ended March 31, 2024 which was offset by billings, net of \$74.1 million during the three months ended March 31, 2024. As a result, our days sales outstanding for accounts receivable was 97 days as of March 31, 2024. The favorable change in deferred contract costs was due to capitalizing \$2.5 million of commissions and amortizing \$5.0 million of deferred contract costs during the three months ended March 31, 2024.

Offsetting these favorable changes were unfavorable changes to accrued liabilities of \$8.4 million, deferred revenue of \$29.3 million and accounts payable of \$2.3 million. The unfavorable use of cash for accrued liabilities related primarily to paying incremental compensation related to bonuses and commissions of \$8.1 million during the current period. Regarding the use of cash for deferred revenue, it was due to recognizing \$106.7 million in revenue for the current period, which was offset by recording billings, net of \$74.1 million during the current period.

For the three months ended March 31, 2023, cash flows provided by operating activities amounted to approximately \$8.6 million. The key drivers resulting in our cash provided by operating activities for the three months ended March 31, 2023 included net income of \$5.6 million, as well as adjustments to reconcile net income to net cash totaling \$4.5 million. These two items were offset, in part, by unfavorable changes in operating assets and liabilities of \$1.5 million, resulting in net cash provided by operating activities of \$8.6 million.

For the three months ended March 31, 2023, adjustments to reconcile net income to net cash consisted primarily of stock-based compensation expense of \$2.0 million, amortization and accretion related to operating lease ROU assets of \$1.1 million, depreciation and amortization expense of \$0.6 million, accretion and amortization of debt discount and issuance costs of \$0.2 million and deferred income taxes of \$0.5 million. For the three months ended March 31, 2023, the changes in operating assets and liabilities, net primarily consisted of favorable changes to accounts receivable of \$26.9 million and deferred contract costs of \$1.4 million. The favorable change to accounts receivable was a result of collecting \$121.0 million during the three months ended March 31, 2023 compared to billings, net of \$93.0 million during the three months ended March 31, 2023. As a result, our days sales outstanding for accounts receivable was 96 days as of March 31, 2023. The favorable change in deferred contract costs was due to capitalizing \$3.2 million of commissions and amortizing \$4.6 million of deferred contract costs during the three months ended March 31, 2023.

The favorable cash sources noted above were offset by unfavorable uses of cash related to changes to accrued liabilities of \$14.8 million, deferred revenue of \$12.5 million, accounts payable of \$2.1 million and prepaid expenses, deposits and other assets of \$0.4 million. The unfavorable use of cash for accrued liabilities was due to making payments of \$2.5 million related to our reorganization plan, incurring incremental professional fee payments of \$4.4 million, and paying incremental compensation related primarily to bonuses and commissions of \$6.6 million during the three months ended March 31, 2023. The related use of cash for deferred revenue was due to recognizing \$105.5 million of revenue during the period, which was offset by recording billings, net of \$93.0 million during the three months ended March 31, 2023.

#### *Cash Flows Provided By Investing Activities*

Cash provided by investing activities totaled \$8.7 million for the three months ended March 31, 2024 and cash used in investing activities totaled \$0.3 million for the three months ended March 31, 2023. For the three months ended March 31, 2024, cash provided by investing activities was primarily driven by proceeds from sales of short-term investments of \$17.3 million offset by purchases of short-term investments of \$7.5 million and capital expenditures for leasehold improvements, software development costs, and computer equipment of \$1.2 million. The capital expenditures consisted primarily of capitalized software development costs, new computer equipment, and furniture and fixtures in our U.S. entity of \$0.7 million and \$0.4 million for computer equipment at our foreign locations, primarily in Brazil of \$0.2 million and in India of \$0.2 million.

For the three months ended March 31, 2023, cash used in investing activities of \$0.3 million consisted of investment purchases of \$7.7 million, which were offset by proceeds from sales of investments of \$8.4 million, as well as capital expenditures of \$1.0 million. The capital expenditures consisted of \$0.8 million primarily for new computer equipment and capitalized development costs in our U.S. entity and \$0.2 million for computer equipment at our foreign locations, primarily in India of \$0.1 million and Brazil of \$0.1 million.

#### *Cash Flows Used In Financing Activities*

For the three months ended March 31, 2024, cash utilized in financing activities of \$1.8 million was attributable to principal payments related to the Original Credit Facility of \$1.7 million and capital lease payments of \$0.1 million.

For the three months ended March 31, 2023, cash utilized in financing activities of \$1.1 million was attributable to principal payments related to the Original Credit Facility of \$1.1 million and capital lease payments of \$47 thousand. These cash uses were offset by proceeds of \$0.1 million received from stock option exercises.

### **Foreign Subsidiaries**

Our foreign subsidiaries and branches are dependent on our U.S.-based parent for continued funding. We currently do not intend to repatriate any amounts that have been invested overseas back to the U.S.-based parent. However, we may still be liable for withholding taxes, state taxes, or other income taxes that might be incurred upon the repatriation of foreign earnings. We have not made any provision for additional income taxes on undistributed earnings of our foreign subsidiaries. As of March 31, 2024, we had cash and cash equivalents of \$45.4 million held by our foreign subsidiaries.

### **Critical Accounting Estimates**

Our management's discussion and analysis of financial condition and results of operations is based on our Unaudited Condensed Consolidated Financial Statements, which have been prepared in accordance with U.S. GAAP. The preparation of these Consolidated Financial Statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the Consolidated Financial Statements, as well as the reported revenue and expenses during the reporting periods. These items are monitored and analyzed for changes in facts and circumstances, and material changes in these estimates could occur in the future. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Changes in estimates are reflected in reported results for the period in which they become known. Actual results may differ from these estimates under different assumptions or conditions. We describe our significant accounting policies in Note 2 to our Consolidated Financial Statements for the year ended December 31, 2023, included in Part II, Item 8 of our 2023 Form 10-K, and we discuss our critical accounting policies and estimates in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section included in Part II, Item 7 of our 2023 Form 10-K. Since the filing of our 2023 Form 10-K, there have been no material changes in our critical accounting policies and estimates from those disclosed therein.

### **Recent Accounting Pronouncements**

From time to time, new accounting pronouncements are issued by the FASB or other standard setting bodies that are adopted by us as of the specified effective date. For additional information on recently issued accounting standards and our plans for adoption of those standards, please refer to the section titled *Recent Accounting Pronouncements* under Note 2 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report.

#### *Recently Issued Accounting Standards*

In December 2023, the FASB issued ASU 2023-09, *"Income Taxes - Improvements to Income Tax Disclosures."* The guidance requires disaggregating income tax disclosures relating to the effective tax rate reconciliation and income taxes paid. ASU 2023-09 is effective for annual periods beginning after December 15, 2024, though early adoption is permitted. We are assessing the impact of the adoption of this guidance on our Consolidated Financial Statements and related disclosures.

We believe that no other recently issued accounting standards will have a material impact on our Unaudited Condensed Consolidated Financial Statements or apply to our operations.

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

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

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. Dollar, primarily the Euro, British Pound Sterling, Brazilian Real, Australian Dollar, Indian Rupee and Japanese Yen. For the three months ended March 31, 2024 and 2023, we generated approximately 50% and 49% of our revenue from our international business, respectively. Increases in the relative value of the U.S. Dollar to other currencies may negatively affect our revenue, partially offset by a positive impact to operating expenses in other currencies as expressed in U.S. Dollars. We have experienced and will continue to experience fluctuations in our net income as a result of transaction gains or losses related to revaluing certain current asset and current liability balances, including intercompany receivables and payables, which are denominated in currencies other than the functional currency of the entities in which they are recorded. While we have not engaged in the hedging of our foreign currency transactions to date, we evaluate the costs and benefits of entering into future hedge transaction for currencies other than the U.S. Dollar.

As of March 31, 2024, the effect of a hypothetical 10% change in foreign currency exchange rates applicable to our business would have impacted our income before income taxes by a plus or minus of \$3.1 million in our Consolidated Statements of Operations and Comprehensive Income and would have impacted the effect of foreign currency changes on cash by a plus or minus \$4.8 million in our Consolidated Statement of Cash Flows.

#### **Interest Rate Risk**

##### **Risk with Respect to Investments**

We hold cash and cash equivalents for working capital purposes. We do not have material exposure to market risk with respect to investments, as any investments we enter into are primarily highly liquid investments.

##### **Variable Rate Debt**

In July 2021, we entered into the Original Credit Facility, which originally bore interest at LIBOR plus a margin, ranging from 1.75% to 2.50% and now bears interest at SOFR plus a margin ranging from 1.75% to 2.50% as a result of the amendment to our Original Credit Facility described above. Accordingly, we are exposed to market risk due to variable interest rates based on SOFR. As of March 31, 2024, we had \$70.9 million outstanding debt under the Original Credit Facility. As of this date, a hypothetical adverse change of 100 basis points in SOFR would have resulted in an increase of approximately \$0.7 million in annual interest expense. See "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" in Part I, Item 2 as well as Note 5 and Note 11 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report for more information related to the Original Credit Facility.

### **ITEM 4. Controls and Procedures**

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

We maintain a system of disclosure controls and procedures that are designed to reasonably ensure that information required to be disclosed in our SEC reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and to reasonably ensure that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) ("Disclosure Controls") will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected. We monitor our Disclosure Controls and make modifications as necessary; our intent in this regard is that the Disclosure Controls will be modified as systems change and conditions warrant.

In connection with the preparation of this Report, as of March 31, 2024, an evaluation of the effectiveness of the design and operation of our Disclosure Controls was performed. This evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer. Based on this evaluation, we concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in our SEC reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and to reasonably ensure that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

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

There were no changes in our internal control over financial reporting during the fiscal quarter ended March 31, 2024 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II - OTHER INFORMATION

### ITEM 1. Legal Proceedings.

The legal proceedings described in Note 8 to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report are incorporated herein by reference. In addition, from time to time, we may be a party to litigation and subject to claims incident to the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, we currently believe that the final outcome of these ordinary course matters will not have a material adverse effect on our business. Regardless of the outcome, litigation can have an adverse impact on us because of judgment, defense and settlement costs, diversion of management resources and other factors.

### ITEM 1A. Risk Factors.

Factors that could cause our actual results to differ materially from those in this Report are any of the risks described in this Item 1A. Any of these factors could result in a significant or material adverse effect on our business, financial condition, results of operations and cash flows. Additional risk factors not presently known to us or that we currently deem immaterial may also impair our business or results of operations. In addition, risk factors relating to economic uncertainties and downturns in the general economy or the industries in which our clients operate should be interpreted as heightened risks in the current macroeconomic global environment.

Our business operations are subject to a number of risk factors that may adversely affect our business, financial condition, results of operations or cash flows. If any significant adverse developments resulting from these risk factors should occur, the trading price of our securities could decline, and moreover, investors in our securities could lose all or part of their investment in our securities.

You should refer to the explanation of the qualifications and limitations on forward-looking statements under the section titled "Cautionary Note About Forward-Looking Statements" set forth under "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part I, Item 2 of this Report. All forward-looking statements made by us are qualified by the risk factors described below.

The following is a summary of some of the principal risk factors which are more fully described below.

#### ***Risks Related to Our Business, Operations and Industry***

- Since 2010, we and our Chief Executive Officer, Chairman of the Board and President have been involved in continuing litigation with Oracle. Adverse outcomes and future adverse outcomes in the litigation could result in the payment of substantial attorneys' fees and/or costs and/or injunctions against certain of our business practices.
- The Oracle software products that are part of our ongoing Rimini I Injunction compliance and that are the subject of the Rimini II litigation with Oracle and the Rimini II Injunction represent a significant portion of our revenue.
- Our ongoing litigation with Oracle presents challenges for growing our business.
- Oracle has a history of litigation against companies offering alternative support programs for Oracle products, and Oracle could pursue additional litigation with us.
- Economic uncertainties, changes in economic conditions, including rising inflation, or downturns in the general economy or the industries in which our clients operate could disproportionately affect the demand for our products and services and may have a material adverse effect on our business.
- The market for independent software support services is relatively undeveloped and may not grow.
- We face significant competition for all components of our Solutions Portfolio.
- We have had a history of losses and may not achieve or sustain revenue growth or profitability in the future.
- If our retention rates decrease or we do not accurately predict retention rates, our future revenue and results of operations may be harmed.
- If we are unable to attract new clients or retain and sell additional products or services to existing clients, our revenue growth will be adversely affected.
- Because we recognize revenue from subscriptions over the term of the relevant contract, downturns or upturns in sales are not immediately reflected in full in our results of operations.

- The variability of timing in our sales cycle or our failure to accurately forecast revenue could affect our results of operations and liquidity.
- Our future liquidity and results of operations may be adversely affected by the timing of new orders, the level of client renewals and cash receipts from clients.
- The loss of one or more key employees could harm our business.
- The failure to attract and retain additional qualified personnel, including sales personnel, or to expand our marketing and sales capabilities could prevent us from executing our business strategy.
- Our past growth is not indicative of future growth, and, if we grow rapidly, we may not be able to manage our growth effectively.
- Our failure to generate significant capital or raise additional capital necessary to fund our operations and invest in new services and products could reduce our ability to compete and could harm our business.
- Our business may suffer if it is alleged or determined that our technology infringes others' intellectual property rights.
- Interruptions to or degraded performance of our services, including as a result of interruptions or performance problems with technologies provided by third parties, could result in client dissatisfaction, damage to our reputation, loss of clients, limited growth and reduction in revenue.
- Interruptions or performance problems with SaaS technologies and related services from third parties that we use to operate critical functions of our business, including any deficiencies associated with generative artificial intelligence (AI) technologies potentially used by such third parties, may adversely affect our business and operating results.
- We may experience fluctuations in our results of operations due to the sales cycles for our products and services, which makes our future results difficult to predict and could cause our results of operations to fall below expectations or our guidance.
- We may need to change our pricing to compete successfully.
- If we are not able to scale our business quickly and grow efficiently, our results of operations could be harmed.
- Our business will be susceptible to risks associated with global operations as our growth strategy involves further expansion of our sales to clients outside the United States.
- Consolidation in our target sales markets is continuing at a rapid pace, which could harm our business.
- If there is a widespread shift by clients or potential clients to enterprise software vendors, products and releases for which we do not provide software products or services, our business would be adversely impacted.
- Cybersecurity threats continue to increase in frequency and sophistication; if our data security measures are compromised or our services are perceived as not being secure, clients may curtail or cease their use of our services, our reputation may be harmed, and we may incur significant liabilities.
- We are subject to governmental and other legal obligations related to privacy, and our actual or perceived failure to comply with such obligations could harm our business.
- If our products and services fail due to defects or other similar problems, and if we fail to correct any defect or other software problems, we could lose clients, become subject to service performance or warranty claims or incur significant costs.
- If we are not able to maintain an effective system of internal control over financial reporting, investors could lose confidence in our financial reporting, which could harm our business and have an adverse effect on our stock price.
- If we fail to enhance our brand, our ability to expand our client base will be impaired.
- If we fail to adequately protect our proprietary rights, our competitive position could be impaired and we may lose valuable assets, experience reduced revenue and incur costly litigation to protect our rights.
- We may be subject to additional obligations to collect and remit sales tax and other taxes, and we may be subject to tax liability, interest and/or penalties for past sales, which could adversely harm our business.
- The amount of and ultimate realization of the benefits from the net operating loss carryforwards for income tax purposes is dependent, in part, upon future events, the effects of which cannot be determined; if we are not able to use a significant portion of our net operating loss carryforwards, our profitability could be adversely affected.
- We are a multinational organization, and we could be obligated to pay additional taxes in various jurisdictions.
- Our reputation and/or business could be negatively impacted by ESG matters and/or our reporting of such matters.

#### ***Risks Related to our Indebtedness, Capitalization Matters and Corporate Governance***

- Our level of indebtedness and any future indebtedness we may incur may limit our operational and financing flexibility.
- The terms of our 2024 Credit Facility impose operating and financial restrictions on us.
- Our variable rate indebtedness subjects us to interest rate risk, which, along with the phase-out of LIBOR and transition to SOFR, could cause our indebtedness service obligations to increase significantly.
- Our stock repurchase program could affect the price of our Common Stock and increase volatility and may be suspended or terminated at any time, which may result in a decrease in the trading price of our Common Stock.
- The price of our Common Stock may be volatile and risk compliance with stock exchange requirements.

- Any issuance of Common Stock upon the exercise of remaining warrants will cause dilution to existing stockholders and may depress the market price of our Common Stock.
- Certain of our common stockholders can exercise significant control, which could limit our stockholders' ability to influence the outcome of key transactions, including a change of control.
- We do not currently intend to pay dividends on our Common Stock.
- The DGCL and our organizational documents contain provisions that limit the ability of stockholders to take certain actions and could delay or discourage takeover attempts that stockholders may consider favorable.
- Our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, stockholders or employees could be limited by our choice of forum in our bylaws.

## **Risks Related to Our Business, Operations and Industry**

### **Risks Related to Litigation**

***We and our Chief Executive Officer, Chairman of Board and President have been involved in continuing litigation with Oracle since 2010. Adverse outcomes and future adverse outcomes in the ongoing litigation could result in the payment of substantial attorneys' fees and/or costs and/or injunctions against certain of our business practices, which could have a material adverse effect on our business and financial results.***

In January 2010, certain subsidiaries of Oracle Corporation (together with its subsidiaries individually and collectively, "Oracle") filed a lawsuit, *Oracle USA, Inc. et al v. Rimini Street, Inc. et al* (United States District Court for the District of Nevada) (the "District Court") ("Rimini I"), against us and our Chief Executive Officer, Chairman of the Board and President, Seth Ravin, alleging that certain of our processes (Process 1.0) violated Oracle's license agreements with its customers and that we committed acts of copyright infringement and violated other federal and state laws. The litigation involved our business processes and the manner in which we provided our services to our clients.

After completion of a jury trial in 2015 and subsequent appeals, the final outcome of Rimini I was that Mr. Ravin was found not liable for any claims and we were found liable for only one claim: "innocent infringement," a jury finding that we did not know and had no reason to know that our former support processes were infringing. The jury also found that the infringement did not cause Oracle to suffer lost profits. We were ordered to pay a judgment of \$124.4 million in 2016, which we promptly paid and then pursued appeals. With interest, attorneys' fees and costs, the total judgment paid by us to Oracle after the completion of all appeals was approximately \$89.9 million. A portion of such judgment was paid by our insurance carriers (for additional information on this topic, see Note 8 to our Consolidated Financial Statements included in Part I, Item 1 of this Report).

Since November 2018, we have been subject to a permanent injunction (the "Rimini I Injunction") prohibiting us from using certain support processes that had been found in Rimini I to "innocently" infringe certain Oracle copyrights. The Rimini I Injunction does not prohibit our provision of support services for any Oracle product lines, but rather defines the manner in which we can provide support services for certain Oracle product lines.

In July 2020, Oracle filed a motion to show cause contending that we were in violation of the Rimini I Injunction, and we opposed this motion, disputing Oracle's claims. In July 2020, Oracle filed a motion to show cause contending that we were in violation of the Rimini I Injunction, and we opposed this motion, disputing Oracle's claims. After completion of an evidentiary hearing in September 2021, findings and order by the District Court in January 2022 and a subsequent appeal by us to the Ninth Circuit Court of Appeals ("Court of Appeals"), the final outcome of the proceedings, which were resolved in October 2023 on remand to the District Court, was a finding that we had violated the Rimini I Injunction in four instances, entitling Oracle to \$0.5 million in sanctions (representing a \$0.1 million adjustment to the \$0.6 million sanctions award originally paid by us to Oracle in January 2022). In addition, we complied with the District Court's January 2022 order to quarantine certain computer files and provide proof of such quarantining to Oracle. We were reimbursed \$0.1 million by Oracle in November 2023 for the portion of the sanctions award that was reduced on appeal.

In its January 2022 findings and order, the District Court also ruled that Oracle could recover its reasonable attorneys' fees and costs relating to the Rimini I Injunction Proceedings. In December 2023, the District Court accepted a joint stipulation between us and Oracle (the "Stipulation") resolving the issue of Oracle's recovery of attorneys' fees and costs upon our payment of approximately \$9.7 million to Oracle. Also per the Stipulation, we agreed that we would forego any remaining appellate rights with respect to this matter.

As a result of the Stipulation and the subsequent payment by us of the amount described above, all matters relating to the Rimini I Injunction Proceedings have been resolved. At this time, we believe that we are in substantial compliance with the Rimini I Injunction.

In October 2014, we filed a separate lawsuit, *Rimini Street Inc. v. Oracle Int'l Corp.*, in the District Court against Oracle seeking a declaratory judgment that our revised "Process 2.0" support practices, in use since at least July 2014, did not infringe certain Oracle copyrights ("Rimini II"). Our operative complaint asserted declaratory judgment, tort, and statutory claims, including a request for injunctive relief against Oracle for unfair competition in violation of the California Unfair Competition Law. Oracle asserted counterclaims including copyright infringement claims, violations of the Digital Millennium Copyright Act ("DMCA") and Lanham Act, breach of contract and business tort violations with respect to PeopleSoft and other Oracle-branded products, including J.D. Edwards, Siebel, Oracle Database and Oracle E-Business Suite ("EBS").

In mid-October 2022, Oracle withdrew all of its monetary damages claims against us and our Chief Executive Officer, Chairman of the Board and President, Mr. Ravin, in Rimini II and moved to proceed with a bench trial instead of a jury trial for its claims for equitable relief.

The District Court entered an order on October 24, 2022, dismissing with prejudice Oracle's claims in Rimini II "for monetary relief of any kind under any legal theory[,] including but not limited to claims for damages, restitution, unjust enrichment, and engorgement. . . ." In addition, Oracle's claims for breach of contract, inducing breach of contract and an accounting were dismissed with prejudice, meaning that the claims (including for monetary damages) were dismissed on their merits and the judgment rendered is final. Prior to the date of the District Court's order dismissing with prejudice all of Oracle's claims for monetary relief, no damages of any kind were awarded by the District Court in Rimini II. The parties each reserved the right to seek or object to any attorneys' fees and/or costs to the extent permissible by law.

Following a bench trial that concluded in December 2022, the parties submitted their proposed findings of fact and conclusions of law to the District Court in February 2023.

In July 2023, the District Court issued its findings of fact and conclusions of law in Rimini II, accompanied by a permanent injunction against us (the "Rimini II Injunction") which, as set forth in detail below, is subject to an administrative stay and is not currently effective. The District Court found infringement as to Oracle's PeopleSoft and Oracle Database products but did not find infringement as to Oracle's EBS, Siebel and J.D. Edwards products, further ordering that we were entitled to a declaration of non-infringement for Oracle's EBS product. The District Court also found in favor of Oracle on its DMCA and Lanham Act claims, enjoining us from making certain statements and prohibiting certain actions in connection with the manner of marketing, selling and providing services to clients of the Oracle products in question as further described below, and on indirect and vicarious copyright infringement claims against our Chief Executive Officer, Chairman of the Board and President, Mr. Ravin. The District Court denied our California Unfair Competition Law claim and other declaratory judgment claims.

In late July 2023, we filed a notice of appeal in the District Court, commencing an appeal of the District Court's July 2023 Rimini II judgment and Injunction.

Shortly thereafter, we filed an emergency motion with the District Court to stay enforcement of the Rimini II Injunction pending our appeal of the Rimini II judgment and Injunction.

In August 2023, the District Court issued an order denying our emergency motion to stay the Rimini II Injunction pending our appeal with the Court of Appeals and granting an administrative stay of the Rimini II Injunction pending the outcome of a motion to stay to be filed by us with the Court of Appeals.

We have filed the separate motion to stay the Rimini II Injunction with the Court of Appeals, asserting that certain provisions of the Rimini II Injunction are vague and overbroad, that the District Court committed legal error, that certain provisions would require us to commit criminal acts to comply with its terms, and that the Rimini II Injunction would cause us and third parties "irreparable harm," among other grounds.

In September 2023, the Court of Appeals issued an order holding our appeal of the District Court's decision in Rimini II in abeyance pending the District Court's resolution of a motion filed by Oracle in August 2023 to amend the Rimini II judgment regarding an update, technical specification and tool related to Oracle's EBS software product. The District Court denied Oracle's motion to amend on January 9, 2024.

On January 18, 2024, the Ninth Circuit issued an order lifting the stay of our appeal. As of the date of this Report, the appeal is fully briefed before the Ninth Circuit and a three-judge panel will hold oral argument on our appeal on June 5, 2024.

As of the date of this Report, the Court of Appeals has not issued a decision on our motion to stay the Rimini II Injunction. Accordingly, the Rimini II Injunction, as issued by the District Court, is currently stayed by the District Court, meaning that it is not currently effective. The Rimini II Injunction is primarily directed at Oracle's PeopleSoft software product and, if effective, would limit, but not fully prohibit, the support services we can provide our clients using Oracle's PeopleSoft software product.

Among other things, the Rimini II Injunction requires us to immediately and permanently delete certain PeopleSoft software environments, files and updates identified in the Rimini II Injunction, as well as to delete and immediately and permanently discontinue use of certain Company-created automated tools. The Rimini II Injunction also prohibits using, distributing, copying, or making derivative works from certain files, and it prohibits the transfer or copying of PeopleSoft files, updates, and modifications, and portions of PeopleSoft software that are developed, tested, or exist in one client's systems to our systems or another client's systems.

The Rimini II Injunction also specifies that we shall not remove, alter or omit any Oracle copyright notices or other Oracle copyright management information from any file that contains an Oracle copyright notice and prohibits us from publicly making statements or statements substantially similar to those the District Court found to be "false and misleading," which are listed in the Rimini II Injunction.

While we plan to continue to vigorously pursue a stay of the Rimini II Injunction pending appeal and our appeal of the Rimini II judgment and Injunction, we are unable to predict the timing or outcome of these matters. No assurance is or can be given that we will succeed in our efforts to stay the Rimini II Injunction in full or in part pending appeal or that we will prevail in all or part of our Rimini II appeal.

In November 2023, Oracle filed a motion with the District Court requesting attorneys' fees and taxable costs of approximately \$70.6 million relating to the Rimini II litigation. We filed our opposition to Oracle's motion on February 20, 2024. In our opposition, we argued that the District Court should deny Oracle's motion in its entirety. We further argued that, should the District Court award any attorneys' fees to Oracle, such fees should not exceed \$14.5 million. Following Oracle's filing of a reply brief on March 15, 2024, the matter is under consideration for determination by the District Court. As of the date of this Report, a decision about whether to award any attorneys' fees and/or costs to Oracle, and, if so, the amounts, has not been made by the District Court. There were no monetary damages included in the District Court's judgment in Rimini II.

Although we continue to evaluate our liability and exposure, we do not currently believe that it is probable that an award of attorneys' fees and costs to Oracle representing a material loss will occur. However, our judgment on whether a loss is probable, reasonably possible, or remote, and our estimates of probable loss amounts, may differ from actual results due to the inherent uncertainties associated with predicting the outcome of a decision on Oracle's motion. It is reasonably possible that the District Court could award Oracle attorneys' fees and costs in an amount that could have a material adverse impact on our financial position, results of operations and cash flows.

If the Rimini II Injunction becomes effective in its current form, it likely would impact our delivery of PeopleSoft support services to clients in the future. However, the associated costs are not currently estimatable and are required to be recorded when incurred. Accordingly, we have made no associated accrual as of March 31, 2024. Required changes to how support services are delivered to our PeopleSoft clients could have a material adverse impact on our financial position, results of operations and cash flows. The percentage of revenue derived from services we provide solely for Oracle's PeopleSoft software product was approximately 8% of our total revenue for the three months ended March 31, 2024.

Oracle may file additional contempt motions against us at any time to attempt to enforce its interpretation of the Rimini I Injunction and/or the Rimini II Injunction or if it has reason to believe we are not in compliance with the express terms of the Rimini I Injunction and/or the Rimini II Injunction. Such contempt proceedings or any judicial finding of contempt could result in a material adverse effect on our business and financial condition. In addition, the existence of the Rimini I Injunction, the Rimini II Injunction, the District Court's January 2022 order and/or the District Court's July 2023 order could dissuade clients from purchasing or continuing to purchase our services. If we are obligated to pay substantial civil assessments arising from any finding of contempt, this could reduce the amount of cash flows available to pay principal, interest, fees and other amounts due under our 2024 Credit Facility, which could result in an event of default, in which case the lenders could demand accelerated payment of principal, accrued and unpaid interest, and other fees. We cannot provide assurances that we will have sufficient assets which would allow us to repay such indebtedness in full at such time. As a result, we could be forced into bankruptcy or liquidation.

We could be required to pay substantial attorneys' fees and/or costs in connection with litigation relating to our current or past business activities and/or be enjoined from certain business practices. Any of these outcomes could result in a material adverse effect on our business and financial condition, and the pendency of the litigation alone could dissuade clients from purchasing or continuing to purchase our services. If we are obligated to pay substantial attorneys' fees and/or costs to Oracle as a result of the District Court's rulings in Rimini II, or are enjoined from certain business practices, this could reduce the amount of cash flows available to pay principal, interest, fees and other amounts due under our 2024 Credit Facility, which could result in an event of default, in which case the lenders could demand accelerated payment of principal, accrued and unpaid interest, and other fees. If we default in our payment obligations under our 2024 Credit Facility and the indebtedness under our 2024 Credit Facility were to be accelerated, there can be no assurance that our assets would be sufficient to repay such indebtedness in full, and we could be forced into bankruptcy or liquidation.

Our business has been and may continue to be materially harmed by this litigation and Oracle's conduct. During the course of these cases, we anticipate there will be additional rulings by the District Court in Rimini II with respect to attorneys' fees and costs and the Court of Appeals in Rimini II in connection with hearings, motions, decisions, and other matters, as well as other interim developments related to the litigation. If securities analysts or investors regard these rulings as negative, the market price of our Common Stock may continue to decline, which stock price volatility may result in other legal claims against us and potentially create risk of noncompliance with Nasdaq minimum trading price requirements. If current or prospective clients regard these rulings as negative, it could negatively impact our new client sales or renewal sales.

While we plan to continue to vigorously litigate the pending matters in our Rimini II appeal, we are unable to predict the timing or outcome of these matters. No assurance is or can be given that we will prevail on any appeal, claim, or counterclaim.

See the section titled "Legal Proceedings" in Part II, Item 1 and Note 8 to our Unaudited, Condensed Consolidated Financial Statements included in Part I, Item 1 of this Report for more information related to this litigation.

***The Oracle software products that are part of our ongoing Rimini I Injunction compliance and that are the subject of the Rimini II litigation with Oracle and the Rimini II Injunction represent a significant portion of our current revenue.***

The Rimini II Injunction currently limits, but does not fully prohibit, the support services we can provide clients using Oracle's PeopleSoft software product. The percentage of revenue derived from services we provide solely for Oracle's PeopleSoft software product was approximately 8% of our total revenue for the three months ended March 31, 2024. For the three months ended March 31, 2024, approximately 63% of our total revenue was derived from services provided to our clients using Oracle software products. Although we provide support services for additional Oracle product lines that are not subject to the Rimini I Injunction or the Rimini II Injunction, as well as for software products provided by companies other than Oracle, our current revenue depends significantly on the product lines that are the subject of the Rimini I Injunction and Rimini II Injunction. Should we not obtain a stay of the Rimini II Injunction pending our appeal of the District Court's ruling, should our appeal in Rimini II fail or should any additional contempt proceeding on the Rimini I Injunction result in a final order holding us in contempt, implicating processes for which we have not previously modified the way we provide our support services, we could be required to change the way we provide support services to some of our clients, which could result in the loss of clients and revenue, and may also give rise to claims for compensation from our clients, and require us to incur additional costs in order to comply with a final Rimini II injunction, any of which could have a material adverse effect on our business, financial condition and results of operations.

***Our ongoing litigation with Oracle presents challenges for growing our business.***

We have experienced challenges growing our business as a result of our ongoing litigation with Oracle. Many of our existing and prospective clients have expressed concerns regarding our ongoing litigation and, in some cases, have been subjected to various negative communications by Oracle in connection with the litigation. We have experienced in the past, and may continue to experience in the future, volatility and slowness in acquiring new clients, as well as clients not renewing their agreements with us, due to these challenges relating to our ongoing litigation with Oracle. Further, certain of our prospective and existing clients may be subject to additional negative communications from software vendors. We have taken steps to minimize disruptions to our existing and prospective clients regarding the litigation, but we continue to face challenges growing our business while the litigation remains ongoing. In certain cases, we have agreed to pay certain liquidated damages to our clients if we are no longer able to provide services to these clients, and/or reimburse our clients and our former lenders for their reasonable legal fees incurred in connection with any litigation-related subpoenas and depositions or to provide certain client indemnification or termination rights if any outcome of litigation results in our inability to continue providing any of the paid-for services. In addition, we believe the length of our sales cycle is longer than it otherwise would be due to prospective client

diligence on possible effects of the Oracle litigation on our business. We cannot provide assurances that we will continue to overcome the challenges we face as a result of the litigation and continue to renew existing clients or secure new clients.

Additionally, the existence of this ongoing litigation, including the July 2023 District Court order, could negatively impact the value of our equity securities, and could negatively impact our ability to raise additional equity or debt financing, as well as result in other legal claims against us.

We are self-insured for any costs related to any current or future intellectual property litigation, although we maintain and have tendered our errors and omissions insurance coverage for the wrongful acts alleged in Oracle's Rimini I Injunction contempt proceeding to seek determinations of a duty to defend. We obtained a determination of a duty to defend with respect to our primary errors and omission insurance carrier. We cannot provide assurances that we will prevail any similar claims that we may tender in the future.

While we currently believe our cash on hand, accounts receivable and contractually committed backlog provides us with liquidity to cover attorneys' fees and related costs, such as travel, hotels, and consultants, associated with the ongoing litigation with Oracle, we cannot assure our liquidity will be sufficient.

***Oracle has a history of litigation against companies offering alternative support programs for Oracle products, and Oracle could pursue additional litigation with us.***

Oracle has been active in litigating against companies that have offered competing maintenance and support services for their products. For example, in March 2007, Oracle filed a lawsuit against SAP and its wholly-owned subsidiary, TomorrowNow, Inc. After a jury verdict awarding Oracle \$1.3 billion, the parties stipulated to a final judgment of \$306 million subject to appeal. After the appeal, the parties settled the case in November 2014 for \$356.7 million. In February 2012, Oracle filed suit against ServiceKey, Inc. and settled the case in October 2013 after the District Court issued an injunction against ServiceKey and its CEO. Oracle also filed suit against CedarCrestone Corporation in September 2012 and settled the case in July 2013. TomorrowNow and CedarCrestone offered maintenance and support for Oracle software products, and Service Key offered maintenance and support for Oracle technology products. Given Oracle's history of litigation against companies offering alternative support programs for Oracle products, we can provide no assurance, regardless of the outcome of our current litigations with Oracle, that Oracle will not pursue additional litigation against us. Such additional litigation could be costly, distract our management team from running our business and reduce client interest and our sales revenue.

**Other Risks Related to Our Business, Operations and Industry**

***Economic uncertainties, changes in economic conditions, including rising inflation, or downturns in the general economy or the industries in which our clients operate, may result in increased costs of operations, could disproportionately affect the demand for our products and services and could negatively impact our results of operations.***

General worldwide economic conditions have experienced significant fluctuations in recent years, and market volatility and uncertainty remain widespread, with the expectation that inflation, other economic challenges and possible recession will be exacerbated for an extended period. Inflation has accelerated in the U.S. and globally. An inflationary environment may increase our and our clients' cost of labor due to higher wages, as well as result in higher financing costs and/or higher supplier prices for both us and our clients. As a result, we and our clients may find it difficult to accurately forecast and plan future business activities. In addition, these conditions could cause our clients or prospective clients to reduce their IT budgets, which could decrease corporate spending on our products and services, resulting in delayed and lengthened sales cycles, a decrease in new client acquisition and loss of clients. Furthermore, during challenging economic times, our clients may face issues with their cash flows and in gaining timely access to sufficient credit or obtaining credit on reasonable terms, which could impair their ability to make timely payments to us, impact client renewal rates and adversely affect our revenue. In addition, further disruptions in the U.S. banking sector could impact certain of our clients' ability to access their existing cash, which could also impair their ability to make timely payments to us, adversely affecting our revenue. If such conditions occur, we may be required to increase our reserves, allowances for doubtful accounts and write-offs of accounts receivable, and our results of operations would be harmed. We cannot predict the timing, strength or duration of any economic slowdown or recovery, whether global, regional or within specific markets. If the conditions of the general economy or markets in which we operate worsen, our business could be harmed. In addition, even if the overall economy improves, the market for our products and services may not experience growth. Moreover, multiple events, including changes in U.S. trade policies and responsive changes in policy by foreign jurisdictions, geopolitical developments, including the economic disruption continuing to be caused by the Israel-Hamas conflict, the Russian invasion of Ukraine in early 2022 and recent political and trade turmoil with China and elsewhere, and governmental and multinational organizations' responses to the coronavirus ("COVID-19")

pandemic, have increased levels of political and economic unpredictability globally, and may increase the volatility of global financial markets and the global and regional economies.

***The market for independent software support services is relatively undeveloped and may not grow.***

The market for independent enterprise software support services is still relatively undeveloped, has not yet achieved widespread acceptance and may not grow quickly or at all. Our success will depend to a substantial extent on the willingness of companies to engage a third party such as us to provide software support services for their enterprise software. Many enterprise software licensees remain hesitant to use a third party to provide such support services, choosing instead to rely on support services provided by the enterprise software vendor. Other enterprise software licensees have invested substantial personnel, infrastructure and financial resources in their own organizations with respect to support of their licensed enterprise software products and may choose to self-support with their own internal resources instead of purchasing services from the enterprise software vendor or an independent provider such as ourselves. Particularly because our market is relatively undeveloped, we must address any potential clients' concerns and explain the benefits of our approach to convince them of the value of our services. If companies are not sufficiently convinced that we can address their concerns and that the benefits of our services are compelling, then the market for our services may not develop as we anticipate, and our business will not grow.

***We face significant competition for the services comprising each component of our Solutions Portfolio, from both enterprise software vendors and other companies offering independent enterprise software support, products and services, as well as from software licensees that attempt to self-support, which may harm our ability to add new clients, retain existing clients and grow our client base across all of our Solutions Portfolio offerings.***

Our current and potential competitors across each component of our Solutions Portfolio, which include enterprise software vendors, may have significantly more financial, technical, sales and marketing teams and other resources than we have, may be able to devote greater resources to the development, promotion, sale and support of their products and services, may have more extensive customer bases and broader customer relationships than we have and may have longer operating histories and greater name recognition than we have. Specifically, we face intense competition from enterprise software vendors, such as Oracle and SAP, who provide software support for their own products, as well as from other competitors who provide independent enterprise software support, products and services. Competitors, including enterprise software vendors, have offered, and may continue to offer, discounts to companies to whom we have marketed our services. In addition, competitors, including enterprise software vendors, may take other actions in an attempt to maintain their business, including changing the terms of their customer agreements, the functionality of their support, products or services, or their pricing terms. For example, starting in the second quarter of 2017 Oracle has prohibited us from accessing its support websites to download software updates on behalf of our clients who are authorized to do so and permitted to authorize a third party to do so on their behalf. In addition, the support, license or other contractual policies of our future and current competitors, including Oracle and SAP, may include clauses that penalize customers that choose to use our or any independent provider's services or products. Further, the contractual policies of enterprise software vendors, such as Oracle and SAP, may contain clauses that penalize customers that seek to return to the software vendor to purchase new licenses following a departure from the software vendor's support program. In addition, our current and potential competitors may develop and market new technologies that render our existing or future enterprise software support, products or services less competitive or obsolete. Finally, we also face competition from software licensees that choose to self-support. Competition could significantly impede our ability to sell our enterprise support, products and services on terms favorable to us, and we may need to decrease the prices for our support, products or services to remain competitive. If we are unable to maintain our current pricing due to competitive pressures, our margins will be reduced and our results of operations will be negatively affected.

There are also several smaller support services vendors in the independent enterprise software support services market with whom we compete with respect to certain of our support services. We expect competition to continue to increase in the future, particularly if we prevail in our appeal of the District Court's order and injunction in Rimini II, which could harm our ability to increase sales, maintain or increase renewals and maintain our prices. In addition, certain providers of independent enterprise software support, products and services may have or may develop more strategic relationships with enterprise software vendors, which may allow them to compete more effectively than us over the long term. To the extent any of our competitors have existing relationships with potential clients for any component of our Solutions Portfolio, those potential clients may be unwilling to purchase our services because of those existing relationships, which could cause the demand for our services to be substantially impacted. Further, our competitors may attempt to use the Oracle litigation and the existence of the Rimini I Injunction and the Rimini II Injunction described above under the section titled "Risks Related to Litigation," to dissuade certain of our prospective or existing clients from purchasing or continuing to purchase any or all of the components of our Solutions Portfolio, including our enterprise software support services.

***We have had a history of losses and may not achieve or sustain revenue growth or profitability in the future. Further, if we are unable to attract new clients or retain and/or sell additional products or services to our existing clients, our revenue growth could be adversely affected.***

We recorded net income of \$1.3 million for the three months ended March 31, 2024, and we had an accumulated deficit of \$200.9 million as of March 31, 2024. We will need to generate and sustain increased revenue levels in future periods while managing our costs to be profitable, and, even if we do, we may not be able to maintain or increase our level of profitability. To increase our revenue, we must add new clients, secure renewals or service extensions by existing clients on terms favorable to us and sell additional products and services to existing clients. As competitors introduce low-cost and/or differentiated services that are perceived to compete with ours, or as enterprise software vendors introduce competitive pricing or additional products and services or implement other sales strategies to compete with us, our ability to sell to new clients and renew agreements with existing clients based on pricing, service levels, technology and functionality could be impaired. In addition, certain of our existing clients may choose to license a new or different version of enterprise software from an enterprise software vendor, and such clients' license agreements with the enterprise software vendor will typically include a minimum one-year mandatory maintenance and support services agreement. In such cases, it is unlikely that these clients would renew their maintenance and support services agreements with us, at least during the early term of the license agreement. In addition, such existing clients could move to another enterprise software vendor, product or release for which we do not offer any products or services. As a result, we may be unable to renew or extend our agreements with existing clients or attract new clients or new business from existing clients on terms that would be favorable or comparable to prior periods, which could have an adverse effect on our revenue and growth.

Additionally, we intend to continue to expend significant funds to expand our sales and marketing operations, enhance our service offerings, expand into new markets, launch new product offerings and meet the compliance requirements associated with our operations as a public company. Our efforts to grow our business may be costlier than we expect, and we may not be able to increase our revenue enough to offset our higher operating expenses. Further, many companies with which we compete have larger and longer-tenured sales and marketing teams, which may impact the ability to grow our business, which could have an adverse effect on our revenue and growth. If we are unable to achieve and sustain revenue growth or profitability, the market price of our securities may significantly decrease.

***If our retention rates decrease, or we do not accurately predict retention rates, our future revenue and results of operations may be harmed.***

Our clients have no obligation to renew their product or service subscription agreements with us after the expiration of a non-cancelable agreement term. In addition, the majority of our multi-year, non-cancelable client agreements are not pre-paid other than the first year of the non-cancelable service period. We may not accurately predict retention rates for our clients. Our retention rates may decline or fluctuate as a result of a number of factors, including our clients' decision to license a new product or release from an enterprise software vendor, our clients' decision to move to another enterprise software vendor, product or release for which we do not offer products or services, global economic conditions, including rising inflation and interest rates on our clients' businesses, client satisfaction with our products and services, the acquisition of our clients by other companies and clients going out of business. If our clients do not renew their agreements for our products and services or if our clients decrease the amount they spend with us, our revenue will decline and our business will suffer. In addition, certain of our existing clients may choose to license a new or different version of enterprise software from an enterprise software vendor, and such clients' license agreements with the enterprise software vendor will typically include a minimum one-year mandatory maintenance and support services agreement. In such cases, it is unlikely that these clients would renew their maintenance and support services agreements with us, at least during the early term of the license agreement. In addition, such existing clients could move to another enterprise software vendor, product or release for which we do not offer any products or services.

***Because we recognize revenue from subscriptions over the term of the relevant contract, downturns or upturns in sales are not immediately reflected in full in our results of operations.***

As a subscription-based business, we recognize revenue over the service period of our contracts. As a result, much of our reported revenue each quarter results from contracts entered into during previous quarters. Consequently, while a shortfall in demand for our products and services or a decline in new or renewed contracts in any one quarter may not significantly reduce our revenue for that quarter, it could negatively affect our revenue in future quarters and full year periods. Accordingly, the effect of significant downturns in new sales, renewals or extensions of our service agreements for a quarter will not be reflected in full in our results of operations until future periods. Our revenue recognition model also makes it difficult for us to rapidly increase our revenue through additional sales in any period, as revenue from new clients must be recognized over the applicable service contract term.

***Due to the variability of timing in our sales cycle, if we fail to forecast our revenue accurately, or if we fail to match our expenditures with corresponding revenue, our results of operations and liquidity could be adversely affected.***

The variability of the sales cycle for the evaluation and implementation of our products and services, which typically has been six to twelve months once a client is engaged, may cause us to experience a delay between increasing operating expenses for such sales efforts, and the generation of corresponding revenue. Accordingly, we may be unable to prepare accurate internal financial forecasts or replace anticipated revenue that we do not receive as a result of delays arising from these factors. As a result, our results of operations and liquidity in future reporting periods may be significantly below the expectations of the public market, securities analysts or investors, which could negatively impact the price of our Common Stock.

***Our future liquidity and results of operations may be adversely affected by the timing of new orders, the level of client renewals and cash receipts from clients.***

Due to the collection of cash from our clients before services are provided, our revenue is recognized over future periods when there are no corresponding cash receipts from such clients. Accordingly, our future liquidity depends upon the ability to continue to attract new clients and to enter into renewal arrangements with existing clients. If we experience a decline in orders from new clients or renewals from existing clients, our revenue may continue to increase while our liquidity and cash levels decline. Any such decline, however, will negatively affect our revenues in future quarters. Accordingly, the effect of declines in orders from new clients or renewals from existing clients may not be fully reflected in our results of operations and cash flows until future periods. Comparing our revenues and operating results on a period-to-period basis may not be meaningful, as it may not be an indicator of the future sufficiency of our cash and cash equivalents to meet our liquidity requirements. You should not rely on our past results as an indication of our future performance or liquidity.

***We rely on our management team and other key employees, including our Chief Executive Officer, Chairman of the Board and President, and the loss or disability of one or more key employees could harm our business. Additionally, the failure to attract and retain additional qualified personnel, including sales personnel, or to expand our marketing and sales capabilities could prevent us from executing our business strategy.***

The loss of or a disability that would prevent our Chief Executive Officer, Chairman of the Board and President or any of our key senior members of management from substantially performing their duties could have a material adverse effect on our business, operating results and financial condition, particularly if we are unable to hire and integrate suitable replacements on a timely basis. Mr. Ravin has been under long-standing medical care for kidney disease, which includes ongoing treatment. Although Mr. Ravin's condition has not adversely impacted his performance as Chief Executive Officer, Chairman of the Board and President or on the overall management of the Company, we can provide no assurance that his condition will not affect his ability to perform the role of Chief Executive Officer, Chairman of the Board and President in the future. Further, as we continue to grow our business, we will continue to adjust our senior management team to best address our growth opportunities. If we are unable to attract or retain the right individuals for the team, it could hinder our ability to grow our business and could disrupt our operations or otherwise have a material adverse effect on our business. We do not maintain key man life insurance on any of our employees.

Furthermore, to execute our business strategy, we must attract and retain highly qualified personnel, including sales personnel. Our ability to increase our client base and achieve broader market acceptance of our services will depend to a significant extent on our ability to expand our marketing and sales operations. We plan to continue expanding our sales force globally. We are experiencing a very competitive recruiting environment, creating difficulty in hiring and retaining sufficient numbers of highly skilled sales personnel and other employees with appropriate qualifications. In particular, we have experienced extreme hiring competition in the San Francisco Bay Area, where we have a significant amount of operations, but also face extremely competitive hiring environments across the United States and the other countries in which we operate. Our efforts to attract, develop, integrate and retain highly skilled employees with appropriate qualifications may be compounded by intensified restrictions on travel, immigration, or the availability of work visas. Many companies with which we compete for experienced personnel have greater resources and less stock price volatility than we do. In making employment decisions, job candidates often consider the value of the equity incentives they are to receive in connection with their employment. If the price of our stock continues to experience significant volatility, our ability to attract or retain qualified employees will be adversely affected. In addition, as we continue to expand into new geographic markets, there can be no assurance that we will be able to attract and retain the required management, sales, marketing and support services personnel to profitably grow our business. If we fail to attract highly qualified new sales and other personnel or fail to retain and motivate our current personnel, our growth prospects could be severely harmed.

Moreover, our sales personnel typically take an average of between nine to twelve months before any new sales personnel can operate at the capacity typically expected of experienced sales personnel. This ramp cycle, combined with our typical six- to twelve-month sales cycle for engaged prospects, means that we will not immediately recognize a return on this investment in our sales results. In addition, the cost to acquire clients is high due to the cost of these marketing and sales efforts. Further, the cost of marketing and sales efforts will likely increase as we continue to offer new products and services, as even our experienced sales personnel will need to receive specialized training on our new offerings. Our business may be materially harmed if our efforts do not generate a corresponding increase in revenue. We may not achieve anticipated revenue growth from expanding our sales force if we are unable to hire, develop and retain talented sales personnel, if our new sales personnel are unable to achieve desired productivity levels in a reasonable period of time or if our sales and marketing programs are not effective.

***Our past growth is not indicative of our future growth, and if we grow rapidly, we may not be able to manage our growth effectively.***

Our revenue grew from \$105.5 million for the three months ended March 31, 2023 to \$106.7 million for the three months ended March 31, 2024, representing a period over period increase of 1%. You should not consider our past growth as indicative of our future performance. We believe growth of our revenue depends on a number of factors, including our ability to:

- price our products and services effectively so that we are able to attract new clients and retain existing clients without compromising our profitability;
- introduce our products and services to new geographic markets;
- introduce new enterprise software products and services supporting additional enterprise software vendors, products and releases;
- satisfactorily conclude any Oracle-related litigation and any other litigation or governmental inquiry that may occur; and
- increase awareness of our company, products and services on a global basis.

We may not successfully accomplish all or any of these objectives.

In addition, our historical growth has placed and may continue to place significant demands on our management and our operational and financial resources. Our organizational structure is becoming more complex as we add additional staff, and we will need to improve our operational, financial and management controls, as well as our reporting systems and procedures. Further, we believe that our corporate culture has been a critical component of our success. We have invested substantial time and resources in building our team and nurturing our culture. As we continue to expand our business and operate as a public company, we may find it difficult to maintain our corporate culture while managing our employee growth. We will require significant capital expenditures and the allocation of valuable management resources to grow and change in these areas without undermining our corporate culture of rapid innovation, teamwork and attention to client service that has been central to our growth. Any failure to manage our anticipated growth and related organizational changes in a manner that preserves our culture could negatively impact future growth and achievement of our business objectives.

***Our failure to generate significant capital through our operations or raise additional capital necessary to fund and expand our operations, invest in new services and products, and service our debt could reduce our ability to compete and could harm our business.***

We may need to incur additional debt under our 2024 Credit Facility and/or raise additional capital beyond what is available under our 2024 Credit Facility if we cannot fund our growth or service our debt through our operating cash flows. Should this occur, we may not be able to obtain additional debt or additional equity financing on favorable terms, if at all, which could harm our business, results of operations and financial condition. We are also subject to certain restrictions for future financings as discussed in the risk factor "*The terms of our 2024 Credit Facility impose operating and financial restrictions on us.*" If we raise additional equity financing, our stockholders may experience significant dilution of their ownership interests and the value of our Common Stock could decline. If we engage in additional debt financings, the holders of the debt securities or lenders would have priority over the holders of our Common Stock. We may also be required to accept terms that further restrict our ability to incur additional indebtedness, take other actions that would adversely impact the short-term price of our Common Stock, or force us to maintain specified liquidity or other ratios, any of which could harm our business, results of operations and financial condition and reduce the value of our Common Stock.

***Our business may suffer if it is alleged or determined that our technology infringes the intellectual property rights of others.***

The software industry is characterized by the existence of a large number of patents, copyrights, trademarks, trade secrets and other intellectual and proprietary rights. Companies in the software industry are often required to defend against claims and litigation alleging infringement or other violations of intellectual property rights. Many of our competitors and other industry participants have been issued patents and/or have filed patent applications and may assert patent or other intellectual property rights within the industry. Our ongoing litigation with Oracle relates in part to copyright infringement claims and, from time to time, we may receive threatening letters or notices alleging infringement or may be the subject of claims that our services and underlying technology infringe or violate the intellectual property rights of others. Further, while we generally prohibit the use of generative artificial intelligence (AI) technologies by our employees and currently do not use generative AI technologies in our products or service offerings, the unauthorized use of generative AI technologies by our employees may result in allegations or claims against us related to violations of third-party intellectual property rights, unauthorized access to or use of proprietary information and/or failure to comply with the terms of third-party licensing agreements. Any allegation of infringement, whether innocent or intentional, can adversely impact marketing, sales and our reputation.

***Interruptions to or degraded performance of our service could result in client dissatisfaction, damage to our reputation, loss of clients, limited growth and reduction in revenue.***

Our software support agreements with our clients generally guarantee a 10-minute response time with respect to certain high-priority issues. If we do not meet the 10-minute guarantee, our clients may in some instances be entitled to liquidated damages, service credits or refunds. To date, no such payments have been made.

We also deliver tax, legal and regulatory updates to our clients. If there are inaccuracies in these updates, or if we are not able to deliver them on a timely basis to our clients, our reputation may be damaged, and we could be found liable for damages to our clients and potentially lose clients.

Any interruptions or delays in our service, whether as a result of third-party error, our own error, natural disasters or other catastrophic events, security breaches or a result of any other issues, whether accidental or willful, could harm our relationships with clients and cause our revenue to decrease and our expenses to increase. Also, in the event of damage or interruption, our insurance policies may not adequately compensate us for any losses that we may incur. These factors, in turn, could further reduce our revenue, subject us to liability, cause us to pay liquidated damages, issue credits or cause clients not to renew their agreements with us, any of which could materially adversely affect our business.

***We depend and rely on SaaS technologies and related services from third parties in order to operate critical functions of our business and interruptions or performance problems with these technologies or services, including any deficiencies associated with generative artificial intelligence technologies potentially used by such third parties, may adversely affect our business and operating results.***

We depend and rely on software-as-a-service, or SaaS, technologies and related services from third parties to operate critical functions of our business, including billing and order management, financial accounting services, and client relationship management services. If these services become unavailable due to extended outages or interruptions, security vulnerabilities, or cyber-attacks, because they are no longer available on commercially reasonable terms or prices, or due to other unforeseen circumstances, our expenses could increase, our ability to manage these critical functions could be interrupted, and our processes for and ability to manage sales of our products, recognize revenue, and support our clients could be impaired, all of which could adversely affect our business and operating results. Further, our third-party vendors and service providers may use generative artificial intelligence (AI) technologies or systems, and ineffective or inadequate generative AI development or deployment practices by such third-party vendors and service providers could result in unintended consequences such as reputational damage, legal liabilities or loss of user confidence or business. The algorithms and models used in generative AI technologies and systems may have limitations, including biases, errors, or inability to handle certain data types or scenarios. In addition, there is a risk of system failures, disruptions or vulnerabilities that could compromise the integrity, security or privacy of the generated content, including the use of cyberattacks against emerging technologies, such as forms of generative AI.

***We may experience fluctuations in our results of operations due to the sales cycles for our products and services, which makes our future results difficult to predict and could cause our results of operations to fall below expectations or our guidance.***

Our results of operations have fluctuated in the past and are expected to fluctuate in the future due to a variety of factors, many of which are outside of our control, including seasonality linked to certain of the sales cycles for our products and services. Historically, our sales cycle has been tied to the renewal dates for our clients' existing and prior vendor support agreements for the products that we support. Because our clients make support vendor selection decisions in conjunction with the renewal of their existing support agreements with Oracle and SAP, among other enterprise software vendors, we have

experienced an increase in business activity during the quarterly periods in which those agreements are up for renewal. However, because we have introduced and intend to continue to introduce products and services for additional software products that do not follow the same renewal timeline or pattern, our past results may not be indicative of our future performance, and comparing our results of operations on a period-to-period basis may not be meaningful. Also, if we are unable to engage a potential client before its renewal date for software support services in a particular year, it will likely be at least another year before we would have the opportunity to engage that potential client again, given that such potential client likely had to renew or extend its existing support agreement for at least an additional year's worth of service with its existing support provider. Furthermore, our existing clients generally renew their agreements with us at or near the end of each calendar year, so we have also experienced and expect to continue to experience heavier renewal rates in the fourth quarter.

We may not be able to accurately forecast the amount and mix of future product and service subscriptions, revenue and expenses, and as a result, our results of operations may fall below our estimates or the expectations of securities analysts and investors. If our revenue or results of operations fall below the expectations of investors or securities analysts, or below any guidance we may provide, the price of our Common Stock could decline.

***We may need to change our pricing models to compete successfully.***

We currently offer our clients support services for a fee that is equal to a percentage of the annual fees charged by the enterprise software vendor; therefore, changes in such vendors' fee structures would impact the fees we would receive from our clients. If the enterprise software vendors offer deep discounts on certain services or lower prices generally, we may need to change our pricing models, which could have an adverse effect on our results of operations. In addition, our other product and service offerings, such as our Rimini ONE integrated services, have pricing models that use a variety of different metrics and formulas as compared to our support solutions. To the extent that we do not have substantial experience with pricing such new products and services, we may need to adjust our pricing models for these offerings over time to ensure that we remain competitive and realize a return on our investment in developing these new products and services. If we do not adapt our pricing models as necessary or appropriate, our revenue could decrease and adversely affect our results of operations.

***We may not be able to scale our business systems quickly enough to meet our clients' growing needs, and if we are not able to grow efficiently, our results of operations could be harmed.***

As enterprise software products become more advanced and complex, we will need to devote additional resources to innovating, improving and expanding our offerings to provide relevant products and services to our clients using these more advanced and complex products. In addition, we will need to appropriately scale our internal business systems and our global operations and client engagement teams to serve our growing client base, particularly as our client demographics expand over time. Any such expansion may be expensive and complex, requiring financial investments, management time and attention. Any failure or delay in these efforts could adversely affect the quality or success of our services and negatively impact client satisfaction, resulting in potential decreased sales to new clients and possibly lower renewal rates by existing clients.

We could also face inefficiencies or operational failures as a result of our efforts to scale our infrastructure. There can be no assurance that the expansion and improvements to our infrastructure and systems will be fully or effectively implemented within budgets or on a timely basis, if at all. Any failure to efficiently scale our business could result in reduced revenue and increased expenditures and adversely impact our operating margins and results of operations.

***Because our long-term growth strategy involves further expansion of our sales to clients outside the United States, our business will be susceptible to risks associated with global operations, including currency exchange rate fluctuations.***

A significant component of our growth strategy involves the further expansion of our operations and client base outside the United States. Accordingly, our international revenue grew from \$52.1 million for the three months ended March 31, 2023 to \$52.9 million for the three months ended March 31, 2024, an increase of \$0.9 million or 2%. We currently have subsidiaries outside of the United States in Australia, Brazil, Canada, UAE (Dubai), France, Germany, Hong Kong, India, Israel, Japan, Korea, Malaysia, Mexico, Netherlands, New Zealand, Poland, Singapore, Sweden, Taiwan and the United Kingdom, which focus primarily on selling our services in those regions.

In the future, we may expand to other locations outside of the United States. Our current global operations and future initiatives will involve a variety of risks, including among others:

- changes in a specific country's or region's political or economic conditions;
- the occurrence of catastrophic events, including natural disasters, that may disrupt our business;
- changes in regulatory requirements, taxes or trade laws or the imposition of trade sanctions;

- currency exchange rate fluctuations and the resulting effect on our revenue and expenses, and the cost and risk of entering into currency exchange rate hedging transactions;
- more stringent regulations relating to data security, such as where and how data can be housed, accessed and used, and the unauthorized use of, or access to, commercial and personal information;
- differing labor regulations, especially in countries and geographies where labor laws are more advantageous to employees as compared to the United States, including deemed hourly wage and overtime regulations;
- challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs as well as hire and retain local management, sales, marketing and support personnel, along with the ability to recapture costs to open up new geographies;
- difficulties in managing a business in new markets with diverse cultures, languages, customs, legal systems, alternative dispute systems and regulatory systems;
- increased logistics, travel, real estate, infrastructure and legal compliance costs associated with global operations;
- limitations on our ability to reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- laws and business practices favoring local competitors or general preferences for local vendors;
- limited or insufficient intellectual property protection;
- war, political instability or terrorist activities, including geopolitical actions specific to an international region, such as the ongoing geopolitical conflict between Israel and Hamas;
- exposure to liabilities under anti-corruption and anti-money laundering laws, including the United States Foreign Corrupt Practices Act and similar laws and regulations in other jurisdictions; and
- adverse tax burdens and foreign exchange controls that could make it difficult to repatriate earnings and cash.

Our exposure in operating our business globally with the risks noted above and the unique challenges of each new geography increase the risk that any potential future expansion efforts that we may undertake will not be successful. If we invest substantial time and resources to expand our global operations and are unable to do so successfully and in a timely manner, our business and results of operations will be adversely affected.

***Consolidation in our target sales markets is continuing at a rapid pace, which could harm our business in the event that our clients are acquired and their agreements are terminated, or not renewed or extended.***

Consolidation among companies in our target sales markets has been robust in recent years, and this continuing trend poses a risk for us. If such consolidation rates continue, we expect that some of the acquiring companies will terminate, renegotiate and elect not to renew our agreements with the clients they acquire, which may have an adverse effect on our business and results of operations.

***If there is a widespread shift by clients or potential clients to enterprise software vendors, products and releases for which we do not provide software products or services, our business, financial condition and results of operations would be adversely impacted.***

Our current revenue is primarily derived from the provision of support services for Oracle and SAP enterprise software products. If other enterprise software vendors, products and releases emerge to take substantial market share from current Oracle and SAP products and releases we support, and we are unable to, or do not, offer products or services for such vendors, products or releases, demand for our products and services may decline or our products and services may become obsolete. Developing new products and services to address different emerging enterprise software vendors, products and releases could take a substantial investment of time and financial resources, and we cannot guarantee that we will be successful. If fewer clients use enterprise software products for which we provide products and services, and we are not able to provide services for new vendors, products and releases, our business may be adversely impacted.

We continue to invest resources in research and development to enhance our current product and service offerings, and other new offerings that will appeal to clients and potential clients, for example, our partnership with Salesforce to support SaaS solutions, our Application Management Services (AMS) for SAP and Oracle products and our Rimini ONE integrated services. The development of new product and service offerings may not generate sufficient revenue to offset the increased research and development expenses and may not generate gross profit margins consistent with our current margins. Also, our new product and service offerings may be in markets that are more competitive than markets for our existing product and service offerings, making it more difficult to introduce them to clients and potential clients effectively or provide them profitably.

If our new or modified products, services or technology do not work as intended, are not responsive to client needs or industry or regulatory changes, are not appropriately timed with market opportunity, or are not effectively brought to market,

we may lose existing and prospective clients or related opportunities, in which case our financial condition and results of operations may be adversely impacted, and if we are not successful in implementing any new product and service offerings, we may need to write off the value of our investment in such offerings.

***Cybersecurity threats continue to increase in frequency and sophistication; if our data security measures are compromised or unauthorized access to or misuse of client data occurs, our services may be perceived as not being secure, clients may curtail or cease their use of our services, our reputation and our business may be harmed, and we may incur significant liabilities.***

Our services sometimes involve accessing, processing, sharing, using, storing and transmitting proprietary information and protected data of our clients. We rely on proprietary and commercially available systems, software, tools and monitoring, as well as other processes, to provide security for accessing, processing, sharing, using, storing and transmitting such information and data. If our security measures are compromised as a result of third-party action, employee, vendor or client error, malfeasance, stolen or fraudulently obtained log-in credentials or otherwise, our reputation could be damaged, our business and our clients may be harmed, and we could incur significant liabilities. Cyberattacks continue to increase in frequency and in magnitude generally, and these threats are being driven by a variety of sources, including nation-state sponsored espionage and hacking activities, industrial espionage, organized crime, sophisticated organizations and hacking groups and individuals. Furthermore, due to tensions related to the ongoing geopolitical conflicts such as between Russia and Ukraine, the risk of cyber-attacks may be elevated. We have been the subject of cybersecurity threats and expect such threats to continue in the future. In addition, if the security measures of our clients are compromised, even without any actual compromise of our own systems or security measures, we may face negative publicity or reputational harm if our clients or anyone else incorrectly attributes the blame for such security breaches to us, our products and services, or our systems. We may also be responsible for repairing any damage caused to our clients' systems that we support, and we may not be able to make such repairs in a timely manner or at all.

We may be unable to fully anticipate or prevent techniques used to obtain unauthorized access or to sabotage systems because they change frequently and generally are not detected until after an incident has occurred. As we increase our client base and our brand becomes more widely known and recognized, we may become more of a target for third parties seeking to compromise our systems or security measures or gain unauthorized access to our clients' proprietary information and protected data as was the case in a 2021 successful phishing incident where we were a victim, which resulted in some unauthorized sharing of client addresses and outstanding billing data information, but did not significantly impact our business or client relationships.

Although we attempt to identify, mitigate and manage these risks by employing a number of measures, including insurance, monitoring of our systems and networks, employee training and maintenance of backup and protective systems, our systems, networks, products and services remain potentially vulnerable to increasingly sophisticated advanced persistent threats that may have a material effect on our business. In addition, the devotion of additional resources to the security of our information technology systems in the future could significantly increase the cost of doing business or otherwise adversely impact our financial results.

In addition, many governments have enacted laws requiring companies to notify individuals of data security incidents involving certain types of personal data, and some of our clients contractually require notification of any data security compromise. In the event of a data security compromise, we may have difficulty timely complying with notification requirements that are unreasonably short or burdensome. SEC rules and potential other applicable legislative action will require public disclosure of material security compromises experienced by our clients, by our competitors or by us, which may lead to widespread negative publicity. Any data security compromise in our industry, whether actual or perceived, could harm our reputation, erode client confidence in the effectiveness of our security measures, negatively impact our ability to attract new clients, cause existing clients to elect not to renew their agreements with us, or subject us to third party lawsuits, government investigations, regulatory fines or other action or liability, all or any of which could materially and adversely affect our business, financial condition and results of operations.

We cannot provide assurances that any limitations of liability provisions in our contracts for a security breach would be enforceable or adequate or would otherwise protect us from any such liabilities or damages with respect to any particular claim. Further, certain of our contracts do not contain limitations of liability specific to security breaches, which could expose us to significant liabilities or damages, all or any of which could materially and adversely affect our business, financial condition and results of operations. We also cannot be sure that our existing general liability insurance coverage and coverage for errors or omissions will continue to be available on acceptable terms or will be available in sufficient amounts to cover one or more claims, or that the insurer will not deny coverage as to any future claim. The successful assertion of one or more claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium

increases or the imposition of substantial deductible or co-insurance requirements, could have a material adverse effect on our business, financial condition and results of operations.

***We are subject to governmental and other legal obligations related to privacy and security, and our actual or perceived failure to comply with such obligations could harm our business.***

As an expanding global company, we are subject to the laws and regulations of numerous jurisdictions worldwide regarding accessing, processing, sharing, using, storing, transmitting, disclosure and protection of personal data, the scope of which are constantly changing, subject to differing interpretation and related to jurisdictions where we have operations, clients, or where we conduct marketing, and such laws may be inconsistent between countries or in conflict with other laws, legal obligations or industry standards. For example, the General Data Protection Regulation in the European Union creates a broad range of requirements and imposes substantial penalties for non-compliance, including possible fines of up to 4% of global annual revenue for the preceding financial year or €20 million (whichever is higher) for the most serious infringements. We are also subject to certain requirements in other international jurisdictions with or developing strong privacy and security legislation, as well as expanding U.S. state law, including the California Consumer Privacy Act of 2018, the California Privacy Rights Act of 2020, the Virginia Consumer Data Protection Act of 2021 (effective Jan 1, 2023), the Colorado Consumer Privacy Act of 2021 (effective July 1, 2023), as well as privacy and security legislation in other states, including Nevada, each of which add to the range of privacy- and security-related compliance requirements. We generally comply with industry standards and strive to comply with all applicable legal obligations relating to privacy, data protection and security, but it is possible that these laws and other legal obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with industry standards or our practices or may be mandated at a pace that exceeds our ability to comply. Compliance with such requirements may be costly and may require us to modify our business practices, which could adversely affect our business and profitability. Any failure or perceived failure by us to comply with these laws, policies or other obligations may result in governmental enforcement actions or litigation against us, with potential consequences such as fines and other expenses related to such governmental actions, an order requiring that we change our data practices or business practices, and could cause our clients to lose trust in us, any of which could have an adverse effect on our business. Further, the unauthorized use of generative artificial intelligence (AI) technology by our workforce may pose potential risks relating to the protection of data, including cybersecurity risk, exposure of our and our clients' proprietary confidential information to unauthorized recipients and the misuse of our or third-party intellectual property.

***If our products and services fail due to defects or similar problems, and if we fail to correct any defect or other software problems, we could lose clients, become subject to service performance or warranty claims or incur significant costs.***

Our products and services and the systems infrastructure necessary for the successful delivery of our products and services to clients are inherently complex and may contain material defects or errors unknown to us. We have from time to time found defects in our products and services after delivery to our customers and may discover additional defects in the future. In particular, we have developed our own tools and processes to deliver comprehensive tax, legal and regulatory updates tailored for each client, which we endeavor to deliver to our clients in a shorter timeframe than our competitors, which may result in an increased risk of material defects or errors occurring. We may not be able to detect and correct all defects or errors before clients begin to use our products and services, as some may be unknown. Consequently, defects or errors may be discovered after our products and services are provided and used. These defects or errors could also cause inaccuracies in the data we collect and process for our clients, or even the loss, damage or inadvertent release of such confidential data. Even if we are able to implement fixes or corrections to our tax, legal and regulatory updates in a timely manner, any history of defects or inaccuracies in the data we collect for our clients, or the loss, damage or inadvertent release of such confidential data could cause our reputation to be harmed, and clients may elect not to renew, extend or expand their agreements with us and subject us to service performance credits, warranty or other claims or increased insurance costs. The costs associated with any material defects or errors in our products and services or other performance problems may be substantial and could materially adversely affect our financial condition and results of operations.

***If we are not able to maintain an effective system of internal control over financial reporting, current and potential investors could lose confidence in our financial reporting, which could harm our business and have an adverse effect on our Common Stock price.***

We have had material weaknesses in our internal control over financial reporting in the past as described in our historical periodic reports filed with the SEC. We remediated the material weaknesses; however, we cannot provide assurance that material weaknesses in our internal control over financial reporting will not be identified in the future.

We are required to have our independent registered public accounting firm attest to and report on management's assessment of the effectiveness of our internal control over financial reporting. If we are unable to conclude that we have

effective internal control over financial reporting, or if our independent registered public accounting firm is unable to provide us with an attestation and an unqualified report as to the effectiveness of our internal control over financial reporting, investors could lose confidence in the reliability of our financial statements, which could result in a decrease in the value of our securities. For further information regarding our controls and procedures, see "Controls and Procedures" in Part I, Item 4 of this Report.

***If we fail to enhance and protect our brand, our ability to expand our client base will be impaired and our financial condition may suffer.***

We believe that our development and protection of the Rimini Street brand is critical to achieving widespread awareness of our products and services, and as a result, is important to attracting new clients and maintaining existing clients. We also believe that the importance of brand recognition will increase as competition in our market increases. Successful promotion of our brand will depend largely on the effectiveness of our marketing efforts and on our ability to provide reliable products and services at competitive prices, as well as the outcome of our ongoing litigation with Oracle. Brand promotion activities may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incurred in building our brand. If we fail to successfully promote, maintain and protect our brand, our business could be adversely impacted.

***If we fail to adequately protect our proprietary rights, our competitive position could be impaired and we may lose valuable assets, experience reduced revenue and incur costly litigation to protect our rights.***

Our success depends, in part, upon protecting our proprietary products, services, knowledge, software tools and processes. We rely on a combination of copyrights, trademarks, service marks, trade secret laws and contractual restrictions to establish and protect our proprietary rights. However, the steps we take to protect our intellectual property may be inadequate. We will not be able to protect our intellectual property if we are unable to enforce our rights or if we do not detect unauthorized use of our intellectual property. Any of our copyrights, trademarks, service marks, trade secret rights or other intellectual property rights may be challenged by others or invalidated through administrative process or litigation. Furthermore, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights are uncertain. Despite our precautions, it may be possible for unauthorized third parties to copy or use information that we regard as proprietary to create products and services that compete with ours. In addition, the laws of some countries do not protect proprietary rights to the same extent as the laws of the United States. To the extent we expand our global activities, our exposure to unauthorized copying and use of our brand, processes and software tools may increase.

We enter into confidentiality and invention assignment agreements with our employees and consultants and enter into confidentiality agreements with the parties with whom we have strategic relationships and business alliances. No assurance can be given that these agreements will be effective in controlling access to and distribution of our proprietary intellectual property. Further, these agreements may not prevent our competitors from independently developing products and services that are substantially equivalent or superior to our products and services.

Although we have been successful in the past, there can be no assurance that we will receive any additional patent protection for our proprietary software tools and processes. Even if we were to receive patent protection, those patent rights could be invalidated at a later date. Furthermore, any such patent rights may not adequately protect our processes, our software tools or prevent others from designing around our patent claims.

To protect our intellectual property rights, we may be required to spend significant resources to monitor and protect these rights. Litigation brought to protect and enforce our intellectual property rights could be costly, time consuming and distracting to management and could result in the impairment or loss of portions of our intellectual property. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims and countersuits attacking the validity and enforceability of our intellectual property rights. Our inability to protect our products, processes and software tools against unauthorized copying or use, as well as any costly litigation or diversion of our management's attention and resources, could delay further sales or the implementation of our products and services, impair the functionality of our products and services, delay introductions of new products and services, result in our substituting inferior or more costly technologies into our products and services, or injure our reputation.

***We may be subject to additional obligations to collect and remit sales tax and other taxes, and we may be subject to tax liability, interest and/or penalties for past sales, which could adversely harm our business.***

State, local and foreign jurisdictions have differing and complex rules and regulations governing sales, use, value-added and other taxes, and these rules and regulations can be subject to varying interpretations that may change over time. In

particular, the applicability of such taxes to our products and services in various jurisdictions is unclear. Further, these jurisdictions' rules regarding tax nexus are complex and can vary significantly. As a result, we could face the possibility of tax assessments and audits, and our liability for these taxes and associated interest and penalties could exceed our original estimates. Should these jurisdictions determine that we should be collecting additional sales, use, value-added or other taxes, it could result in substantial tax liabilities and related penalties for past sales, discourage clients from purchasing our products and services or otherwise harm our business and results of operations.

***The amount of and ultimate realization of the benefits from the net operating loss carryforwards for income tax purposes is dependent, in part, upon the tax laws in effect, our future earnings, and other future events, the effects of which cannot be determined; if we are not able to use a significant portion of our net operating loss carryforwards, our profitability could be adversely affected.***

We have United States federal and state net operating loss carryforwards due to prior period losses, which could expire unused and be unavailable to offset future income tax liabilities, which could adversely affect our profitability.

In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, our ability to utilize net operating loss carryforwards or other tax attributes in any taxable year may be limited if we experience an "ownership change." A Section 382 "ownership change" generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws in the United States. While our ownership changes to date have not triggered any limitations under Section 382, it is possible that any future ownership changes or issuances of our capital stock, could have a material effect on the use of our net operating loss carryforwards or other tax attributes, which could adversely affect our profitability.

***We are a multinational organization faced with increasingly complex tax issues in many jurisdictions, and we could be obligated to pay additional taxes in various jurisdictions.***

As a multinational organization, we may be subject to taxation in several jurisdictions worldwide with increasingly complex tax laws, the application of which can be uncertain. Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain. As such, our results may differ from previous estimates and may materially affect our financial position.

The amount of taxes we pay in jurisdictions in which we operate could increase substantially as a result of changes in the applicable tax principles, including increased tax rates, new tax laws or revised interpretations of existing tax laws and precedents, which could have a material adverse effect on our liquidity and results of operations. In addition, the authorities in these jurisdictions could review our tax returns and impose additional tax, interest and penalties, and the authorities could claim that various withholding requirements apply to us or our subsidiaries or assert that benefits of tax treaties are not available to us or our subsidiaries, any of which could have a material impact on our business and results of operations.

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

There is an increasing focus from regulators, including U.S. state attorneys general, certain investors, certain clients, the communities in which we operate and other stakeholders concerning environmental, social, and governance ("ESG") matters, both in the United States and internationally. These stakeholders may have differing priorities and expectations regarding ESG matters. In particular, certain of our clients or potential clients might require that we implement specified ESG procedures or standards in order to do business or continue to do business with them. In addition, proxy advisory firms and certain institutional investors who manage investments in public companies are increasingly integrating ESG factors into their investment analysis. The specific consideration of ESG factors in making business, investment and voting decisions is unsettled and still developing. In addition, recent judicial decisions, federal and state legislative actions and actions of private interest groups have challenged certain ESG policies and practices. Accordingly, the frameworks and methods for assessing ESG policies are not fully developed, likely vary across our various stakeholders and will likely continue to evolve over time.

Moreover, the subjective nature of methods used by our various stakeholders to assess a company with respect to ESG criteria could result in erroneous perceptions or a misrepresentation of our actual ESG policies and practices. In addition, we could also incur additional costs and require additional resources to monitor, report and comply with various ESG practices and associated legal, legislative and regulatory requirements. To the extent that our required and voluntary disclosures about ESG matters increase, we could be criticized for the accuracy, adequacy, or completeness of such disclosures. If we fail to comply with specific ESG-related client/potential client or investor expectations and standards, or to provide the disclosure relating to

ESG issues that any third parties may believe is necessary or appropriate (regardless of whether there is a legal requirement to do so), our reputation, business, financial condition, and/or results of operations, as well as the price of our common stock, could be negatively impacted.

#### **Risks Related to our Indebtedness and Securities**

##### ***Our level of indebtedness and any future indebtedness we may incur may limit our operational and financing flexibility and negatively impact our business.***

On March 31, 2024, our outstanding indebtedness under our Original Credit Facility and finance leases totaled \$71.2 million. We may incur substantial additional indebtedness in the future. Our 2024 Credit Facility and other debt instruments we may enter into in the future may significantly impact our business, including the following among others:

- our ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired;
- our requirement to use a significant portion of our cash flows from operations to pay principal and interest on our indebtedness, which will reduce the funds available to us for operations and other purposes;
- our level of indebtedness could place us at a competitive disadvantage compared to our competitors that may have proportionately less debt;
- our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate may be limited; and
- our level of indebtedness may make us more vulnerable to economic downturns and adverse developments in our business.

We expect to depend primarily on cash generated by our operations for funds to pay our expenses and any amounts due under our 2024 Credit Facility and any other indebtedness we may incur. Our ability to make these payments depends on our future performance, which will be affected by financial, business, economic and other factors, many of which we cannot control, including inflation and global economic conditions. Our business may not generate sufficient cash flows from operations in the future, and our currently anticipated growth in net sales and cash flows may not be realized, either or both of which could result in our being unable to repay indebtedness or to fund other liquidity needs. If we do not generate adequate resources, we may be required to refinance all or part of our then existing debt, sell assets or borrow more money, in each case on terms that may not be acceptable to us. In addition, the terms of existing or future debt agreements, including our existing 2024 Credit Facility, may restrict us from adopting some or any of these alternatives. Our inability to incur additional debt in the future could also delay or prevent a change in control of our Company, make some transactions more difficult and impose additional financial or other covenants on us. In addition, any significant levels of indebtedness in the future could make us more vulnerable to economic downturns and adverse developments in our business. Our current indebtedness and any inability to pay our debt obligations as they come due or an inability to incur additional debt could adversely affect our business and results of operations.

##### ***The terms of our 2024 Credit Facility impose operating and financial restrictions on us.***

Our 2024 Credit Facility contains certain restrictions and covenants that generally limit our ability to, among other things, create liens on assets, sell assets, engage in mergers or consolidations, make loans or investments, incur additional indebtedness, engage in certain transactions with affiliates, incur certain material ERISA or pension liabilities and pay dividends or repurchase capital stock and in each case, subject to certain exceptions set forth in our credit agreement. Our 2024 Credit Facility may limit our ability to engage in these types of transactions even if we believe that a specific transaction would contribute to our future growth or improve our operating results. Further, we were required under our Original Credit Facility and are currently required under our 2024 Credit Facility to achieve specified financial and operating results and maintain compliance with specified financial ratios, including as a condition to accessing additional amounts available for borrowing. As of March 31, 2024 and on the date of filing this Report, we were in compliance with each of these financial covenants. Our ability to comply with these provisions may be affected by events beyond our control. A breach of any of these financial covenants or our inability to comply with required financial ratios in our 2024 Credit Facility could result in a default under the 2024 Credit Facility in which case the lenders would have the right to declare all borrowings, which includes any principal amount outstanding, together with all accrued, unpaid interest and other amounts owing in respect thereof, to be immediately due and payable. If we are unable to repay all borrowings when due, whether at maturity or if declared due and payable following a default, the lenders would have the right to proceed against the collateral granted to secure the indebtedness. If we breach these covenants or fail to comply with other terms of the 2024 Credit Facility and the lenders accelerate the amounts outstanding under the 2024 Credit Facility, our business and results of operations would be adversely affected. Additionally, we

may need to refinance our 2024 Credit Facility at maturity or upon default, and future financing may not be available on acceptable terms, or at all.

***Our variable rate indebtedness subjects us to interest rate risk, which, along with the previous phase-out of LIBOR and transition to SOFR, could cause our indebtedness service obligations to increase significantly.***

As a result of market interest rate fluctuations, interest rates under our 2024 Credit Facility or other variable rate indebtedness we may incur in the future could be higher or lower than current levels. As interest rates increase, our debt service obligations under our 2024 Credit Facility may increase even though the amounts borrowed remain the same, and our net income and cash flows, including cash available for servicing our indebtedness, would correspondingly decrease. We have entered into an interest rate swap agreement that involves the exchange of floating for fixed rate interest payments in order to partially reduce interest rate volatility under our 2024 Credit Facility. However, we currently do not maintain interest rate swap agreements with respect to all of our variable rate indebtedness, and any interest rate swap agreements we enter into in the future may not fully mitigate our interest rate risk.

Our 2024 Credit Facility gives us a choice of interest rates between (a) SOFR and (b) a Base Rate, in each case plus an applicable margin and as further defined in the 2024 Credit Facility. The applicable margin is based on our Consolidated Total Leverage Ratio (as defined in the 2024 Credit Facility) and whether we elect SOFR (ranging from 2.75 to 3.50%) or Base Rate (ranging from 1.75 to 2.50%). SOFR is a relatively new reference rate, and its composition and characteristics are not the same as LIBOR, which was the initial reference rate (through February 2023) under our Original Credit Facility. SOFR is calculated based on short-term repurchase agreements, backed by Treasury securities. As such, SOFR is observed and backward looking, which stands in contrast with LIBOR under the previous methodology, which is an estimated forward-looking rate and relies, to some degree, on the expert judgment of submitting bank panel members. Given SOFR's limited history, the future performance of SOFR cannot be predicted based on historical performance, and there is no assurance that SOFR will perform in the same way as LIBOR would have performed at any time or that it is a comparable substitute for LIBOR. In the long term, transitioning to SOFR could result in an increase in the cost of our variable rate indebtedness, which could have a material adverse impact on our business, financial condition and results of operations.

***Our stock repurchase program could affect the price of our Common Stock and increase volatility and may be suspended or terminated at any time, which may result in a decrease in the trading price of our Common Stock.***

Our Board of Directors has authorized a \$50.0 million stock repurchase program. During the three months ended March 31, 2024, we did not acquire any shares of Common Stock on the open market. Repurchases pursuant to any such stock repurchase program could affect our Common Stock price and increase its volatility. The existence of a stock repurchase program could also cause our Common Stock price to be higher than it would be in the absence of such a program and could potentially reduce the market liquidity for our Common Stock. Such repurchase program will not obligate us to repurchase any further specific dollar amount or number of shares of Common Stock within that authorization and may be suspended or discontinued at any time, which could cause the market price of our Common Stock to decline. The timing and actual number of further shares repurchased under any such stock repurchase program depends on a variety of factors including the timing of open trading windows, price, corporate and regulatory requirements, and other market conditions. Further, the provisions of the Inflation Reduction Act of 2022 impose an excise tax of 1% tax on the fair market value of stock repurchases made after December 31, 2022, net of certain adjustments for issuances of incentive and other equity. The impact of this provision will depend on the extent of share repurchases and qualified reductions for issuances made in future periods. There can be no assurance that any stock repurchases will enhance stockholder value because the market price of our Common Stock may decline below the levels at which we repurchased shares of Common Stock. Although our stock repurchase program is intended to enhance stockholder value, short-term stock price fluctuations could reduce the program's effectiveness.

***The price of our Common Stock may be volatile, any issuance of Common Stock upon the exercise of remaining warrants will dilute existing stockholders and such issuances and/or any sales of Common Stock by large stockholders may depress the market price of our Common Stock.***

The price of our Common Stock may fluctuate due to various factors enumerated in this Risk Factors section and elsewhere in this Report. Additional factors impacting the price of our Common Stock could include:

- the failure of securities analysts to publish research about us, or shortfalls in our results of operations compared to levels forecast by securities analysts;
- any delisting of our Common Stock from Nasdaq Global Market due to any failure to meet listing requirements, including the minimum trading price requirements as a result of our stock price volatility, particularly since the July 2023 District Court order in the Rimini II litigation, which is currently stayed; and

- the general state of securities markets.

These factors may materially reduce the market price of our Common Stock, regardless of our operating performance. Additionally, we have registered for resale the shares of Common Stock of certain of our significant holders of our Common Stock, including our largest stockholder, Adams Street Partners, LLC. Any sale of large amounts of our Common Stock on the open market or in privately negotiated transactions could have the effect of increasing the volatility and putting significant downward pressure on the price of our Common Stock. Also, the issuance of Common Stock upon exercise of warrants that remain outstanding and exercisable may result in immediate dilution to the equity interests of our existing common stockholders and might result in dilution in the tangible net book value of a share of Common Stock, depending upon the price at which the additional shares are issued. We may also seek to engage in further capital optimization transactions in the future, the result of which could trigger some dilution or have other impacts on the market price of our Common Stock and not achieve an improved capital structure. Any issuance of equity we may undertake in the future to raise additional capital could cause the price of our Common Stock to decline or require us to issue shares at a price that is lower than that paid by holders of our Common Stock in the past, which would result in those newly issued shares being dilutive.

***Certain of our common stockholders can exercise significant control, which could limit our stockholders' ability to influence the outcome of key transactions, including a change of control.***

Based on the number of shares of Common Stock outstanding as of March 31, 2024, two of our stockholders have aggregate voting power of 38.1% of our outstanding capital stock. As of March 31, 2024, (i) approximately 26.2% of our outstanding voting capital stock is held by Adams Street Partners LLC and certain Adams Street fund limited partnerships and (ii) approximately 11.9% of our outstanding voting capital stock is beneficially owned by our Chief Executive Officer, Chairman of the Board and President. Our directors and officers or persons affiliated with our directors and officers have aggregate voting power of approximately 39.6% as of March 31, 2024.

As a result, these stockholders, acting together, have significant influence over all matters that require approval by our stockholders, including the election of directors and approval of significant corporate transactions. Corporate action might be taken even if other stockholders oppose the action being taken. This concentration of ownership might also have the effect of delaying or preventing a change of control of our company that other stockholders may view as beneficial.

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

We have not paid any cash dividends on our Common Stock to date. The payment of any cash dividends on our Common Stock will depend upon our revenue, earnings, cash flow and financial condition from time to time. The payment of any dividends is at the discretion of our Board of Directors and is also limited under the terms of our 2024 Credit Facility. Our ability to declare dividends on our Common Stock may also be limited by the terms of future financing and other agreements entered into by us from time to time. It is presently expected that we will retain all earnings for use in our business operations and, accordingly, it is not expected that our Board of Directors will declare any dividends on our Common Stock in the foreseeable future. Therefore, the success of an investment in shares of our Common Stock will depend upon any future appreciation in its value. There is no guarantee that shares of our Common Stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

**Risks Relating to our Corporate Governance**

***The DGCL and our certificate of incorporation, bylaws and corporate governance policies contain certain provisions, including anti-takeover provisions that limit the ability of stockholders to take certain actions and could delay or discourage takeover attempts that stockholders may consider favorable.***

Our certificate of incorporation and bylaws, and Delaware General Corporation Law (the "DGCL"), contain provisions that could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our Board of Directors and therefore depress the trading price of our Common Stock. These provisions could also make it difficult for stockholders to take certain actions, including electing directors who are not nominated by the current members of our Board of Directors or taking other corporate actions, including effecting changes in our management and corporate governance policies and practices. Among other things, our certificate of incorporation and bylaws include provisions regarding:

- a classified Board of Directors with three-year staggered terms, which could delay the ability of stockholders to change the membership of a majority of our Board of Directors;

- the ability of our Board of Directors to issue shares of preferred stock, including “blank check” preferred stock, and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the limitation of the liability of, and the indemnification of our directors and officers;
- the exclusive right of our Board of Directors to elect a director to fill a vacancy created by the expansion of the Board of Directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our Board of Directors;
- the requirement that directors may only be removed from our Board of Directors for cause;
- a prohibition on common stockholder action by written consent, which forces common stockholder action to be taken at an annual or special meeting of stockholders and could delay the ability of stockholders to force consideration of a stockholder proposal or to take action, including the removal of directors;
- the requirement that a special meeting of stockholders may be called only by our Board of Directors, the chairperson of our Board of Directors, our chief executive officer or our president (in the absence of a chief executive officer), which could delay the ability of stockholders to force consideration of a proposal or to take action, including the removal of directors;
- controlling the procedures for the conduct and scheduling of Board of Directors and stockholder meetings;
- the requirement for the affirmative vote of holders of at least 66 2/3% of the voting power of the then outstanding shares of the voting stock, voting together as a single class, to amend, alter, change or repeal any provision of our certificate of incorporation or our bylaws, which could preclude stockholders from bringing matters before annual or special meetings of stockholders and delay changes in our Board of Directors and also may inhibit the ability of an acquirer to effect such amendments to facilitate an unsolicited takeover attempt;
- the ability of our Board of Directors to amend the bylaws, which may allow our Board of Directors to take additional actions to prevent an unsolicited takeover and inhibit the ability of an acquirer to amend the bylaws to facilitate an unsolicited takeover attempt; and
- advance notice procedures with which stockholders must comply to nominate candidates to our Board of Directors or to propose matters to be acted upon at a stockholders’ meeting, which could preclude stockholders from bringing matters before annual or special meetings of stockholders and delay changes in our Board of Directors and also may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to obtain control of our company.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our Board of Directors or management and corporate governance policies.

In addition, as a Delaware corporation, we are subject to provisions of Delaware law, including Section 203 of the DGCL, which may prohibit certain stockholders holding 15% or more of our outstanding capital stock from engaging in certain business combinations with us for a specified period of time.

Any provision of our certificate of incorporation, bylaws or DGCL that has the effect of delaying or preventing a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our Common Stock and could also affect the price that some investors are willing to pay for our Common Stock.

***Our bylaws designate a state or federal court located within the State of Delaware as the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, stockholders or employees.***

Our bylaws provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for:

- any derivative action or proceeding brought on behalf of us;
- any action asserting a claim of breach of a fiduciary duty owed to us or our stockholders by any of our directors, officers or other employees;
- any action asserting a claim against us or any of our directors, officers or employees arising out of or relating to any provision of the DGCL, our certificate of incorporation or our bylaws; or
- any action asserting a claim against us or any of our directors, officers, stockholders or employees that is governed by the internal affairs doctrine of the Court of Chancery.

This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision to be inapplicable or unenforceable in an

action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations and financial condition.

#### **General Risks**

##### ***Future acquisitions, strategic investments, partnerships or alliances could be difficult to identify and integrate, divert the attention of management, disrupt our business, dilute stockholder value and adversely affect our financial condition and results of operations.***

We may in the future seek to acquire or invest in businesses, products or technologies that we believe could complement or expand our services, enhance our technical capabilities or otherwise offer growth opportunities. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable acquisitions, whether or not the acquisitions are completed. If we acquire businesses, we may not be able to integrate successfully the acquired personnel, operations and technologies, or effectively manage the combined business following the acquisition. We may not be able to find and identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain adequate financing to complete such acquisitions. Acquisitions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our results of operations. In addition, if an acquired business fails to meet our expectations, our business, financial condition and results of operations may be adversely affected.

##### ***The commercial insurance market is changing rapidly in response to rising insurance losses and claims, changes in available insurance capacity and adverse worldwide economic conditions, uncertainties, and risks, which may lead to higher premium costs, higher policy deductibles, self-insured retentions, and/or lower coverage limits, potentially impacting our ability to continue our present limits of insurance coverage, obtain sufficient insurance capacity to adequately insure our risks or maintain adequate insurance at a reasonable cost.***

Commercial insurance availability and coverage terms, including deductibles, self-insured retentions and pricing, continue to vary with market conditions. While we believe our insurance coverage addresses all material risks to which we are exposed and is adequate and customary for our current global operations, we have observed rapidly changing conditions in the insurance markets relating to nearly all areas of traditional corporate insurance, resulting in higher premium costs, rising policy deductibles/self-insured retentions and lower coverage limits. If these changes continue, we may not be able to continue our present limits of insurance coverage, obtain sufficient insurance capacity to adequately insure our risks and/or obtain and maintain adequate insurance at a reasonable cost. Our insurance policies cover a number of risks and potential liabilities, such as general liability, property coverage, errors and omissions liability, employment liability, business interruptions, cybersecurity liability, crime, and directors' and officers' liability. We cannot be certain that our insurance coverage will be adequate to cover liabilities actually incurred, that insurance will continue to be available to us on commercially reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim or become insolvent. The successful assertion of one or more large claims against us that exceed available insurance coverage, the occurrence of changes in our insurance policies, including premium increases, decreases in coverage and the imposition of large deductible, self-insured retentions, or co-insurance requirements, or the insolvency of any of our insurers, could have a material adverse effect on our business, results of operations and financial condition.

##### ***Catastrophic events may disrupt our business.***

We rely heavily on our network infrastructure and information technology systems for our business operations. A disruption or failure of these systems in the event of an online attack, earthquake, fire, terrorist attack, geopolitical instability such as the conflicts between Israel and Hamas, war, power loss, telecommunications failure, extreme weather conditions (such as hurricanes, wildfires or floods) or other catastrophic event could cause system interruptions, delays in accessing our service, reputational harm, loss of critical data or could prevent us from providing our products and services to our clients. In addition, several of our employee groups reside in areas particularly susceptible to earthquakes, such as the San Francisco Bay Area and Japan, and a major earthquake or other catastrophic event could affect our employees, who may not be able to access our systems, or otherwise continue to provide our services to our clients. A catastrophic event that results in the destruction or disruption of our data centers, or our network infrastructure or information technology systems, or access to our systems could affect our ability to conduct normal business operations and adversely affect our business, financial condition and results of operations. Additionally, the emergence or spread of a pandemic or other widespread health emergency (or concerns over and response to the possibility of such an emergency) could adversely affect our business, financial condition and results of operations.

##### ***Failure to comply with laws and regulations applicable to our operations could harm our business.***

Our business is subject to regulation by various global governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, workplace safety, environmental laws, consumer protection laws, anti-bribery laws, import/export controls, securities laws and tax laws and regulations. For example, transfer of certain software outside of the United States or to certain persons is regulated by export controls.

In certain jurisdictions, these regulatory requirements may be more stringent than those in the United States. Noncompliance with applicable requirements could subject us to investigations, sanctions, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties or injunctions and may result in our inability to provide certain products and services. If any governmental sanctions are imposed, or if we do not prevail in any possible civil or criminal litigation, or if clients make claims against us for compensation for such non-compliance, our business, financial condition and results of operations could be harmed, and responding to any such type of action will likely result in a significant diversion of management's attention and resources.

***Reports published by analysts, including projections in those reports that differ from our actual results, could adversely affect the price and trading volume of our Common Stock.***

Securities research analysts may establish and publish their own periodic projections for us. These projections may vary widely and may not accurately predict the results we actually achieve. Our share price may decline if our actual results do not meet the projections of these securities research analysts. Similarly, if one or more of the analysts who write reports on us downgrades our stock or publishes inaccurate or unfavorable research about our business, our share price could decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, our share price or trading volume could decline. If no additional analysts commence coverage of us, the market price and volume for our common shares could be adversely affected.

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

There were no repurchases of our Common Stock during the three months ended March 31, 2024.

**ITEM 3. Defaults Upon Senior Securities.**

None.

**ITEM 4. Mine Safety Disclosures.**

Not applicable.

**ITEM 5. Other Information.**

During the quarter ended March 31, 2024, none of our directors or officers informed us of the adoption or termination of a "Rule 10b5-1 trading arrangement" or a "non-Rule 10b5-1 trading arrangement," as those terms are defined in Regulation S-K, Item 408(c), except as described below.

The Company's RSU and PSU notice and award agreements provide that, upon the settlement of awards subject to such agreements, such number of shares of Company common stock as the Company determines appropriate to satisfy associated minimum statutory tax withholding obligations shall automatically be sold on the awardee's behalf, with the sale proceeds remitted to the appropriate taxing authorities. This provision may constitute a "non-Rule 10b5-1 trading arrangement" (as defined in Item 408(c) of Regulation S-K). Certain of our executive officers have elected to automatically sell such number of shares of Company common stock as to generate cash proceeds in excess of the amount needed to satisfy associated minimum statutory tax withholding obligations (at an identified rate) upon settlement of future RSU and/or PSU awards , with all sale proceeds remitted to appropriate taxing authorities.

As described above in Note 2 (Liquidity) and in Note 5 (Debt) to our Unaudited Condensed Consolidated Financial Statements included in Part I, Item I of this Report, as well as in the "Liquidity and Capital Resources Overview" section of *Management's Discussion and Analysis of Financial Condition and Results of Operations* in Part I, Item 2 of this Report, on April 30, 2024, the Company amended its Original Credit Facility. A copy of the 2024 Credit Facility and the related 2024 Guaranty and Security Agreement are filed as Exhibits 10.1 and 10.2, respectively, to this Report, the terms of which are incorporated herein by reference.

**ITEM 6. Exhibits.**

Exhibit Number	Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
<a href="#">3.1*</a>	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant</a>	8-K	001-37397	3.1	October 16, 2017
<a href="#">3.2*</a>	<a href="#">Amended and Restated Bylaws of the Registrant</a>	10-Q	001-37397	3.2	November 1, 2023
<a href="#">10.1†</a>	<a href="#">Amended and Restated Credit Agreement dated as of April 30, 2024, by and among Rimini Street, Inc., as borrower, the lenders party thereto and Capital One, National Association, as a lender, swing lender and agent for all lenders</a>				
<a href="#">10.2†</a>	<a href="#">Amended and Restated Guaranty and Security Agreement dated as of April 30, 2024, by and among Rimini Street, Inc., the other grantors named therein and Capital One, National Association, as agent</a>				
<a href="#">31.1†</a>	<a href="#">Certification of Seth A. Ravin, Chief Executive Officer and President, Pursuant to Rule 13a-14(a)</a>				
<a href="#">31.2†</a>	<a href="#">Certification of Michael L. Perica, Chief Financial Officer, Pursuant to Rule 13a-14(a)</a>				
<a href="#">32.1**</a>	<a href="#">Certification of Seth A. Ravin, Chief Executive Officer and President, Pursuant to 18 U.S.C. Section 1350</a>				
<a href="#">32.2**</a>	<a href="#">Certification of Michael L. Perica, Chief Financial Officer, Pursuant to 18 U.S.C. Section 1350</a>				
101.INS†	Inline XBRL Instance Document				
101.SCH†	Inline XBRL Taxonomy Extension Schema				
101.CAL†	Inline XBRL Taxonomy Extension Calculation Linkbase				
101.DEF†	Inline XBRL Taxonomy Extension Definition Linkbase				
101.LAB†	Inline XBRL Taxonomy Extension Label Linkbase				
101.PRE†	Inline XBRL Taxonomy Extension Presentation Linkbase				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				

† Filed herewith.

\* Previously filed and incorporated herein by reference.

\*\* Furnished herewith.

**SIGNATURES**

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

**RIMINI STREET, INC.**

Date: May 2, 2024

/s/ Seth A. Ravin

Name: Seth A. Ravin

Title: Chief Executive Officer, Chairman of the Board and President  
(Principal Executive Officer)

Date: May 2, 2024

/s/ Michael L. Perica

Name: Michael L. Perica

Title: Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

**\$110,000,000 CREDIT FACILITY**

**AMENDED AND RESTATED CREDIT AGREEMENT**

Dated as of April 30, 2024

by and among

**RIMINI STREET, INC.,**  
as Borrower,

**THE OTHER PERSONS PARTY HERETO  
DESIGNATED FROM TIME TO TIME AS CREDIT PARTIES,**

**CAPITAL ONE, NATIONAL ASSOCIATION,  
for itself, as a Lender, Swing Lender and as Agent for all Lenders,**

and

**THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO  
as Lenders**

\*\*\*\*\*

**CAPITAL ONE, NATIONAL ASSOCIATION,  
as Sole Lead Arranger and Sole Bookrunner**

and

**U.S. BANK, NATIONAL ASSOCIATION,  
as Syndication Agent**

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## AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (including all exhibits and schedules hereto, as the same may be amended, modified and/or restated from time to time, this “**Agreement**”) is entered into as of April 30, 2024, by and among Rimini Street, Inc., a Delaware corporation (the “**Borrower**”) and the other Persons party hereto that are designated as a ‘**Credit Party**’, Capital One, National Association, a national banking association (in its individual capacity, “**Capital One**”) as Agent for the several financial institutions from time to time party to this Agreement (collectively, the “**Lenders**” and individually each a ‘**Lender**’) and for itself as a Lender (including as Swing Lender).

### WITNESSETH:

WHEREAS, Borrower is party to that certain Credit Agreement dated as of July 2, 2021 by and among the Borrower, the other Persons party thereto that are designated as a “Credit Party,” Capital One, as a lender and administrative agent, and the financial institutions from time to time party thereto (as amended, restated, supplemented, or otherwise modified from time to time prior to the Restatement Date, the “**Original Credit Agreement**”);

WHEREAS, the Borrower has requested, and the Lenders have agreed to (i) make available to the Borrower a revolving credit facility (including a letter of credit facility), (ii) increase the Term Loans and (iii) amend the Original Credit Agreement, in each case, in accordance with and subject to the terms and conditions set forth in this Agreement;

WHEREAS, the Credit Parties desire to secure all of their Obligations under the Loan Documents by granting to Agent, for the benefit of the Secured Parties, a security interest in and Lien upon substantially all of their Property; and

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

### ARTICLE I

#### DEFINITIONS

1.1 **Defined Terms.** The following terms have the following meanings:

“**Acceptable Discount Price**” as defined in Section 2.7(d)(ii).

“**Accounting Changes**” as defined in Section 1.3.

“**Acquisition**” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the Stock of any Person or otherwise causing any Person to become a Subsidiary of the Borrower, or (c) a merger or consolidation or any other combination with another Person.

“**Acquisition Consideration**” as defined in the definition of Permitted Acquisition.

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

**"Affected Lender"** as defined in Section 10.20.

**"Affiliate"** means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person; provided, however, that no Secured Party shall be an Affiliate of any Credit Party or of any Subsidiary of any Credit Party solely by reason of the provisions of the Loan Documents.

**"Agent"** means Capital One, National Association, in its capacity as administrative agent for the Lenders hereunder, and any successor administrative agent.

**"Agent Fee Letter"** as defined in Section 2.9(a).

**"Aggregate Excess Funding Amount"** as defined in Section 2.11(e)(iv).

**"Aggregate Revolving Loan Commitment"** means the combined Revolving Loan Commitments of the Lenders, which shall be in the aggregate principal amount of \$35,000,000 as of the Restatement Date, as such amount may be adjusted as permitted by this Agreement.

**"Aggregate Term Loan Commitment"** means the combined Term Loan Commitments of the Lenders, which shall initially be in the amount of \$75,000,000, as such amount may be adjusted as permitted by this Agreement.

**"Agreement"** as defined in the preamble hereto.

**"Anti-Corruption Laws"** as defined in Section 4.22(c).

**"Anti-Money Laundering Laws"** as defined in Section 4.22(b).

**"Applicable Discount Price"** as defined in Section 2.7(d)(ii).

**"Applicable Margin"** means:

(a) for the period commencing on the Restatement Date through the last day of the calendar month (the **'First Grid Calculation Date'**) during which (x) financial statements for September 30, 2024 and (y) a Compliance Certificate calculating the Consolidated Total Leverage Ratio have been delivered in accordance with the terms hereof: (i) if a Base Rate Loan, one and three-quarters percent (1.75%) per annum and (ii) if a SOFR Loan, two and three-quarters percent (2.75%) per annum;

(b) thereafter, the Applicable Margin shall equal the applicable SOFR Margin or Base Rate Margin in effect from time to time determined as set forth below based upon the applicable Consolidated Total Leverage Ratio then in effect pursuant to the appropriate column under the table below (the **"Pricing Grid"**):

<u>Consolidated Total Leverage Ratio</u>	<u>SOFR Margin</u>	<u>Base Rate Margin</u>	<u>Unused Commitment Fee Percentage</u>
Greater than or equal to 3.00:1.00	3.50%	2.50%	0.40%

Greater than or equal to 2.50:1.00 but less than 3.00:1.00	3.25%	2.25%	0.35%
Greater than or equal to 2.00:1.00 but less than 2.50:1.00	3.00%	2.00%	0.30%
Less than 2.00:1.00	2.75%	1.75%	0.25%

The Applicable Margin shall be adjusted from time to time on the Business Day immediately following the First Grid Calculation Date and thereafter upon delivery to Agent of the financial statements for each Fiscal Quarter required to be delivered pursuant to Section 5.1 hereof accompanied by a Compliance Certificate with a written calculation of the Consolidated Total Leverage Ratio. If such calculation indicates that the Applicable Margin shall increase or decrease, then on the first day of the calendar month following the date of delivery of such financial statements and a Compliance Certificate with such written calculation, the Applicable Margin shall be adjusted in accordance therewith; provided, however, that if an Event of Default shall have occurred, then, at Agent's election, as of the first Business Day after an Event of Default shall have occurred and be continuing and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the Applicable Margin otherwise determined in accordance with this definition shall apply), the Applicable Margin shall equal the highest Applicable Margin specified in the pricing table set forth above. Notwithstanding anything herein to the contrary, (i) Swing Loans may not be SOFR Loans and (ii) Incremental Term Loans shall have the Applicable Margin set forth in the applicable Incremental Joinder Agreement.

In the event that any financial statement or Compliance Certificate delivered pursuant to Sections 5.1 or 5.2 is inaccurate, and such inaccuracy, if corrected, would have led to the imposition of a higher Applicable Margin for any period than the Applicable Margin applied for that period, then (i) the Borrower shall promptly, but in any event within 4 Business Days, deliver to Agent a corrected financial statement and a corrected Compliance Certificate for that period (the "**Corrected Financials Date**"), (ii) the Applicable Margin shall be determined based on the corrected Compliance Certificate for that period, and (iii) the Borrower shall promptly, but in any event within 4 Business Days, pay to Agent (for the account of the Lenders that hold the Commitments and Loans at the time such payment is received, regardless of whether those Lenders held the Commitments and Loans during the relevant period) the accrued additional interest owing as a result of such increased Applicable Margin for that period; provided, for the avoidance of doubt, such deficiency shall be due and payable as at such Corrected Financials Date and no Default or Event of Default under Section 8.1(a) shall be deemed to have occurred with respect to such deficiency prior to such date. This paragraph shall not limit the rights of Agent or the Lenders with respect to Section 2.3(c) and Article VIII hereof, and shall survive the termination of this Agreement until the payment in full in cash of the aggregate outstanding principal balance of the Loans.

**"Applicable Unused Commitment Fee"** means (a) initially one-quarter percent (0.25%) per annum and (b) from and after the First Grid Calculation Date, the "Unused Commitment Fee Percentage" set forth in the Pricing Grid in effect from time to time determined as set forth in the definition of Applicable Margin based upon the applicable Consolidated Total Leverage Ratio then in effect.

**"Approved Fund"** means, with respect to any Lender, any Person (other than a natural Person) that (a) (i) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (ii) temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is advised or managed by (i) such

Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

**"Assignment"** means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, substantially in the form of Exhibit 1.1(a) or any other form approved by Agent.

**"Attorney Costs"** means and includes all reasonable and documented (in summary form) fees and disbursements of (a) one external counsel, (b) to the extent necessary, one local counsel in each relevant jurisdiction, (c) regulatory counsel if required and (d) solely in the event of a conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction and one regulatory counsel) to each group (which may be a single Person) of similarly situated affected Persons.

**"Availability"** means, as of any date of determination, the amount by which (a) the Maximum Revolving Loan Balance exceeds (b) the aggregate outstanding principal balance of Revolving Loans.

**"Available Amount"** means, at any date of determination (the applicable **"Available Amount Reference Date"**), an amount equal to, without duplication:

(x) the sum of:

(i) the cumulative amount of Net Issuance Proceeds of issuances of Stock (other than Disqualified Stock and other than Specified Equity Contributions) received by the Borrower after the Restatement Date and prior to the Available Amount Reference Date, which Net Issuance Proceeds are not required to be used to prepay the Obligations and are not otherwise used for any other purpose other than the making of Investments or payment of Restricted Payments or the payment of Restricted Debt Payments contemplated in clause (y) below; plus

(ii) (A) the aggregate amount of Net Proceeds received by the Borrower in cash or Cash Equivalents after the Restatement Date from the Disposition of any Investment to the extent not required to be used to prepay the Obligations, plus (B) returns, profits, distributions and similar amounts received in cash or Cash Equivalents after the Restatement Date to the extent not included or includable in Consolidated EBITDA, in each instance in (A) and (B) on or in respect of Investments to the extent such Investment was originally funded with and in reliance on the Available Amount (but, in the aggregate for clauses (A) and (B), not in excess of the original amount of the Available Amount used to fund such Investment); plus

(iii) the aggregate amount of Declined Proceeds retained by the Borrower (and not applied to repay or prepay any other Indebtedness) during the period from the Business Day immediately following the Restatement Date through and including the Available Amount Reference Date;

minus:

(y) the sum of:

(i) the aggregate amount of Investments made pursuant to Section 6.4(l) and, to the extent funded with the Available Amount in accordance with the definition of Permitted Acquisitions, Section 6.4(k) after the Restatement Date and on or prior to the Available Amount Reference Date; plus

(ii) the aggregate amount of Restricted Payments made pursuant to Section 6.8(e) after the Restatement Date and on or prior to the Available Amount Reference Date; plus

(iii) the aggregate amount of Restricted Debt Payments made pursuant to Section 6.12(f) after the Restatement Date and on or prior to the Available Amount Reference Date.

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 11.6(d).

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

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

**“Bankruptcy Code”** means the Federal Bankruptcy Reform Act of 1978.

**“Base Rate”** means, for any day, a floating interest rate per annum equal to the highest of (a) the rate of interest from time to time announced by the Agent at its principal office as its prime commercial lending rate (it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by the Agent to any customer and such rate is set by the Agent based upon various factors including the Agent’s costs and desired return, general economic conditions and other factors), (b) the sum of one half of one percent (0.50%) per annum and the federal funds rate (which shall not be less than 0% per annum), and (c) the sum of (x) Term SOFR calculated for each such day (giving effect to the Floor) based on an interest period of one month determined two (2) Business Days prior to such date, plus (y) the excess of the Applicable Margin for SOFR Loans over the Applicable Margin for Base Rate Loans, in each instance, as of such day. Any change in the Base Rate due to a change in any of the foregoing shall be effective on the effective date of such change in the Agent’s prime commercial lending rate, the Federal Funds Rate or Term SOFR for an interest period of one (1) month.

**“Base Rate Loan”** means a Loan that bears interest based on the Base Rate.

**“Base Rate Margin”** as defined in the definition of Applicable Margin.

**“Base Rate Term SOFR Determination Day”** as defined in the definition of “Term SOFR”.

**“Benchmark”** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current

Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 11.6(a).

**"Benchmark Replacement"** means, for any Available Tenor, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (i) the alternate benchmark rate that has been mutually selected by the Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**"Benchmark Replacement Adjustment"** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been mutually selected by the Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities.

**"Benchmark Replacement Conforming Changes"** means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 11.4 and other technical, administrative or operational matters) that the Agent decides (in consultation with the Borrower) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**"Benchmark Replacement Date"** means the earlier to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event", the first date

on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) have been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**"Benchmark Transition Event"** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**"Benchmark Transition Start Date"** means in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is

a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**"Benchmark Unavailability Period"** means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 11.6 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 11.6.

**"Beneficial Ownership Certification"** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

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

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

**"Bona Fide Debt Fund"** means any bona fide debt fund, investment vehicle, regulated banking entity or non-regulated lending entity that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans or bonds and/or similar extensions of credit in the ordinary course of business.

**"Borrower"** as defined in the preamble hereto.

**"Borrower Materials"** as defined in Section 10.10(a)(i).

**"Borrowing"** means a borrowing hereunder consisting of Loans made to or for the benefit of the Borrower on the same day by the Lenders pursuant to Article II.

**"Business Day"** means any day that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York City and, when determined in connection with notices and determinations in respect of SOFR or any SOFR Loan or any funding, conversion, continuation, Interest Period or payment of any SOFR Loan, that is also a U.S. Government Securities Business Day.

**"Capital Adequacy Regulation"** means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of any Lender or of any corporation controlling a Lender, including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D).

**"Capital Lease"** means, with respect to any Person, all leases that have been or are required to be in accordance with GAAP as in effect on the Original Closing Date, recorded as capitalized leases; 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 GAAP as in effect on the Original Closing Date.

**“Capital Lease Obligations”** means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capital Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP as in effect on the Original Closing Date.

**“Capital One”** as defined in the preamble hereto.

**“Cash Equivalents”** (a) Dollars, (b) in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business, consistent with past practice, and not for speculation, (c) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (d) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s, (e) any commercial paper rated at least “A-2” by S&P or “P-2” by Moody’s and issued by any Person organized under the laws of any state of the United States, (f) any Dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$250,000,000 or (g) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c), (d), (e) or (f) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) or (d), (e) or (f) above shall not exceed 365 days. In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (f) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (f) and in this paragraph. Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (a) above, provided that, except as otherwise permitted by clause (b) above or the immediately preceding paragraph, such amounts in excess of the Dollar equivalent (as reasonably determined by the Borrower in good faith) of \$1,000,000 in the aggregate are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

**“Cash Management Agreement”** means any agreement to provide one or more of the following types of services or facilities: (a) Automated Clearing House (ACH) transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, credit or debit card, stored value card, electronic funds transfer services, and (c) foreign exchange facilities or other cash management arrangements in the ordinary course of business. For the avoidance of doubt, Cash Management Agreements do not include Rate Contracts.

**“Change of Control”** means any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) (other than any Permitted Holder) is or shall at any time become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of the greater of (I) 35% or more on a fully diluted basis of the voting interests in Borrower’s

Stock and (II) the percentage (measured on a fully diluted basis) of the voting interests in Borrower's Stock then owned immediately prior to such transaction, (b) the sale, lease or transfer (other than by way of merger or consolidation), in one or a series of transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person other than the Borrower or a Subsidiary of the Borrower, or (c) the adoption of a plan of liquidation or dissolution of the Borrower.

**"Class"** (a) when used with respect to Lenders, refers to whether such Lenders have a Loan or Commitment with respect to a particular "class" (as described in clauses (b) or (c) of this definition) of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Loan Commitments, Incremental Revolving Loan Commitments, Term Loan Commitments, Incremental Term Loan Commitments, Extended Term Loan Commitments or Extended Revolving Loan Commitments and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Revolving Loans, Incremental Revolving Loans, Term Loans, or Incremental Term Loans, Extended Term Loans, or Extended Revolving Loans, in each case, under this Agreement as originally in effect or amended pursuant to Section 2.1(e)(iv), or 10.1), of which such Loans, Borrowing or Commitments shall be a part. Revolving Loan Commitments, Term Loan Commitments, Incremental Revolving Loan Commitments, Incremental Term Loan Commitments, Extended Term Loan Commitments and Extended Revolving Loan Commitments (and in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Notwithstanding the foregoing, Commitments (and in each case, the Loans made pursuant to such Commitments), including any Incremental Revolving Loan Commitments or Incremental Term Loan Commitments intended to be fungible with any existing Revolving Loan Commitment or Term Loan Commitments) that have identical terms and conditions shall be construed to be in the same Class.

**"Code"** means the United States Internal Revenue Code of 1986.

**"Collateral"** means all Property and interests in Property and proceeds thereof now owned or hereafter acquired by any Credit Party, and any other Person who has granted a Lien to Agent, in or upon which a Lien is granted, purported to be granted, or now or hereafter exists in favor of any Lender or Agent for the benefit of Agent, Lenders and other Secured Parties, under any Loan Document.

**"Collateral Documents"** means, collectively, the Guaranty and Security Agreement, the Mortgages, each Control Agreement and all other security agreements, guaranties and other similar agreements, and all amendments, restatements, modifications or supplements thereof or thereto, by or between any one or more of any Credit Party, any of their respective Subsidiaries or any other Person pledging or granting a lien on Collateral or guarantying the payment and performance of the Obligations, and any Lender or Agent for the benefit of Agent, the Lenders and other Secured Parties now or hereafter delivered to the Lenders or Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the UCC or comparable law) against any such Person as debtor in favor of any Lender or Agent for the benefit of Agent, the Lenders and the other Secured Parties, as secured party, as any of the foregoing may be amended, restated and/or modified from time to time.

**"Commission"** means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or, if at any time after the execution of this Agreement such Commission is not existing and performing the duties now assigned to it under the Exchange Act, the body performing such duties at such time.

**"Commitment"** means, for each Lender, the sum of its Revolving Loan Commitment and Term Loan Commitment.

**“Commitment Percentage”** means, as to any Lender, the percentage equivalent of such Lender’s Revolving Loan Commitment or Term Loan Commitment divided by the Aggregate Revolving Loan Commitment or Aggregate Term Loan Commitment, as applicable; provided that after the Term Loan has been funded, Commitment Percentages shall be determined for the Term Loan by reference to the outstanding principal balance thereof as of any date of determination rather than the Commitments therefor; provided, further, that following acceleration of the Loans, such term means, as to any Lender, the percentage equivalent of the principal amount of the Loans held by such Lender, divided by the aggregate principal amount of the Loans held by all Lenders.

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

**“Competitor”** means any Person that is an operating company directly and substantially engaged in substantially similar business operations as the Borrower or any of its Subsidiaries.

**“Compliance Certificate”** as defined in Section 5.2(b).

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

**“Consolidated Capital Expenditures”** means, for any period, all expenditures for the period of measurement that should be capitalized under GAAP, excluding (to the extent otherwise included) any such expenditures financed with (1) Net Proceeds from Dispositions, (2) cash proceeds from Stock issuances or capital contributions, (3) Net Proceeds from any Event of Loss to the extent such proceeds are actually applied to replace, repair or reconstruct the damaged Property or Property affected by the condemnation or taking in connection with such Event of Loss, (4) cash proceeds of indemnity payments or third party reimbursements received by the Borrower or any of its Subsidiaries, and (5) the trade-in amount of existing equipment solely to the extent that the gross amount of the purchase price of equipment acquired substantially contemporaneously therewith is reduced by such trade-in amount; Consolidated Capital Expenditures shall also exclude that portion of the purchase price of a Target in a Permitted Acquisition or other Acquisition permitted hereunder that constitutes a capital expenditure under GAAP.

**“Consolidated Cash Flow”** means, for any period, (1) Consolidated EBITDA, minus (2) Consolidated Unfinanced Cash Capital Expenditures.

**“Consolidated Depreciation and Amortization Expense”** means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person, including impairment losses, depreciation and amortization (including (x) accelerated depreciation and amortization from the write-off or write-down of tangible or intangible assets and (y) amortization of (A) intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses, bridge, commitment and other financing fees, discounts and yield and (B) unrecognized prior service costs and actuarial losses related to pensions and other post-employment benefits of the Borrower and its Subsidiaries) or costs for such period on a consolidated basis and otherwise determined in accordance with GAAP.

**“Consolidated EBITDA”** means, for any period, net income (or loss) for the applicable period of measurement of the Borrower and its Subsidiaries (together with the other Persons whose income or loss is taken into account as provided below in determining Consolidated EBITDA) on a consolidated basis determined in accordance with GAAP, without duplication of any item described under clause (a) or (b) below (and the term “duplication” shall include any cash reimbursement for any loss or expense or other item for which an add-back is provided below), in each case to the extent taken into account in the calculation of net income (or loss) for such period:

(a) Less:

(1) the income (or plus the loss) of any Person which is not a Subsidiary of the Borrower or any of its Subsidiaries, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries in cash or Cash Equivalents by such Person and the payment of dividends or similar distributions by that Person was not at the time subject to the consent of a third party or prohibited by operation of the terms of its charter or of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Person,

(2) the income (or plus the loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person's assets are acquired by the Borrower or any of its Subsidiaries,

(3) the proceeds of any insurance (other than business interruption insurance),

(4) gains (or plus losses) from the sale, exchange, transfer or other disposition of Property not in the ordinary course of business of the Borrower and its Subsidiaries, and related tax effects in accordance with GAAP,

(5) income tax refunds received, in excess of income tax liabilities,

(6) income (or plus the loss) from the early extinguishment of Indebtedness, net of related tax effects,

(b) Plus:

(1) Consolidated Depreciation and Amortization Expense for such period,

(2) (i) total interest expense determined in accordance with GAAP, (ii) bank and other fees, costs and charges for such period owed with respect to letters of credit, bankers acceptances and surety bonds or other like obligations, in each case under this clause (ii), in connection with financing activities (whether amortized or immediately expensed), in each cause under clauses (i) and (ii) to the extent the same were deducted in computing net income, (iii) non-cash interest payments, (iv) the interest component of Capital Leases, (v) the interest component of any pension or other post-employment benefit expense and (vi) to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations

(3) all Taxes on or measured by income (excluding income tax refunds), profits or capital gains, including, without limitation, federal, state, franchise and similar taxes and foreign withholding taxes paid or accrued during such period, including penalties and interest related to such taxes or arising from any tax examinations,

(4) all charges attributable to, and payments of, legal settlements, fines, judgments or orders (including third-party legal fees and expenses but excluding, in all cases, the Borrower's and its Subsidiaries' legal fees and expenses in connection therewith), in an aggregate amount not to exceed (i) \$70,600,000 for the Fiscal Year ending December 31, 2024 and (ii) \$15,000,000 for any Fiscal Year ending thereafter,

(5) all non-cash losses and non-cash expenses (or minus non-cash income or gain), including non-cash adjustments resulting from the application of purchase accounting, non-cash compensation

expense and other non-cash expenses arising from grants of stock appreciation rights, stock options or restricted stock, restricted stock units, non-cash impairment of good will and other long term intangible assets, unrealized non-cash losses (or minus unrealized non-cash gains) under Rate Contracts, unrealized non-cash losses (or minus unrealized non-cash gains) in such period due solely to fluctuations in currency values, but excluding any non-cash loss or expense (i) that is an accrual of a reserve for a cash expenditure or payment to be made, or anticipated to be made, in a future period or (ii) relating to a write-down, write off or reserve with respect to accounts receivable or Inventory,

(6) fees and expenses incurred in connection with the negotiation, execution and delivery on the Restatement Date of the Loan Documents, together with costs associated with, or in anticipation of, or preparation for, compliance with the rules and regulations promulgated in connection therewith and costs related to compliance with the provisions of the Securities Act and the Exchange Act and/or any Permitted Acquisition or other Permitted Investment consummated after the Restatement Date, in each case, including, without limitation, legal, accounting and other professional fees and expenses incurred in connection therewith,

(7) costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act and the Exchange Act or any other comparable body of laws, rules or regulations, as applicable to companies with equity securities held by the public, the rules of national securities exchange companies with listed equity, directors' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees, in each case to the extent arising solely by virtue of the listing of the Borrower's equity securities on a national securities exchange,

(8) fees and expenses incurred in connection with any amendments or waivers to this Agreement and the other Loan Documents,

(9) fees and expenses incurred in connection with any (i) consummated (x) Permitted Acquisition or other Acquisition or Investment not in the ordinary course of business, (y) Disposition not in the ordinary course of business, or (z) issuance, repayment or refinancing of Indebtedness, issuance of Stock (including in connection with any registration of securities or exchange offer), refinancing transaction or amendment or modification of any debt instrument, and/or (ii) Event of Loss,

(10) extraordinary, non-recurring or unusual charges, expenses or losses (including legal expenses in connection therewith) and including severance costs, transition costs, retention, recruiting and relocation costs not otherwise added back to Consolidated EBITDA,

(11) restructuring charges and integration expenses not otherwise added back to Consolidated EBITDA (collectively, "**Restructuring Charges**") in an aggregate amount, together with all Cost Savings added back to net income during any measurement period, not to exceed fifteen percent (15%) of Consolidated EBITDA (calculated before the add-back or adjustment for any such item) in the aggregate for any four consecutive Fiscal Quarter period; provided that a Responsible Officer of the Borrower provided a reasonably detailed statement or schedule of such Restructuring Charges,

(12) the amount of pro forma adjustments, pro forma "run rate" cost savings, operating expense reductions and cost synergies (collectively, "**Cost Savings**"), in each case, with respect to mergers and other permitted business combinations, acquisitions, divestitures and other similar transactions consummated by the Borrower and, in each case, projected by the Borrower in good faith to result from actions taken prior to the last day of such measurement period and are expected to be realized

within twenty four (24) months of the end of such measurement period, which Cost Savings shall be calculated on a pro forma basis as though such Cost Savings had been realized on the first day of such period, net of the amount of actual benefits realized from such actions; provided that (i) a Responsible Officer of the Borrower shall have provided a reasonably detailed statement or schedule of such Cost Savings and shall have certified to Agent that (x) such Cost Savings are reasonably identifiable and factually supportable and (y) such actions have been taken and are ongoing and are expected to be realized within twenty four (24) months of the end of such measurement period, and (ii) the aggregate amount of all Restructuring Charges and Cost Savings added back to net income during any measurement period shall not exceed fifteen percent (15%) of Consolidated EBITDA (calculated before the add-back or adjustment for any such item) in the aggregate for any four consecutive Fiscal Quarter period,

(13) reimbursements of any expenses and charges subject to contractual indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or Disposition permitted under the Loan Documents, that (i) are actually reimbursed or otherwise paid or (ii) reasonably expected to be reimbursed so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the applicable carrier or indemnitor and only to the extent that such amount is (A) not denied by the applicable carrier or indemnitor and (B) in fact reimbursed within 365 days of the date of the incurrence of such charges or expenses (with a deduction for any amount so included to the extent not so reimbursed within such 365 days),

(14) proceeds of business interruption insurance received in cash to the extent not taken into account in the calculation of net income (or loss),

(15) to the extent covered by insurance proceeds (other than business interruption insurance) that have been received (or both (x) are reasonably expected in good faith to be received within 270 days of the date of the relevant insurance event and (y) the applicable insurance company has acknowledged its obligation to pay such insurance proceeds with such 270-day period), any loss arising from any casualty or condemnation events (with a deduction for any amount so included to the extent not so paid within such 270 days),

(16) any costs and expenses incurred by the Borrower or its Subsidiaries pursuant to any grants of stock appreciation rights, stock options, restricted stock, restricted stock units, phantom equity, stock options or other similar rights pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or stockholders agreement, to the extent such costs or expenses are funded with Net Issuance Proceeds contributed to the capital of Borrower or Net Issuance Proceeds of an issuance of Stock of Borrower,

(17) non-cash losses (or less non-cash gains) from foreign exchange with respect to intercompany loans and advances among the Borrower and its Foreign Subsidiaries,

(18) non-cash expenses resulting from any employee benefit or management compensation plan or the grant of stock appreciation or similar rights, stock options, restricted stock, restricted stock units or other rights or equity incentive programs to employees of the Borrower or any Subsidiary of the Borrower pursuant to a written plan or agreement or the treatment of such options under variable plan accounting, and

(19) solely for, and with respect to, the Fiscal Quarter of the Borrower ending December 31, 2022 and any applicable period including such Fiscal Quarter, costs and legal fees and expenses incurred by the Borrower in connection with the Oracle Litigation, in an amount not to exceed \$10,000,000; provided that, this clause (b)(19) shall only be available for the purpose of determining compliance with the covenants in Sections 7.1, 7.2 and 7.4 and shall be disregarded for purposes of the calculation of

Consolidated EBITDA for all other purposes, including calculating basket levels, pricing, determining compliance with incurrence-based or pro forma calculations or conditions and any other items governed by reference to Consolidated EBITDA.

**"Consolidated Fixed Charge Coverage Ratio"** means, as of the last day of any twelve month period, the ratio of:

(1) Consolidated Cash Flow for such period, less, (i) for the Borrower and its Subsidiaries all Taxes on or measured by income (excluding income tax refunds) paid or payable in cash with respect to such period, less, (ii) federal, state, local and foreign income Taxes and Tax distributions actually paid in cash during such period to

(2) Consolidated Fixed Charges for such period.

**"Consolidated Fixed Charges"** means for the Borrower and its Subsidiaries, for such period, an amount equal to the sum of:

(1) Consolidated Interest Expense for such period, plus

(2) Scheduled principal payments of Indebtedness during such period reduced by prepayments of the Term Loans as permitted by the Loan Documents, plus

(3) Contingent Acquisition Consideration payable in cash during such period, plus

(4) Restricted Payments described in Section 6.8(b) paid in cash during such period.

**"Consolidated Funded Indebtedness"** means, as of any date of measurement, all Indebtedness of Borrower and its Subsidiaries as of the date of measurement (other than Indebtedness of the type described in clauses (e), (h), (i), (j) (other than, with respect to clause (j), guarantees of Indebtedness of others of the type not described in clauses (e), (g), (h), (i), (k), (l) and (m) of the definition of Indebtedness), (k), (l) and (m) of the definition of Indebtedness).

**"Consolidated Interest Expense"** means for the Borrower and its Subsidiaries for any period, gross interest expense (including that attributable to Capital Lease Obligations) for such period paid or required to be paid in cash (including all commissions, discounts, fees and other charges in connection with letters of credit and similar instruments and net amounts paid or payable and/or received or receivable under permitted Rate Contracts in respect of interest rates) for Borrower and its Subsidiaries on a consolidated basis.

**"Consolidated Total Assets"** means the consolidated total assets of the Borrower and its Subsidiaries determined in accordance with GAAP as of the date of the financial statements most recently delivered pursuant to Section 5.1 hereunder.

**"Consolidated Total Indebtedness"** means, at any date, for the Borrower and its Subsidiaries, the sum of (i) all Consolidated Funded Indebtedness as of date of measurement, plus (ii) Contingent Acquisition Consideration (valued in accordance with GAAP).

**"Consolidated Total Leverage Ratio"** means, as of any date of determination, the ratio of (x) Consolidated Total Net Indebtedness as of such date of determination to (y) Consolidated EBITDA for the twelve month period most recently ended on or immediately prior to such date of determination for which financial statements have been delivered under Section 5.1.

**"Consolidated Total Net Indebtedness"** means, at any date, Consolidated Total Indebtedness net of unrestricted domestic cash and Cash Equivalents of the Borrower and its Subsidiaries of up to \$20,000,000, with respect to which (from and after the date by which the Borrower must deliver executed Control Agreements in accordance with Section 5.11) Agent has a first priority perfected Lien perfected by Control Agreements.

**"Consolidated Unfinanced Cash Capital Expenditures"** means, for any period, Consolidated Capital Expenditures, less any such expenditures financed with (1) Capital Leases or (2) other Indebtedness of the Borrower and its Subsidiaries; provided that Indebtedness, for this purpose, shall not include drawings under the Revolving Loan Commitment, Swingline Commitment or any other revolving credit facility.

**"Contingent Acquisition Consideration"** means any earnout obligation or similar deferred or contingent obligation of the Borrower or any of its Subsidiaries incurred or created in connection with a Permitted Acquisition or other Investment that would be required to be classified as debt on the balance sheet of the Borrower and its Subsidiaries in accordance with GAAP.

**"Contractual Obligations"** means, as to any Person, any provision of any security (whether in the nature of Stock, or otherwise) issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement (other than a Loan Document, but including IP Licenses) to which such Person is a party or by which it or any of its Property is bound or to which any of its Property is subject.

**"Control"** means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**"Control Agreement"** means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to Agent, among Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried, and the Credit Party maintaining such account or owning such entitlement or contract, effective to grant "control" (within the meaning of Articles 8 and 9 under the applicable UCC) over such account to Agent (and, if applicable, such holder or representative).

**"Control Investment Affiliate"** means, as to any Person, any other Person that (a) directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person and (b) is organized by such Person primarily for the purpose of making equity investments in one or more companies.

**"Conversion Date"** means any date on which the Borrower converts a Base Rate Loan to a SOFR Loan or a SOFR Loan to a Base Rate Loan.

**"Copyrights"** means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

**"Cost Savings"** as defined in the definition of Consolidated EBITDA.

**"Credit Parties"** means the Borrower and each other Person that (i) executes a guaranty of the Obligations and (ii) grants a Lien on all or substantially all of its assets to secure payment of the Obligations.

**"Cure Amount"** as defined in Section 7.4.

**"Cure Quarter"** as defined in Section 7.4.

**"Declined Proceeds"** as defined in Section 2.8(f).

**"Default"** means any event or circumstance that, with the passing of time or the giving of notice or both, would (if not cured or otherwise remedied during such time) become an Event of Default.

**"Defaulting Lender"** means any Lender that:

(a) has failed to (i) fund any payments required to be made by it under the Loan Documents within two (2) Business Days after any such payment is due (excluding expense and similar reimbursements that are subject to good faith disputes) unless such Lender notifies Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (ii) pay to Agent, any L/C Issuer, any Swing Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Loans) within two (2) Business Days of the date when due,

(b) has given written notice (and Agent has not received a revocation in writing), to the Borrower, Agent, any Lender, or any L/C Issuer or has otherwise publicly announced (and Agent has not received notice of a public retraction) that such Lender believes it will fail to fund payments or purchases of participations required to be funded by it under the Loan Documents or one or more other syndicated credit facilities (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), or

(c) has, or any Person that directly or indirectly controls such Lender has, (i) become subject to a voluntary or involuntary case under the Bankruptcy Code or any similar bankruptcy laws, (ii) had a custodian, conservator, receiver or similar official appointed for it or any substantial part of such Person's assets, (iii) made a general assignment for the benefit of creditors, been liquidated, or otherwise been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or bankrupt, or (iv) become the subject of a Bail-In Action, and for this clause (c), Agent has determined that such Lender is reasonably likely to fail to fund any payments required to be made by it under the Loan Documents. For purposes of this definition, control of a Person shall have the same meaning as in the second sentence of the definition of Affiliate.

**"Discount Price Range"** as defined in Section 2.7(d)(ii).

**"Discounted Buyback"** as defined in Section 2.7(d)(i).

**"Discounted Buyback Amount"** as defined in Section 2.7(d)(ii).

**"Discounted Buyback Notice"** as defined in Section 2.7(d)(ii).

**"Disposition"** means (a) the sale, lease, conveyance or other disposition of Property and (b) the sale or transfer by the Borrower or any Subsidiary of the Borrower of any Stock issued by any Subsidiary of the Borrower. The word **"Dispose"**, when capitalized, shall have a correlative meaning.

**"Disqualified Institutions"** means any Person that is (a) designated by the Borrower, by written notice delivered to Agent on or prior to June 1, 2021, as a (i) disqualified institution or (ii) Competitor or (b) clearly identifiable, solely on the basis of such Person's name, as an Affiliate of any Person referred to in clause (a)(i) or (a)(ii) above; provided, however, Disqualified Institutions shall (A) exclude any Person that the Borrower has designated as no longer being a Disqualified Institution by written notice delivered to Agent from time to time, (B) exclude any Bona Fide Debt Fund, unless such Bona Fide Debt Fund is identified under clause (a)(i) above and (C) subject to the exclusions in clauses (A) and (B) above, include any person that is added as a Competitor pursuant to a written supplement to the list of Competitors that are Disqualified Institutions delivered by the Borrower to the Agent. Such supplement shall become effective two (2) Business Days after the date that such written supplement is delivered to Agent, but which shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans and/or Commitments as permitted herein.

**"Disqualified Stock"** means any Stock which, by its terms (or by the terms of any security or other 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, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is one hundred-eighty (180) days following the Latest Maturity Date (excluding any provisions requiring redemption upon a "change of control" or similar event; provided that such "change of control" or similar event results in the occurrence of the Facility Termination Date), (b) is convertible into or exchangeable for (i) debt securities or (ii) any Stock referred to in (a) above, in each case, at any time on or prior to the date that is one hundred-eighty (180) days following the Latest Maturity Date at the time such Stock was issued, or (c) is entitled to receive scheduled dividends or distributions in cash prior to the date that is one hundred-eighty (180) days following the Latest Maturity Date.

**"Division"** means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons with the dividing Person either continuing or terminating its existence as part of the division including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law or any analogous action taken pursuant to any applicable Requirement of Law with respect to any corporation, limited liability company, partnership or other entity. The word **"Divide"**, when capitalized shall have correlative meaning.

**"Dollars"**, **"dollars"** and **"\$"** each mean lawful money of the United States.

**"Domestic Subsidiary"** means any Subsidiary incorporated, organized or otherwise formed under the laws of the United States, any state thereof or the District of Columbia.

**"DQ List"** as defined in Section 10.9(i)(ii).

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

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

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

**"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.

**"Employee Benefit Plan"** means any employee benefit plan as defined in Section 3(3) of ERISA (whether or not subject to ERISA) that is maintained, contributed to, or required to be contributed by any Credit Party or any ERISA Affiliate or to which any Credit Party or ERISA Affiliate otherwise has any Liability, excluding any Multiemployer Plan or Non-U.S. Plan.

**"Environmental Assessment"** means an environmental site assessment that meets the United States Environmental Protection Agency's All Appropriate Inquiries Rule as codified in the Code of Federal Regulations ("C.F.R.") at 40 C.F.R. Part 312.

**"Environmental Laws"** means all Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health (with respect to the exposure to Hazardous Materials), safety (with respect to exposure to Hazardous Materials), the environment and natural resources, and including public notification requirements relating to Hazardous Materials and environmental transfer of ownership, notification or approval statutes.

**"Environmental Liabilities"** means all Liabilities (including costs of removal and remedial actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and Attorney 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, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law resulting from the ownership, lease, sublease or other operation or occupation of property by any Credit Party or any Subsidiary of any Credit Party, whether on, prior or after the date hereof.

**"ERISA"** means the United States Employee Retirement Income Security Act of 1974.

**"ERISA Affiliate"** means, any Person under common control or treated as a single employer with any Credit Party, within the meaning of Section 414(b) or (c) of the Code, and solely with respect to Section 412 of the Code (and other provisions of the Code significantly related thereto (e.g., Sections 430 through 436 of the Code)), under Section 414(m) or (o) of the Code.

**"ERISA Event"** means any of the following: (a) a "reportable event" defined in Section 4043(c) of ERISA (other than an event for which the 30-day notice requirement has been duly waived under the applicable regulations) with respect to a Title IV Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Credit Party or ERISA Affiliate from any Multiemployer Plan; (d) with respect to any Multiemployer Plan, the filing of a notice of insolvency or termination, or treatment of a plan amendment as termination, under Section 4041A of ERISA; (e) the filing of a notice of intent to terminate a Title IV Plan, or treatment of a plan amendment as termination, under Section 4041 of ERISA; (f) the institution of proceedings to terminate a Title IV Plan by the PBGC; (g) the failure by any Credit Party or ERISA affiliate to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or

Section 302 of ERISA) applicable to a Title IV Plan or to make a required contribution to a Multiemployer Plan when due; (h) the imposition of a Lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any Credit Party or ERISA Affiliate; (i) a Title IV plan is in “at risk” status within the meaning of Code Section 430(i); (j) a Multiemployer Plan is in “endangered status” or “critical status” within the meaning of Section 432(b) of the Code; and (k) any other event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or for the imposition of any liability upon any Credit Party or ERISA Affiliate under Title IV of ERISA other than for contributions to Title IV Plans and Multiemployer Plans in the ordinary course and PBGC premiums due but not delinquent.

**“Erroneous Payment”** as defined in Section 2.11(d)(iii)(A).

**“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.

**“Event of Default”** as defined in Section 8.1.

**“Event of Loss”** means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

**“Exchange Act”** means the Securities Exchange Act of 1934.

**“Excluded Accounts”** as defined in Section 5.11.

**“Excluded Domestic Holdco”** means a Domestic Subsidiary substantially all of the assets of which consist of (i) Stock of one or more Excluded Foreign Subsidiaries that has not guaranteed or pledged any of its assets to secure, or with respect to which there shall not have been pledged two-thirds or more of the voting Stock to secure, any Indebtedness (other than the Loans) of a Credit Party or any other Subsidiary of Borrower which is a United States person within the meaning of Section 7701(a)(30) of the Code or (ii) Stock of one or more Excluded Domestic Holdcos.

**“Excluded Domestic Subsidiary”** means any Domestic Subsidiary that is a direct or indirect Subsidiary of (a) an Excluded Foreign Subsidiary or (b) an Excluded Domestic Holdco.

**“Excluded Foreign Subsidiary”** means a Foreign Subsidiary which is (a) a controlled foreign corporation (within the meaning of Section 957 of the Code any shares of which are treated as owned directly or indirectly by a United States Shareholder (within the meaning of Section 951(b) of the Code) as measured for purposes of Section 958(a) of the Code) that has not guaranteed or pledged any of its assets to secure, or with respect to which there shall not have been pledged two-thirds or more of the voting Stock to secure, any Indebtedness of a Credit Party or any other Subsidiary of Borrower which is a United States person within the meaning of Section 7701(a)(30) of the Code, or (b) a Foreign Subsidiary owned directly or indirectly by a Foreign Subsidiary described in clause (a).

**“Excluded Rate Contract Obligation”** means, with respect to any Guarantor, any guarantee of any Swap Obligations under a Secured Rate Contract if, and only to the extent that and for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation under a Secured Rate Contract (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures

Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation under a Secured Rate Contract. If a Swap Obligation under a Secured Rate Contract arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation under a Secured Rate Contract that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

**"Excluded Subsidiary"** means each (a) Excluded Domestic Subsidiary, (b) Excluded Foreign Subsidiary, (c) Subsidiary for which any guarantee of the Obligations (i) is legally prohibited by any Requirement of Law or requires any consent, approval, license or authorization from any Governmental Authority, unless such consent, approval, license or authorization has been received or (ii) is contractually prohibited on the Restatement Date or on the date of the Acquisition or formation of such Subsidiary by any Credit Party or Subsidiary of any Credit Party, so long as such prohibition is not created in contemplation of such Acquisition or formation, (d) not-for-profit Subsidiary, (e) solely in the case of any Swap Obligations, Subsidiary that is not an "eligible contract participant" as defined in the Commodity Exchange Act, (f) Subsidiary where the cost of granting a guarantee of the Obligations outweighs the benefit to the Secured Parties, as determined in the reasonable discretion of the Agent and Borrower and (g) Immaterial Subsidiary.

**"Excluded Tax"** means with respect to any Secured Party: (a) Taxes measured by net income (including branch profit Taxes) and franchise Taxes imposed in lieu of net income Taxes, in each case (i) imposed on any Secured Party as a result of 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) that are Other Connection Taxes; (b) withholding Taxes to the extent that the obligation to withhold amounts existed on the date that such Person became a Secured Party under this Agreement in the capacity under which such Person makes a claim under Section 11.1 or designates a new Lending Office, except in each case to the extent such Person is a direct or indirect assignee (other than pursuant to Section 10.20) of any other Secured Party that was entitled, at the time the assignment to such Person became effective, to receive additional amounts under Section 11.1 or such Person was entitled to receive additional amounts under Section 11.1 immediately before it changed its lending office; (c) Taxes that are directly attributable to the failure by any Secured Party to deliver the documentation required to be delivered pursuant to Section 11.1(g); and (d) any United States federal withholding Taxes imposed under FATCA.

**"Extended Revolving Lender"** as defined in Section 10.1(f)(ii).

**"Extended Revolving Loan Commitment"** as defined in Section 10.1(f)(ii).

**"Extended Revolving Loan"** as defined in Section 10.1(f)(ii).

**"Extended Term Loan"** as defined in Section 10.1(f)(iii).

**"Extended Term Loan Commitment"** as defined in Section 10.1(f)(iii).

**"Extending Term Lender"** as defined in Section 10.1(f)(iii).

**"Extension"** as defined in Section 10.1(f).

**"Extension Offer"** as defined in Section 10.1(f).

**"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 Agent, including Syndtrak®, Intralinks® and ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

**"Facility Termination Date"** means the date on which (a) the Revolving Loan Commitments have terminated, (b) all Loans, all L/C Reimbursement Obligations and all other Obligations (excluding Secured Rate Contract Obligations and Secured Cash Management Obligations unless Agent has theretofore been notified in writing by the holder thereof that such Secured Rate Contract Obligations or Secured Cash Management Obligations are then due and payable) have been paid and satisfied in full in cash and (c) there shall have been deposited cash collateral with respect to all contingent Obligations (or, as an alternative to cash collateral, in the case of any Letter of Credit Obligation, Agent shall have received a back-up letter of credit) in amounts and on terms and conditions and with parties satisfactory to Agent and each Indemnitee that is, or may be, owed such Obligations (excluding contingent Obligations (other than L/C Reimbursement Obligations) as to which no claim has been asserted, Secured Rate Contract Obligations and Secured Cash Management Obligations).

**"FATCA"** means Sections 1471, 1472, 1473 and 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), current or future United States Treasury Regulations promulgated thereunder and published guidance with respect thereto, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation or rules adopted pursuant to any intergovernmental agreement as defined in Treasury Regulation Section 1.1471-1(b)(67), treaty or convention among Governmental Authorities and implementing such sections of the Code.

**"FCPA"** as defined in Section 4.22(c).

**"Federal Flood Insurance"** means federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

**"Federal Funds Rate"** means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as determined by Agent in a commercially reasonable manner, but in no event less than 0.0% per annum.

**"Federal Reserve Board"** means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

**"FEMA"** means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

**"Final Availability Date"** means one (1) Business Day prior to the date specified in clause (a) of the definition of Revolving Termination Date.

**"FIRREA"** means the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

**"First Grid Calculation Date"** as defined in the definition of Applicable Margin.

**"Fiscal Quarter"** means any of the quarterly accounting periods of the Borrower and its Subsidiaries ending on March 31, June 30, September 30 and December 31 of each year.

**"Fiscal Year"** means any of the annual accounting periods of the Borrower and its Subsidiaries ending on December 31 of each year.

**"Flood Insurance"** means, for any Real Estate (including any personal property Collateral located on such Real Estate) located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance reasonably satisfactory to Agent, in either case, that (a) meets the requirements of FEMA and any other applicable federal agencies, (b) includes a deductible not to exceed \$50,000 and (c) has a coverage amount equal to the lesser of (i) the insurable value of the buildings and any personal property Collateral located on the Real Estate as reasonably determined by Agent or (ii) the maximum policy limits set under the National Flood Insurance Program.

**"Flood Insurance Requirements"** means, with respect to any Mortgages, Agent shall have received: (i) evidence as to whether the applicable Real Estate is located in a Special Flood Hazard Area pursuant to a standard flood hazard determination form ordered and received by Agent, and (ii) if such Real Estate is located in a Special Flood Hazard Area, (A) evidence as to whether the community in which such Real Estate is located is participating in the National Flood Insurance Program, (B) the applicable Credit Party's written acknowledgment of receipt of written notification from Agent as to the fact that such Real Estate is located in a Special Flood Hazard Area and as to whether the community in which such Real Estate is located is participating in the National Flood Insurance Program and (C) copies of the applicable Credit Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance satisfactory to Agent and naming Agent as sole loss payee on behalf of the Secured Parties.

**"Floor"** means 0.0% per annum.

**"Foreign Subsidiary"** means, with respect to any Person, a Subsidiary of such Person, which Subsidiary is not a Domestic Subsidiary.

**"GAAP"** means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions and comparable stature and authority within the accounting profession) that are applicable to the circumstances as of the date of determination. Subject to Section 1.3, all references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in Section 5.1(a).

**"Governmental Authority"** means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority thereof exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

**"Guarantor"** means any Person that has guaranteed any Obligations.

**"Guaranty and Security Agreement"** means that certain Amended and Restated Guaranty and

Security Agreement, dated as of the Restatement Date, in form and substance reasonably acceptable to Agent and the Borrower, made by the Credit Parties in favor of Agent, for the benefit of the Secured Parties.

**"Hazardous Material"** means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including petroleum or any fraction thereof, asbestos, per- and polyfluoroalkyl substances, polychlorinated biphenyls, and radioactive substances.

**"Immaterial Subsidiary"** means, any Subsidiary of the Borrower that does not have assets in excess of 2.5% of Consolidated Total Assets or revenues in excess of 2.5% of revenues of the Borrower for the most recently ended Fiscal Quarter (provided that the assets of all Immaterial Subsidiaries shall not exceed 5% of Consolidated Total Assets in the aggregate and the annual revenues of all Immaterial Subsidiaries for the most recently ended fiscal quarter shall not exceed 5% of the annual consolidated revenues of the Borrower), in each case as determined as of the most recent Fiscal Quarter of the Borrower for which financial statements have been delivered (or are required to have been delivered).

**"Incremental Effective Date"** as defined in Section 2.1(e)(i).

**"Incremental Facility"** as defined in Section 2.1(e)(i).

**"Incremental Joinder Agreement"** as defined in Section 2.1(e)(iv).

**"Incremental Revolving Loan"** as defined in Section 2.1(e)(i).

**"Incremental Revolving Loan Commitment"** as defined in Section 2.1(e)(i).

**"Incremental Term Loan"** as defined in Section 2.1(e)(i).

**"Incremental Term Loan Commitment"** as defined in Section 2.1(e)(i).

**"Indebtedness"** of any Person means, without duplication: (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of Property or services, including Contingent Acquisition Consideration (other than trade payables entered into in the ordinary course of business); (c) the face amount of all letters of credit issued for the account of such Person (or for which such Person is liable) and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments issued by such Person (or for which such Person is liable); (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of Property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to Property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property); (f) all Capital Lease Obligations; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product; (h) all obligations of such Person, whether or not contingent, in respect of Disqualified Stock, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends; (i) all indebtedness referred to in clauses (a) through (h) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in Property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness;

(j) all direct or indirect liability, contingent or otherwise, of that Person with respect to any other Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (k) all direct or indirect liability, contingent or otherwise, of that Person under any Rate Contracts; (l) all direct or indirect liability, contingent or otherwise, of that Person to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (m) all direct or indirect liability, contingent or otherwise, of that Person for the obligations of another Person through any agreement to purchase, repurchase or otherwise acquire such obligation or any Property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another Person. The amount of any Indebtedness under the foregoing clauses (j) through (m) shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed or supported. For all purposes hereof, the Indebtedness of any Person shall exclude (a) intercompany loans and advances having a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business, (b) trade accounts and accrued expenses payable in the ordinary course of business, (c) any earn-out obligation, contingent post-closing purchase price adjustments or indemnification payments in connection with any Permitted Acquisition or permitted Investments or any permitted Disposition that would not appear on a balance sheet classified as debt in accordance with GAAP, and (d) accruals for payroll and other liabilities accrued in the ordinary course of business.

**"Indemnified Matter"** as defined in Section 10.6.

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

**"Indemnitee"** as defined in Section 10.6.

**"Insolvency Proceeding"** means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case in (a) and (b) above, undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

**"Intellectual Property"** means all rights, title and interests in or relating to (a) intellectual property and industrial property arising under any Requirement of Law, including all Copyrights, Patents, Software, Trademarks, Internet Domain Names, Trade Secrets, (b) all IP Ancillary Rights relating thereto and (c) IP Licenses.

**"Interest Payment Date"** means, (a) with respect to any SOFR Loan (other than a SOFR Loan having an Interest Period longer than three (3) months) the last Business Day of each Interest Period applicable to such Loan, (b) with respect to any SOFR Loan having an Interest Period of longer than three (3) months, the last Business Day of each three (3) month interval and, without duplication, the last Business Day of such Interest Period, and (c) with respect to Base Rate Loans (including Swing Loans) the last Business Day of each calendar quarter.

**"Interest Period"** means, with respect to any SOFR Loan, the period commencing on the

Business Day such Loan is disbursed or continued or on the Conversion Date on which a Base Rate Loan is converted to a SOFR Loan and ending on the date one, three, six or, if available to all applicable Lenders, twelve months thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation; provided that:

- (a) if any Interest Period pertaining to a SOFR Loan would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;
- (b) any Interest Period pertaining to a SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;
- (c) no Interest Period for a Term Loan or any portion thereof shall extend beyond the last scheduled payment date therefor and no Interest Period for any Revolving Loan shall extend beyond the Revolving Termination Date;
- (d) no Interest Period applicable to a Term Loan or portion thereof shall extend beyond any date upon which is due any scheduled principal payment in respect of such Term Loan unless the aggregate principal amount of such Term Loan represented by Base Rate Loans or by SOFR Loans having Interest Periods that will expire on or before such date is equal to or in excess of the amount of such principal payment; and
- (e) no tenor that has been removed from this definition pursuant to Section 11.6(d) shall be available for specification in such Notice of Borrowing or Notice of Conversion/Continuation.

**"Internet Domain Name"** means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to internet domain names.

**"Inventory"** means all "inventory" (as such term is defined in the UCC) of the Borrower and its Subsidiaries.

**"Investment"** as defined in Section 6.4.

**"IP Ancillary Rights"** means, with respect to any Intellectual Property (of the type described in clauses (a) and (c) of the definition of Intellectual Property), as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

**"IP License"** means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property of the type described in clause (a) of the definition of Intellectual Property.

**"IRS"** means the Internal Revenue Service of the United States and any successor thereto.

**"Issue"** means, with respect to any Letter of Credit, to issue, extend the expiration date of, renew (including by failure to object to any automatic renewal on the last day such objection is permitted), increase the face amount of, or reduce or eliminate any scheduled decrease in the face amount of, such Letter of Credit, or to cause any Person to do any of the foregoing. The terms **"Issued"** and **"Issuance"** have correlative meanings.

**"Knowledge"** means the actual knowledge of a Responsible Officer of the Borrower.

**"L/C Issuer"** means any Lender or an Affiliate thereof or a bank or other legally authorized Person, in each case, reasonably acceptable to Agent, in such Person's capacity as an issuer of Letters of Credit hereunder.

**"L/C Reimbursement Agreement"** as defined in Section 2.1(c)(i)(C).

**"L/C Reimbursement Date"** as defined in Section 2.1(c)(v).

**"L/C Reimbursement Obligation"** means, for any Letter of Credit, the obligation of the Borrower to the L/C Issuer thereof or to Agent, as and when matured, to pay all amounts drawn under such Letter of Credit.

**"L/C Request"** as defined in Section 2.1(c)(ii).

**"L/C Sublimit"** as defined in Section 2.1(c)(i)(A).

**"Latest Maturity Date"** means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Term Loan, any Incremental Term Loan Commitment, any Extended Term Loan Commitment, any Incremental Revolving Loan, any Incremental Revolving Loan Commitment, and any Extended Revolving Loan Commitment, in each case as extended in accordance with this Agreement from time to time.

**"Lead Arranger"** means Capital One, National Association.

**"Lender"** as defined in the preamble hereto.

**"Lending Office"** means, with respect to any Lender, the office or offices of such Lender specified as its **"Lending Office"** beneath its name on the applicable signature page hereto, or such other office or offices of such Lender as it may from time to time notify the Borrower and Agent.

**"Letter of Credit"** means documentary or standby letters of credit issued for the account of the any Credit Party by L/C Issuers, and bankers' acceptances issued by the Borrower in connection therewith, for which Agent and Lenders have incurred Letter of Credit Obligations.

**"Letter of Credit Fee"** as defined in Section 2.9(c).

**"Letter of Credit Obligations"** means all outstanding obligations incurred by Agent and Lenders at the request of the Borrower, whether direct or indirect, contingent or otherwise, due or not due, in connection with the Issuance of Letters of Credit by L/C Issuers or the purchase of a participation as set forth in Section 2.1(c) with respect to any Letter of Credit. The amount of such Letter of Credit Obligations shall equal the maximum amount that may be payable by Agent and Lenders thereupon or pursuant thereto.

**“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 mortgage, deed of trust, pledge, hypothecation, collateral assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

**“Limited Condition Acquisition”** means any acquisition by the Borrower or one or more of their Subsidiaries permitted pursuant to the Loan Documents whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

**“Limited Condition Acquisition Agreement”** as defined in Section 1.5.

**“Loan”** means any loan made or deemed made by any Lender hereunder.

**“Loan Documents”** means this Agreement, the Notes, the Agent Fee Letter, the Collateral Documents, any Notes, all agreements entered into with respect to the Letters of Credit, and all documents delivered to Agent and/or any Lender in connection with any of the foregoing (excluding any Secured Rate Contract or any Secured Cash Management Agreement).

**“LTM Consolidated EBITDA”** means, as of any date of determination, Consolidated EBITDA of the Borrower and its Subsidiaries for the most recent period of four consecutive Fiscal Quarters ended on or prior to such date in respect of which financial statements have been delivered.

**“Margin Stock”** means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

**“Material Adverse Effect”** means a material adverse effect on (i) the business, financial condition or results of operations of the Credit Parties and their Subsidiaries, taken as a whole, (ii) the ability of any Credit Party or any Subsidiary of any Credit Party to perform its payment obligations under the Loan Documents or (iii) the rights and remedies, taken as a whole, of Agent or the Lenders under the Loan Documents.

**“Material Environmental Liabilities”** means Environmental Liabilities the nonpayment of which would reasonably be expected to result in a Material Adverse Effect.

**“Material Indebtedness”** means any Indebtedness (other than the Obligations but including Secured Rate Contract Obligations and Secured Cash Management Obligations) of any Credit Party or any of its Subsidiaries having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of \$10,000,000 or more.

**“Maximum Lawful Rate”** as defined in Section 2.3(d).

**"Maximum Revolving Loan Balance"** as defined in Section 2.1(b).

**"MNPI"** as defined in Section 10.10(a).

**"Moody's"** means Moody's Investors Service, Inc.

**"Mortgage"** means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on Real Estate or any interest in Real Estate made by any Credit Party in favor of, or for the benefit of, Agent (or a nominee or sub-agent therefor) for the benefit of the Secured Parties (or any one or more of them), in form and substance reasonably satisfactory to Agent and the Borrower.

**"Multiemployer Plan"** means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, to which any Credit Party or ERISA Affiliate makes or is obligated to make contributions, during the preceding five years, has made or been obligated to make contributions, or otherwise has any Liability, contingent or otherwise.

**"National Flood Insurance Program"** means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, that, among other things, mandates the purchase of flood insurance to cover real property improvements and contents located in Special Flood Hazard Areas in participating communities and may provide protection to property owners through a federal insurance program.

**"Net Issuance Proceeds"** means, in respect of any issuance of equity or incurrence of Indebtedness, cash proceeds (including cash proceeds as and when received in respect of non-cash proceeds received or receivable in connection with such issuance), net of underwriting discounts and reasonable out-of-pocket costs and expenses paid or incurred in connection therewith in favor of any Person not an Affiliate of the Borrower.

**"Net Proceeds"** means proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Disposition, as well as insurance proceeds and condemnation and similar awards received on account of an Event of Loss, net of: (a) in the event of a Disposition (i) the direct costs relating to such Disposition excluding amounts payable to the Borrower or any Affiliate of the Borrower, (ii) sales, use or other transaction Taxes paid or payable as a result thereof, (iii) amounts required to be applied to pay principal, interest and prepayment premiums and penalties on Indebtedness (other than the Obligations) secured by a Lien on the asset which is the subject of such Disposition and prior to the Lien securing the Obligations and (iv) any escrow or reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of the applicable Disposition undertaken by the Borrower or any of its Subsidiaries or other liabilities in connection with such Disposition (provided that upon release of any such escrow or reserve, the amount released shall be considered Net Proceeds) and (b) in the event of an Event of Loss, (i) all money actually applied to repair or reconstruct the damaged Property or Property affected by the condemnation or taking, (ii) all of the costs and expenses reasonably incurred in connection with the collection of such proceeds, award or other payments, and (iii) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments.

**"Non-U.S. Lender Party"** means each of Agent, each Lender, each SPV and each participant, in each case that is not a United States person as defined in Section 7701(a)(30) of the Code.

**"Non-U.S. Plan"** means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by a Credit Party or any Subsidiary of a Credit Party primarily for the benefit of employees of Credit Party or any Subsidiaries of Credit Party residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement, or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

**"Note"** means a promissory note of the Borrower payable to a Lender, in form and substance satisfactory to Borrower and Agent, evidencing the Indebtedness of the Borrower to such Lender resulting from the Loans and Commitments made to the Borrower by such Lender or its predecessor(s).

**"Notice of Borrowing"** means a notice given by the Borrower to Agent pursuant to Section 2.5, in substantially the form of Exhibit 1.1(b) hereto.

**"Notice of Conversion/Continuation"** as defined in Section 2.6(a).

**"Obligations"** means all Loans, and other Indebtedness, advances, debts, liabilities, obligations, L/C Reimbursement Obligations, covenants and duties owing by any Credit Party to any Lender, Agent, any L/C Issuer, any Secured Swap Provider, any Secured Cash Management Bank or any Person required to be indemnified, that arises under any Loan Document, Secured Rate Contract or Secured Cash Management Agreement, or letter of credit reimbursement or similar agreement, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired (whether or not accruing after the filing of any case under the Bankruptcy Code and whether or not a claim for post-filing or post-petition interest, fees and charges is allowed or allowable in any such proceeding); provided, that Obligations of any Guarantor shall not include any Excluded Rate Contract Obligations solely of such Guarantor.

**"OFAC"** as defined in Section 4.22(a).

**"Oracle Litigation"** means Oracle USA, Inc. v. Rimini Street, Inc., Case No. 2:10-cv-00106-LRH-VCF (D. Nev.); Oracle Int'l Corp. v. Rimini Street, Inc., Case No. 2:14-cv-01699-MMD-DJA (D. Nev.); the Contempt Proceeding (D. Nev.).

**"Organization Documents"** means, (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) for any other entity, any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Stock of such entity.

**"Original Closing Date"** means July 2, 2021.

**"Original Credit Agreement"** as defined in the preamble hereto.

**"Original Loan Documents"** as defined in Section 10.27.

**"Original Term Loans"** as defined in Section 2.1(a).

**"Other Connection Taxes"** means, with respect to any Secured Party, Taxes imposed as a result of a present or former connection between such Secured Party and the jurisdiction imposing such Tax, other than any such connection arising solely from the Secured Party having executed, delivered, become a party to, performed its obligations or received a payment under, received or perfected as a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document or sold or assigned an interest in any Loan or Loan Document.

**"Other Taxes"** as defined in Section 11.1(c).

**"Participant Register"** as defined in Section 10.9(f).

**"Participating Lender"** as defined in Section 10.20.

**"Patents"** means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to letters patent and applications therefor.

**"Payment Notice"** as defined in Section 2.11(d)(iii)(B).

**"Payment Recipient"** as defined in Section 2.11(d)(iii)(A).

**"PBGC"** means the United States Pension Benefit Guaranty Corporation or any successor thereto.

**"Periodic Term SOFR Determination Day"** has the meaning specified in the definition of "Term SOFR".

**"Permits"** means, with respect to any Person, any material permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

**"Permitted Acquisition"** means any Acquisition by a Credit Party or a Subsidiary of a Credit Party of all of the Stock of a Target or all or substantially all of the assets of a Target, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Borrower shall have delivered to Agent at least two (2) Business Days prior to the consummation thereof (or such shorter period as Agent may accept):

(i) with respect to an Acquisition in which the Acquisition Consideration (as defined in clause (d) below) is greater than \$20,000,000, (A) notice of such Acquisition setting forth in reasonable detail the terms and conditions of such Acquisition, (B) pro forma financial statements of Borrower and its Subsidiaries after giving effect to the consummation of such Acquisition and the incurrence or assumption of any Indebtedness in connection therewith, (C) audited financial statements or a review (which may be in the form of a quality of earnings report) by a nationally-recognized accounting firm and (D) executed counterparts of the respective acquisition agreement and copies of all other material agreements, documents, consents and approvals pursuant to which such Acquisition is to be consummated; and

(ii) a certificate of a Responsible Officer of the Borrower demonstrating, on a pro

forma basis after giving effect to the consummation of such Acquisition calculated as of the last day of the most recent Fiscal Quarter preceding the date on which the Acquisition is consummated for which financial statements have been delivered that, the Borrower shall be in compliance with the financial covenants set forth in Article VII as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or were required to have been delivered) under Section 5.1 (provided that in the case of any Limited Condition Acquisition, the financial covenants set forth in Article VII shall be tested on the date on which the Limited Condition Acquisition Agreement therefor is executed and delivered by the parties thereto).

(b) such Acquisition shall not be hostile;

(c) no Event of Default shall exist at the time of the consummation of such Acquisition; provided, solely with respect to a Limited Condition Acquisition, at the election of the Borrower in its sole discretion, such condition shall be satisfied so long as (x) at the time of execution of the applicable Limited Condition Acquisition, no Event of Default shall exist and (y) no Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g), shall exist on the date of consummation of such Limited Condition Acquisition; and

(d) the total consideration paid or payable (including all transaction costs, Indebtedness incurred, assumed and/or reflected on a consolidated balance sheet of the Credit Parties and their Subsidiaries after giving effect to such Acquisition and the maximum amount of all deferred payments, including Contingent Acquisition Consideration) (such amounts, collectively, the “**Acquisition Consideration**”) for all Acquisitions of the Stock of a Target not organized under the laws of the United States, any state thereof or the District of Columbia, or of a Target substantially all of the Property of which is not located in the United States, any state thereof or the District of Columbia or of Property which is not located within the United States consummated or of Targets that will not otherwise be, or assets that will not otherwise be owned by, Credit Parties during the term of this Agreement shall not exceed \$7,000,000 in the aggregate for all such Acquisitions; provided each of the foregoing limits may be increased by the Available Amount used to finance all or a portion of such Acquisition.

**“Permitted Holders”** means the collective reference to Adams Street Partners, GP Investments, Ltd. and any of their Control Investment Affiliates (other than their respective portfolio companies).

**“Permitted Investments”** as defined in Section 6.4.

**“Permitted Liens”** as defined in Section 6.1.

**“Permitted Refinancing”** means Indebtedness constituting a refinancing or extension of Indebtedness permitted under Section 6.5(b) and 6.5(c) that:

(a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Indebtedness being refinanced or extended, except by an amount equal to the unpaid accrued interest and premium thereon, defeasance costs and other reasonable amounts paid and fees and expenses incurred in connection therewith;

(b) has a Weighted Average Life to Maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Indebtedness being refinanced or extended;

(c) is not entered into as part of a sale leaseback transaction;

(d) is not secured by a Lien on any assets other than the collateral securing the Indebtedness being refinanced or extended;

- (e) the obligors of which are the same as the obligors of the Indebtedness being refinanced or extended;
- (f) is payment and/or lien subordinated to the Obligations at least to the same extent and in the same manner as the Indebtedness being refinanced or extended; and
- (g) is otherwise on terms no less favorable to the Credit Parties and their Subsidiaries, taken as a whole, than those of the Indebtedness being refinanced or extended.

**“Person”** means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

**“Pricing Grid”** as defined in the definition of Applicable Margin.

**“Private Side Information”** as defined in Section 10.10(a)(iii).

**“Property”** means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

**“PTE”** means a prohibited transaction class exemption issued by the U.S. Department of Labor as any such exemption may be amended from time to time.

**“Public Lender”** as defined in Section 10.10(a)(i).

**“Qualified ECP Guarantor”** means, in respect of any Swap Obligation under a Secured Rate Contract, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation under a Secured Rate Contract or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act 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 2.7(d)(iii).

**“Rate Contracts”** means swap agreements (as such term is defined in Section 101 of the Bankruptcy Code) designed to provide protection against fluctuations in interest or currency exchange rates and commodity prices and any other agreements or arrangements designed to provide such protection.

**“Real Estate”** means any real property owned, leased, subleased or otherwise operated or occupied by any Credit Party or any Subsidiary of any Credit Party.

**“Register”** as defined in Section 2.4(b).

**“Rejection Notice”** as defined in Section 2.8(f).

**“Related Persons”** means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in Article III) and other consultants and agents of or to such Person or any of its Affiliates.

**"Releases"** means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

**"Relevant Governmental Body"** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York, or any successor thereto.

**"Replacement Lender"** as defined in Section 10.20.

**"Required Lenders"** means at any time (a) Lenders then holding more than fifty percent (50%) of the sum of the Revolving Loan Commitments then in effect plus the aggregate unpaid principal balance of the Term Loans then outstanding, or (b) if the Revolving Loan Commitments have terminated, Lenders then holding more than fifty percent (50%) of the sum of the aggregate unpaid principal amount of Loans (other than Swing Loans) then outstanding, Letter of Credit Obligations, amounts of participations in Swing Loans and the principal amount of unparticipated portions of Swing Loans. Such portion of the Aggregate Revolving Loan Commitment (or Revolving Loans, as applicable) and the sum of the aggregate unpaid principal amount of the Term Loans then outstanding, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders at any time; provided that at any time there is more than one (1) unaffiliated Lender, "Required Lenders" shall include at least two (2) unaffiliated Lenders.

**"Required Revolving Lenders"** means at any time (a) Lenders then holding more than fifty percent (50%) of the sum of the Aggregate Revolving Loan Commitments then in effect, or (b) if the Aggregate Revolving Loan Commitments have terminated, Lenders then holding more than fifty percent (50%) of the sum of the aggregate outstanding amount of Revolving Loans, outstanding Letter of Credit Obligations, amounts of participations in Swing Loans and the principal amount of unparticipated portions of Swing Loans. Such portion of the Aggregate Revolving Loan Commitment (or Revolving Loans, as applicable) and the sum of the aggregate unpaid principal amount of the Revolving Loans then outstanding, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders at any time; provided that at any time there is more than one (1) unaffiliated Lender, "Required Revolving Lenders" shall include at least two (2) unaffiliated Lenders.

**"Requirement of Law"** means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives or requirements of, any Governmental Authority 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.

**"Resolution Authority"** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**"Responsible Officer"** means, with respect to any Person, the chief executive officer, the chief legal officer or the chief financial officer of such Person or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer or the treasurer of such Person or any other officer having substantially the same authority and responsibility.

**"Restatement Date"** means April 30, 2024.

**"Restricted Debt Payments"** as defined in Section 6.12.

**"Restricted Payments"** as defined in Section 6.8.

**"Revolving Credit Exposure"** means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in L/C Reimbursement Obligations and Swing Loans at such time.

**"Revolving Lender"** means each Lender with a Revolving Loan Commitment or, if the Revolving Loan Commitments have terminated, who holds Revolving Credit Exposure.

**"Revolving Loan"** means a Loan made or deemed to have been made pursuant to Section 2.1(b), Section 2.1(c)(vi)(B) or Section 2.1(d)(iii)(B) or pursuant to Incremental Revolving Loan Commitments.

**"Revolving Loan Commitment"** means, with respect to each Revolving Lender, the commitment of such Revolving Lender to make Revolving Loans and acquire interests in Letter of Credit Obligations and Swing Loans, which initial commitments are set forth on Schedule 2.1(b) hereto opposite such Lender's name under the heading "Revolving Loan Commitments", as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Revolving Lender pursuant to an Assignment or (ii) an amendment or joinder agreement with respect to an Incremental Revolving Loan Commitment.

**"Revolving Termination Date"** means the earlier to occur of: (a) April 30, 2029; and (b) the date on which the Aggregate Revolving Loan Commitment shall terminate in accordance with the provisions of this Agreement.

**"Sale"** as defined in Section 10.9(b).

**"Sanctioned Country"** as defined in Section 4.22(a).

**"Sanctions"** as defined in Section 4.22(a).

**"SDN List"** as defined in Section 4.22(a).

**"S&P"** means Standard & Poor's Rating Services.

**"Secured Cash Management Agreement"** means any Cash Management Agreement between any Credit Party and a Secured Cash Management Bank, in effect on the Original Closing Date or entered into thereafter, to the extent that (x) Capital One, National Association or any of its Affiliates is the Secured Cash Management Bank or (y) the Borrower and such Secured Cash Management Bank have notified Agent in writing of the intent to include the obligations of such Credit Party arising under such Cash Management Agreement as Secured Cash Management Obligations, and such Secured Cash Management Bank shall have acknowledged and agreed to the terms contained herein applicable to Secured Cash Management Obligations, including the provisions of Sections 2.10, 9.13 and 10.24.

**"Secured Cash Management Bank"** means a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Cash Management Agreement) who has entered into a Cash Management Agreement with a Credit Party.

**"Secured Cash Management Obligation"** means, as to any Person, all obligations, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all

renewals, extensions and modifications thereof and substitutions therefor), of a Credit Party arising under any Secured Cash Management Agreement.

**"Secured Party"** means Agent, each Lender, each L/C Issuer, each other Indemnitee and each other holder of any Obligation of a Credit Party (including each Secured Swap Provider and each Secured Cash Management Bank).

**"Secured Rate Contract"** means any Rate Contract between a Credit Party and a Secured Swap Provider, in effect on the Original Closing Date or entered into thereafter, to the extent that (x) Capital One, National Association or any of its Affiliates is the Secured Swap Provider or (y) the Borrower and such Secured Swap Provider have notified Agent in writing of the intent to include the obligations of such Credit Party arising under such Rate Contract as Secured Rate Contract Obligations, and such Secured Swap Provider shall have acknowledged and agreed to the terms contained herein applicable to Secured Rate Contract Obligations, including the provisions of Sections 2.10, 9.13 and 10.24.

**"Secured Rate Contract Obligations"** means as to any Person, all obligations, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), of a Credit Party arising under any Secured Rate Contract.

**"Secured Swap Provider"** means a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Rate Contract) who has entered into a Rate Contract with a Credit Party.

**"Settlement Date"** as defined in Section 2.11(b).

**"SOFR"** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**"SOFR Administrator"** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**"SOFR Loan"** means a Loan that bears interest based on Term SOFR.

**"SOFR Margin"** as defined in the definition of Applicable Margin.

**"Software"** means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

**"Solvent"** means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets of such Person (both at fair value and present fair saleable value) is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to pay all liabilities of such Person as such liabilities mature and (c) such Person does not have unreasonably small capital for the business or transactions in which it is engaged. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**"Special Flood Hazard Area"** means an area that FEMA has designated as an area subject to special flood hazards, the current standard for which is at least a one percent (1%) chance of a flood equal

to or exceeding the base flood elevation (a 100-year flood) in any given year, as per the applicable flood maps.

**"Specified Equity Contributions"** as defined in Section 7.4.

**"Specified Representations"** means the representations and warranties set forth in Sections 4.1, 4.2, 4.3, 4.4, 4.9, 4.8, 4.13, 4.14, 4.22, and 4.24.

**"SPV"** means any special purpose funding vehicle identified as such in a writing by any Lender to Agent.

**"Stock"** means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting; and (b) all securities convertible into or exchangeable for any other Stock and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any other Stock, whether or not presently convertible, exchangeable or exercisable.

**"Subordinated Indebtedness"** means Indebtedness of any Credit Party or any Subsidiary of any Credit Party which is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder and having such subordination and other terms as are, in each case, reasonably satisfactory to Agent.

**"Subsidiary"** means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than fifty percent (50%) of the voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person.

**"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.

**"Swing Lender"** means, each in its capacity as Swing Lender hereunder, Capital One or, upon the resignation of Capital One as Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of Agent (or, if there is no such successor Agent, the Required Lenders) and the Borrower, to act as the Swing Lender hereunder.

**"Swing Loan"** as defined in Section 2.1(d)(i).

**"Swingline Commitment"** means \$5,000,000.

**"Swingline Request"** as defined in Section 2.1(d)(ii).

**"Target"** means any other Person or business unit or asset group of any other Person acquired or proposed to be acquired in an Acquisition.

**"Tax Affiliate"** means, (a) the Borrower and its Subsidiaries, (b) each other Credit Party and (c) any Affiliate of the Borrower with which the Borrower files or is eligible to file consolidated, combined or unitary Tax returns.

**"Tax Group"** as defined in Section 6.8(f).

**"Tax Return"** as defined in Section 4.10.

**"Taxes"** as defined in Section 11.1(a).

**"Term Lender"** means each Lender who holds Term Loans.

**"Term Loan"** means any term loan made hereunder pursuant to Section 2.1(a) (including the Original Term Loan), including, unless the context shall otherwise require, any Incremental Term Loan, any Extended Term Loan.

**"Term Loan Commitment"** means, with respect to each Lender, such Lender's Term Loan Commitment, as amended to reflect Assignments and as such amount may be reduced or increased pursuant to this Agreement. Unless the context shall otherwise require, the term "Term Loan Commitments" shall include any Incremental Term Loan Commitment of such Lender as set forth in any amendment under Section 2.1(e), and any commitment to extend Term Loans of such Lender under Section 10.1(f).

**"Term Loan Maturity Date"** means April 30, 2029.

**"Term SOFR"** means:

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **"Periodic Term SOFR Determination Day"**) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the **"Base Rate Term SOFR Determination Day"**) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, that if Term SOFR as so determined shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

**“Term SOFR Administrator”** means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

**“Term SOFR Reference Rate”** means the rate per annum determined by the Agent as the forward-looking term rate based on SOFR.

**“Title IV Plan”** means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, that is maintained, contributed to or required to be contributed to by any Credit Party or ERISA Affiliate or to which any Credit Party or ERISA Affiliate otherwise has any Liability, contingent or otherwise.

**“Trade Date”** as defined in Section 10.9(i).

**“Trade Secrets”** means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trade secrets.

**“Trademark”** means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

**“UCC”** means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

**“UK Financial Institution”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unfunded Benefit Liabilities”** of any Title IV Plan means the excess of a Title IV Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of such Title IV Plan’s assets, determined in accordance with the assumptions used for funding the Title IV Plan pursuant to Section 412 of the Code for the applicable plan year.

**“United States”** and **“U.S.”** each means the United States of America.

**“Unused Commitment Fee”** as defined in Section 2.9(b).

**“U.S. Government Securities Business Day”** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends

that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**"U.S. Lender Party"** means each of Agent, each Lender, each SPV and each participant, in each case that is a United States person as defined in Section 7701(a)(30) of the Code.

**"USA Patriot Act"** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56.

**"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 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; provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, the effects of any prepayments made on such Indebtedness prior to the date of the applicable extension shall be disregarded.

**"Wholly-Owned Subsidiary"** of a Person means any Subsidiary of such Person, all of the Stock of which (other than directors' qualifying shares required by law) are owned by such Person, either directly or through one or more Wholly-Owned Subsidiaries of such Person.

**"Write-Down and Conversion Powers"** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## 1.2 Other Interpretive Provisions.

(a) **Defined Terms.** Unless otherwise specified herein or therein, all terms defined in this Agreement or in any other Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) **The Agreement.** The words **"hereof"**, **"herein"**, **"hereunder"** and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document as a whole and not to any particular provision of this Agreement or such other Loan Document; and subsection, section, schedule and exhibit references are to this Agreement or such other Loan Documents unless otherwise specified.

(c) Certain Common Terms. The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term "including" is not limiting and means "including without limitation."

(d) Performance; Time. Whenever any performance obligation hereunder or under any other Loan Document (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. For the avoidance of doubt, the initial payments of interest and fees relating to the Obligations under the Loan Documents (other than amounts due on the Restatement Date) shall be due and payable on the last day of the first month or quarter, as applicable, following the entry of the Obligations onto the operations systems of Agent, but in no event later than the last day of the second month or quarter, as applicable, following the Restatement Date. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including." All references to the time of day shall be a reference to New York time. If any provision of this Agreement or any other Loan Document refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein or in any other Loan Document, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and, except as otherwise provided with respect to FATCA, are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Divisions. For all purposes under the Loan Documents, in connection with any Division: (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Stock at such time.

### 1.3 Accounting Terms and Principles.

(a) All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any financial statement hereafter adopted by Borrower shall be given effect for purposes of measuring compliance with any provision of Article VI or VII, calculating the Applicable Margin or otherwise determining any relevant ratios and baskets which govern whether any action is permitted hereunder unless the Borrower, Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP.

Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) 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", (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (iii) the effects of Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) on capital lease and debt obligations. A breach of a financial covenant contained in Article VII shall be deemed to have occurred as of the last day of any specified measurement period, regardless of when the financial statements reflecting such breach are delivered to Agent.

(b) For purposes of determining pro forma compliance with any financial covenant as of any date prior to the first date on which such financial covenant is to be tested hereunder, the level of any such financial covenant shall be deemed to be the covenant level for such first test date.

(c) If the availability of Indebtedness under this Agreement, or other incurrence of Indebtedness in compliance with this Agreement, is subject to a maximum leverage ratio, then, solely for the purposes of determining such availability or compliance, the cash proceeds of such Indebtedness, shall not be included in the calculation, if applicable, of cash or cash equivalents included in the determination of such leverage ratio.

(d) If any "Accounting Changes" (as defined below) occur and such changes result in a change in the calculation of the financial covenants, standards or terms used in this Agreement or any other Loan Document, then Borrower and Lenders agree to enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Credit Parties' and their Subsidiaries' financial condition shall be consistent in all material respects after such Accounting Changes as if such Accounting Changes had not been made; provided, however, that the agreement of Required Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. "Accounting Changes" means (a) changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions). If Borrower and Required Lenders agree upon amendments pursuant to the foregoing, then after appropriate amendments have been executed and the underlying Accounting Change with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in any other Loan Document shall, only to the extent of such Accounting Change, refer to GAAP, consistently applied after giving effect to the implementation of such Accounting Change. If Agent, Borrower and Required Lenders cannot agree upon amendments pursuant to the foregoing, then until such agreement is reached, all financial statements delivered and all calculations of financial covenants and other standards and terms in accordance with this Agreement and the other Loan Documents shall be prepared, delivered and made without regard to the underlying Accounting Change. Without limiting the foregoing, in the event of an accounting change requiring all leases to be capitalized, only those leases that would constitute Capital Leases in conformity with GAAP on the date hereof shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any

other Loan Document shall be made or delivered, as applicable, in accordance therewith.

1.4 Payments. Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Credit Party or any L/C Issuer. Any such determination or redetermination by Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or any Credit Party and no other currency conversion shall change or release any obligation of any Credit Party or of any Secured Party (other than Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. Agent may round up or down, and may set up appropriate mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable *de minimis* payment thresholds.

1.5 Limited Condition Acquisitions.

(a) In the case of (i) the incurrence of any Indebtedness (other than Indebtedness under the Revolving Loan Commitment or any Incremental Facility, which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition) or Liens or the making of any Investments (other than a Permitted Acquisition which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition) or consolidations, mergers or other fundamental changes pursuant to Section 6.3, in each case, in connection with a Limited Condition Acquisition or (ii) determining compliance with representations and warranties or the occurrence of any Default or Event of Default (other than a Default or Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g)), in each case, in connection with a Limited Condition Acquisition (other than for purposes of the borrowing of Indebtedness under the Revolving Loan Commitment or any Incremental Facility, which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition), at the Borrower's option, the relevant ratios and baskets and whether any such action is permitted hereunder shall be determined as of the date a definitive acquisition agreement for such Limited Condition Acquisition (a "**Limited Condition Acquisition Agreement**") is entered into, and calculated as if such Limited Condition Acquisition (and any other pending Limited Condition Acquisition) and other pro forma events in connection therewith (and in connection with any other pending Limited Condition Acquisition), including the incurrence of Indebtedness, were consummated on such date; provided that if the Borrower has made such an election, then in connection with the calculation of any ratio or basket with respect to the incurrence of any other Indebtedness (other than Indebtedness under the Revolving Loan Commitment or any Incremental Facility, which shall remain subject to the terms and conditions thereof with respect to the impact, if any, of any Limited Condition Acquisition) or Liens, or the making of any other Investments, Restricted Payments, Restricted Debt Payments, Dispositions, the making of any Investments or consolidations, mergers or other fundamental changes pursuant to Section 6.3 on or following such date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the Limited Condition Acquisition Agreement for such Limited Condition Acquisition is terminated, any such ratio or basket shall be calculated on a pro forma basis assuming such Limited Condition Acquisition (and any other pending Limited Condition Acquisition) and other pro forma events in connection therewith (and in connection with any other pending Limited Condition Acquisition), including any incurrence of Indebtedness, have been consummated.

(b) Notwithstanding anything set forth herein to the contrary, any determination in connection with a Limited Condition Acquisition of compliance with representations and

warranties or as to the occurrence or absence of any Default or Event of Default hereunder as of the date the applicable Limited Condition Acquisition Agreement (rather than the date of consummation of the applicable Limited Condition Acquisition), shall not be deemed to constitute a waiver of or consent to any breach of representations and warranties hereunder or any Default or Event of Default hereunder that may exist at the time of consummation of such Limited Condition Acquisition.

## ARTICLE II

### THE CREDITS

#### 2.1 Amounts and Terms of Commitments

(a) The Term Loan. Subject to the terms and conditions of the Original Credit Agreement, the Lenders thereunder funded term loans prior to the Restatement Date in an aggregate original principal amount of \$90,000,000 (the “**Original Term Loan**”), of which \$70,937,500.00 remains outstanding on the Restatement Date. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, the Original Term Loan shall be continued and remain outstanding under the Term Loan Commitments and each Lender with a Term Loan Commitment severally and not jointly agrees to make an additional term loan to the Borrower on the Restatement Date in the amount set forth on Schedule 2.1(a) opposite such Lender’s name under the heading “Term Loan Commitment” (such amount being referred to herein as such Lender’s “Term Loan Commitment”), less the amount of the Original Term Loan held by such Lender. Amounts borrowed under this Section 2.1(a) are referred to as the “Term Loan.” Amounts borrowed as a Term Loan which are repaid or prepaid may not be reborrowed.

(b) Revolving Credit Facility. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, each Revolving Lender severally and not jointly agrees to make loans to the Borrower (each such loan and each Incremental Revolving Loan (if any), a “**Revolving Loan**”) from time to time on any Business Day during the period from the Restatement Date through the Final Availability Date, in an aggregate amount not to exceed at any time outstanding such Lender’s Revolving Loan Commitment, which Revolving Loan Commitments, as of the Restatement Date, are set forth on Schedule 2.1(b) opposite such Lender’s name under the heading “Revolving Loan Commitments”; provided, that, after giving effect to any Borrowing of Revolving Loans, the aggregate principal amount of all outstanding Revolving Loans shall not exceed the Maximum Revolving Loan Balance. Subject to the other terms and conditions hereof, amounts borrowed under this Section 2.1(b) may be repaid and reborrowed from time to time. The “**Maximum Revolving Loan Balance**” from time to time will be the Aggregate Revolving Loan Commitment then in effect, less the sum of (I) the aggregate amount of Letter of Credit Obligations plus (II) the aggregate principal amount of outstanding Swing Loans. If at any time the then outstanding principal balance of Revolving Loans exceeds the Maximum Revolving Loan Balance, then the Borrower shall immediately prepay outstanding Revolving Loans in an amount sufficient to eliminate such excess.

(c) Letters of Credit.

(i) Conditions. On the terms and subject to the conditions contained herein, the Borrower may request that one or more L/C Issuers issue, in accordance with such L/C Issuers’ usual and customary business practices, and for the account of any Credit Party, Letters of Credit (denominated in Dollars) from time to time on any Business Day

during the period from the Restatement Date through the earlier of (x) seven (7) days prior to the date specified in clause (a) of the definition of Revolving Termination Date and (y) the date on which the Aggregate Revolving Loan Commitment shall terminate in accordance with the provisions of this Agreement; provided, however, that no L/C Issuer shall Issue any Letter of Credit upon the occurrence of any of the following or, if after giving effect to such Issuance:

(A) (i) Availability would be less than zero or (ii) the Letter of Credit Obligations for all Letters of Credit would exceed \$5,000,000 (the "**L/C Sublimit**");

(B) the expiration date of such Letter of Credit (i) is not a Business Day, (ii) is more than one year after the date of Issuance thereof or (iii) is later than seven (7) days prior to the date specified in clause (a) of the definition of Revolving Termination Date; provided, however, that any Letter of Credit with a term not exceeding one year may provide for its renewal for additional periods not exceeding one year as long as (x) the Borrower and such L/C Issuer have the option to prevent such renewal before the expiration of such term or any such period and (y) neither such L/C Issuer nor the Borrower shall permit any such renewal to extend such expiration date beyond the date set forth in clause (iii) above; provided further that notwithstanding the foregoing, Agent and the L/C Issuer, in their respective sole discretion, may agree to extend such Letter of Credit beyond the date set forth in clause (iii) above upon the Borrower either (A) delivering to Agent for the benefit of the L/C Issuer cash equal to 105% (or such greater percentage as the L/C Issuer may require in the case of any Letter of Credit with an expiration date later than one year after the date of providing such cash collateral) of the sum of (1) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (2) the aggregate principal amount of all L/C Reimbursement Obligations outstanding at such time with respect to such Letter of Credit that have matured, in each instance, on and as of the date of such extension for deposit in a cash collateral account which cash collateral account will be held as a pledged cash collateral account and applied to reimbursement of all drafts submitted under such outstanding Letter of Credit or (B) delivering to the L/C Issuer on the date of such extension one or more letters of credit for the benefit of the L/C Issuer, issued by a bank reasonably acceptable to the L/C Issuer in its sole discretion, each in form and substance reasonably acceptable to the L/C Issuer in its sole discretion) and in an amount equal to the sum of (1) and (2) above; or

(C) (i) any fee due in connection with, and on or prior to, such Issuance has not been paid, (ii) such Letter of Credit is requested to be Issued in a form that is not acceptable to such L/C Issuer or (iii) such L/C Issuer shall not have received, each in form and substance reasonably acceptable to it and duly executed by the Borrower on behalf of the Credit Parties, the documents that such L/C Issuer generally uses in the ordinary course of business for the Issuance of letters of credit of the type of such Letter of Credit (collectively, the "**L/C Reimbursement Agreement**").

For each Issuance, the applicable L/C Issuer may, but shall not be required to, determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived in connection with the Issuance of any Letter of Credit; provided,

however, that no Letters of Credit shall be Issued during the period starting on the first Business Day after the receipt by such L/C Issuer of notice from Agent or the Required Revolving Lenders that any condition precedent contained in Section 3.2 is not satisfied and ending on the date all such conditions are satisfied or duly waived.

Notwithstanding anything else to the contrary herein, if any Lender is a Defaulting Lender, no L/C Issuer shall be obligated to Issue any Letter of Credit unless (w) the Defaulting Lender has been replaced in accordance with Section 10.9 or 10.20, (x) the Letter of Credit Obligations of such Defaulting Lender have been cash collateralized, (y) the Revolving Loan Commitments of the other Lenders have been increased by an amount sufficient to satisfy Agent that all future Letter of Credit Obligations will be covered by all Revolving Lenders that are not Defaulting Lenders, or (z) the Letter of Credit Obligations of such Defaulting Lender have been reallocated to other Revolving Lenders in a manner consistent with Section 2.11(e)(ii).

(ii) Notice of Issuance. The Borrower shall give the relevant L/C Issuer and Agent a notice of any requested Issuance of any Letter of Credit, which shall be effective only if received by such L/C Issuer and Agent not later than 2:00 p.m. on the third Business Day prior to the date of such requested Issuance. Such notice shall be made in a writing or Electronic Transmission substantially in the form of Exhibit 2.1(c) duly completed or in any other written form acceptable to such L/C Issuer (an "**L/C Request**".

(iii) Reporting Obligations of L/C Issuers. Each L/C Issuer agrees to provide Agent, in form and substance satisfactory to Agent, each of the following on the following dates: (A) (i) on or prior to any Issuance of any Letter of Credit by such L/C Issuer, (ii) immediately after any drawing under any such Letter of Credit or (iii) immediately after any payment (or failure to pay when due) by the Borrower of any related L/C Reimbursement Obligation, notice thereof, which shall contain a reasonably detailed description of such Issuance, drawing or payment and Agent shall provide copies of such notices to each Revolving Lender reasonably promptly after receipt thereof; (B) upon the request of Agent (or any Revolving Lender through Agent), copies of any Letter of Credit Issued by such L/C Issuer and any related L/C Reimbursement Agreement and such other documents and information as may reasonably be requested by Agent; and (C) on the first Business Day of each calendar week, a schedule of the Letters of Credit Issued by such L/C Issuer, in form and substance reasonably satisfactory to Agent, setting forth the Letter of Credit Obligations for such Letters of Credit outstanding on the last Business Day of the previous calendar week.

(iv) Acquisition of Participations. Upon any Issuance of a Letter of Credit in accordance with the terms of this Agreement resulting in any increase in the Letter of Credit Obligations, each Revolving Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in such Letter of Credit and the related Letter of Credit Obligations in an amount equal to its Commitment Percentage of such Letter of Credit Obligations.

(v) Reimbursement Obligations of the Borrower. The Borrower agrees to pay to the L/C Issuer of any Letter of Credit, or to Agent for the benefit of such L/C Issuer, each L/C Reimbursement Obligation owing with respect to such Letter of Credit no later than the first Business Day after the Borrower receives notice from such L/C Issuer or from Agent that payment has been made under such Letter of Credit or that such L/C Reimbursement Obligation is otherwise due (the "**L/C Reimbursement Date**") with

interest thereon computed as set forth in clause (A) below. In the event that any L/C Reimbursement Obligation is not repaid by the Borrower as provided in this clause (v) (or any such payment by the Borrower is rescinded or set aside for any reason), such L/C Issuer shall promptly notify Agent of such failure (and, upon receipt of such notice, Agent shall notify each Revolving Lender) and, irrespective of whether such notice is given, such L/C Reimbursement Obligation shall be payable by the Borrower on demand with interest thereon computed (A) from the date on which such L/C Reimbursement Obligation arose to the L/C Reimbursement Date, at the interest rate applicable during such period to Revolving Loans that are Base Rate Loans and (B) thereafter until payment in full, at the interest rate specified in Section 2.3(c) to past due Revolving Loans that are Base Rate Loans (regardless of whether or not an election is made under such Section).

(vi) Reimbursement Obligations of the Revolving Lenders.

(A) Upon receipt of the notice described in clause (v) above from Agent, each Revolving Lender shall pay to Agent for the account of such L/C Issuer its Commitment Percentage of such Letter of Credit Obligations (as such amount may be increased pursuant to Section 2.11(e)(ii)).

(B) By making any payment described in clause (A) above (other than during the continuation of an Event of Default under Section 8.1(f) or 8.1(g)), such Lender shall be deemed to have made a Revolving Loan to the Borrower, which, upon receipt thereof by Agent for the benefit of such L/C Issuer, the Borrower shall be deemed to have used in whole to repay such L/C Reimbursement Obligation. Any such payment that is not deemed a Revolving Loan shall be deemed a funding by such Lender of its participation in the applicable Letter of Credit and the Letter of Credit Obligation in respect of the related L/C Reimbursement Obligations. Such participation shall not otherwise be required to be funded. Following receipt by any L/C Issuer of any payment from any Lender pursuant to this clause (vi) with respect to any portion of any L/C Reimbursement Obligation, such L/C Issuer shall promptly pay to Agent, for the benefit of such Lender, all amounts received by such L/C Issuer (or to the extent such amounts shall have been received by Agent for the benefit of such L/C Issuer, Agent shall promptly pay to such Lender all amounts received by Agent for the benefit of such L/C Issuer) with respect to such portion.

(vii) Obligations Absolute. The obligations of the Borrower and the Revolving Lenders pursuant to clauses (iv), (v) and (vi) above shall be absolute, unconditional and irrevocable and performed strictly in accordance with the terms of this Agreement irrespective of (A) (i) the invalidity or unenforceability of any term or provision in any Letter of Credit, any document transferring or purporting to transfer a Letter of Credit, any Loan Document (including the sufficiency of any such instrument), or any modification to any provision of any of the foregoing, (ii) any document presented under a Letter of Credit being forged, fraudulent, invalid, insufficient or inaccurate in any respect or failing to comply with the terms of such Letter of Credit or (iii) any loss or delay, including in the transmission of any document, (B) the existence of any setoff, claim, abatement, recoupment, defense or other right that any Person (including any Credit Party) may have against the beneficiary of any Letter of Credit or any other Person, whether in connection with any Loan Document or any other Contractual Obligation or transaction, or the existence of any other withholding, abatement or

reduction, (C) in the case of the obligations of any Revolving Lender, (i) the failure of any condition precedent set forth in Section 3.2 to be satisfied (each of which conditions precedent the Revolving Lenders hereby irrevocably waive) or (ii) any adverse change in the condition (financial or otherwise) of any Credit Party and (D) any other act or omission to act or delay of any kind of L/C Issuer, Agent, any Lender or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this clause (vii), constitute a legal or equitable discharge of any obligation of the Borrower or any Revolving Lender hereunder. No provision hereof shall be deemed to waive or limit the Borrower's right to seek repayment of any payment of any L/C Reimbursement Obligations from the L/C Issuer under the terms of the applicable L/C Reimbursement Agreement or applicable law.

(d) Swing Loans.

(i) Availability. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of the Credit Parties contained herein, the Swing Lender shall make Loans (each a "**Swing Loan**") available to the Borrower under the Revolving Loan Commitments from time to time on any Business Day during the period from the Restatement Date through the Final Availability Date in an aggregate principal amount at any time outstanding not to exceed its Swingline Commitment; provided, however, that the Swing Lender may not make any Swing Loan (x) to the extent that after giving effect to such Swing Loan, the aggregate principal amount of all Revolving Loans would exceed the Maximum Revolving Loan Balance (y) to the extent that after giving effect to such Swing Loan, the aggregate principal amount of all Revolving Loans and Swing Loans held by the Swing Lender (and if the Swing Lender is not also a Revolving Lender, by each of its Affiliates that is a Revolving Lender) would exceed the Revolving Loan Commitment of such Swing Lender (and such Affiliates, if any) and (z) during the period commencing on the first Business Day after it receives notice from Agent or the Required Revolving Lenders that one or more of the conditions precedent contained in Section 3.2 are not satisfied and ending when such conditions are satisfied or duly waived. In connection with the making of any Swing Loan, the Swing Lender may but shall not be required to determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived. Each Swing Loan shall be a Base Rate Loan and must be repaid as provided herein, but in any event must be repaid in full on the Revolving Termination Date. Within the limits set forth in the first sentence of this clause (i), amounts of Swing Loans repaid may be reborrowed under this clause (i).

(ii) Borrowing Procedures. In order to request a Swing Loan, the Borrower shall give to Agent a notice to be received not later than 2:00 p.m. on the day of the proposed Borrowing, which shall be made in a writing or in an Electronic Transmission substantially in the form of Exhibit 2.1(d) or in a writing in any other form acceptable to Agent duly completed (a "**Swingline Request**"). In addition, if any Notice of Borrowing of Revolving Loans requests a Borrowing of Base Rate Loans, the Swing Lender may, notwithstanding anything else to the contrary herein, make a Swing Loan to the Borrower in an aggregate amount not to exceed such proposed Borrowing, and the aggregate amount of the corresponding proposed Borrowing shall be reduced accordingly by the principal amount of such Swing Loan. Agent shall promptly notify the Swing Lender of the details of the requested Swing Loan. Upon receipt of such notice and subject to the terms of this Agreement, the Swing Lender may make a Swing Loan available to the

Borrower by making the proceeds thereof available to Agent and, in turn, Agent shall make such proceeds available to the Borrower on the date set forth in the relevant Swingline Request or Notice of Borrowing.

(iii) Refinancing Swing Loans.

(A) The Swing Lender may at any time (and shall no less frequently than once each week) forward a demand to Agent (which Agent shall, upon receipt, forward to each Revolving Lender) that each Revolving Lender pay to Agent, for the account of the Swing Lender, such Revolving Lender's Commitment Percentage of the outstanding Swing Loans (as such amount may be increased pursuant to Section 2.11(e)(ii)).

(B) Each Revolving Lender shall pay the amount owing by it to Agent for the account of the Swing Lender on the Business Day following receipt of the notice or demand therefor. Payments received by Agent after 1:00 p.m. may, in Agent's discretion, be deemed to be received on the next Business Day. Upon receipt by Agent of such payment (other than during the continuation of any Event of Default under Section 8.1(f) or 8.1(g)), such Revolving Lender shall be deemed to have made a Revolving Loan to the Borrower, which, upon receipt of such payment by the Swing Lender from Agent, the Borrower shall be deemed to have used in whole to refinance such Swing Loan. In addition, regardless of whether any such demand is made, upon the occurrence of any Event of Default under Section 8.1(f) or 8.1(g), each Revolving Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in each Swing Loan in an amount equal to such Lender's Commitment Percentage of such Swing Loan. If any payment made by any Revolving Lender as a result of any such demand is not deemed a Revolving Loan, such payment shall be deemed a funding by such Lender of such participation. Such participation shall not be otherwise required to be funded. Upon receipt by the Swing Lender of any payment from any Revolving Lender pursuant to this clause (iii) with respect to any portion of any Swing Loan, the Swing Lender shall promptly pay over to such Revolving Lender all payments of principal (to the extent received after such payment by such Lender) and interest (to the extent accrued with respect to periods after such payment) on account of such Swing Loan received by the Swing Lender with respect to such portion.

(iv) Obligation to Fund Absolute. Each Revolving Lender's obligations pursuant to clause (iii) above shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including (A) the existence of any setoff, claim, abatement, recoupment, defense or other right that such Lender, any Affiliate thereof or any other Person may have against the Swing Lender, Agent, any other Lender or L/C Issuer or any other Person, (B) the failure of any condition precedent set forth in Section 3.2 to be satisfied or the failure of the Borrower to deliver a Notice of Borrowing (each of which requirements the Revolving Lenders hereby irrevocably waive) and (C) any adverse change in the condition (financial or otherwise) of any Credit Party.

(e) Incremental Facilities.

(i) Requests. The Borrower may, by written notice of the Borrower to Agent request increases in the Term Loans (each, an "**Incremental Term Loan**

**Commitment**" and the term loans thereunder, an "**Incremental Term Loan**") and/or increases in the Revolving Loan Commitments (each, an "**Incremental Revolving Loan Commitment**" and the loans thereunder, "**Incremental Revolving Loans**"; each Incremental Term Loan Commitment and each Incremental Revolving Loan Commitment are each sometimes referred to herein individually as an "**Incremental Facility**" and collectively as the "**Incremental Facilities**") in Dollars in an aggregate amount not to exceed \$65,000,000; provided that the aggregate principal amount of Incremental Revolving Loan Commitments shall not exceed \$20,000,000.

Such notice shall set forth (x) the amount of the Incremental Term Loan Commitment or Incremental Revolving Loan Commitment being requested, (y) the date (an "**Incremental Effective Date**") on which such Incremental Facility is requested to become effective, and (z) if any Incremental Term Loan Commitment, whether the related Incremental Term Loan is to be a SOFR Loan or a Base Rate Loan (and, if a SOFR Loan, the Interest Period therefor).

(ii) Conditions. No Incremental Facility shall become effective under this Section 2.1(e) unless, after giving effect to such Incremental Facility, the Loans to be made thereunder (and assuming, in the case of an Incremental Facility, that the entire amount of such Incremental Facility is funded), and the application of the proceeds therefrom:

(A) no Default or Event of Default shall exist on the Incremental Effective Date; provided, that, solely with respect to an Incremental Term Loan, the proceeds of which are intended to and shall be used to finance a Limited Condition Acquisition, the Lenders providing such Incremental Term Loan may nevertheless agree to fund such Incremental Term Loan if (i) as of the date of signing the Limited Condition Acquisition Agreement no Default or Event of Default shall have occurred and be continuing and (ii) as of the date of funding of such Incremental Term Loan, no Default or Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g) shall have occurred and be continuing at such time of funding;

(B) no commitment of any Lender shall be increased without the consent of such Lender, and any Person providing an Incremental Term Loan Commitment or Incremental Revolving Loan Commitment that is not a Lender shall satisfy the requirements under Section 10.9(b) of a permitted assignee of the Term Loans or the Revolving Loan Commitments, as applicable;

(C) proceeds of such Incremental Term Loan will be used for working capital and other general corporate purposes of Borrower and its Subsidiaries (including for Consolidated Capital Expenditures, Permitted Acquisitions, other permitted Investments, Restricted Payments, repayments of Subordinated Indebtedness and any other use not prohibited by the Loan Documents);

(D) each representation or warranty by any Credit Party contained herein or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the Incremental Effective Date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall be true and correct in all material respect (without

duplication of any materiality qualifier contained therein) as of such earlier date);provided, that, solely with respect to an Incremental Term Loan, the proceeds of which are intended to and shall be used to finance a Limited Condition Acquisition, the Lenders providing such Incremental Term Loan may nevertheless agree that (i) the condition in this subclause (D) shall be tested on the date of signing of the Limited Condition Acquisition Agreement and (ii) only the Specified Representations shall be required to be true and correct as of the date of consummation of such Limited Condition Acquisition; and

(E) Agent shall have received a certificate of a Responsible Officer of the Borrower certifying as to the foregoing.

(iii) Terms.

(A) Any Incremental Term Loans shall be on the same terms (as amended from time to time) (including, but not limited to, interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but excluding reasonable and customary arrangement, structuring and underwriting fees with respect to such Incremental Term Loans) as, and pursuant to, documentation applicable to, the initial Term Loans.

(B) Any Incremental Revolving Loans shall be on the same terms (as amended from time to time) (including interest rate margins, any interest rate floors, original issue discount and upfront fees (based on the lesser of a four-year average life to maturity or the remaining life to maturity), but excluding reasonable and customary arrangement, structuring and underwriting fees with respect to such Incremental Revolving Loans) as, and pursuant to documentation applicable to, the initial Revolving Loans.

(iv) Required Amendments. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence of such Incremental Facility and the Loans evidenced thereby, and any joinder agreement or amendment (each an "**Incremental Joinder Agreement**") may without the consent of the other Lenders effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Agent and the Borrower, to effect the provisions of this Section 2.1(e) (including any amendments that are not adverse to the interests of any Lender that are made to effectuate changes necessary to enable any Incremental Term Loans that are intended to be of the same Class as the initial Term Loans made on the Restatement Date to be of the same Class as such initial Term Loans, which shall include any amendments to Section 2.8(a) that do not reduce the ratable amortization received by each Lender thereunder). For the avoidance of doubt, this Section 2.1(e) shall supersede any provisions in Section 10.1. From and after each Incremental Effective Date, the Loans and Commitments established pursuant to this Section 2.1(e) shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the guarantees and security interests created by the applicable Collateral Documents. The Credit Parties shall take any actions reasonably required by Agent to ensure and/or demonstrate that the Liens and security interests granted by the applicable Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any

such new Loans and Commitments, including compliance with Section 5.13(c). Each of the parties hereto hereby agrees that Agent may, in consultation with the Borrower, take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans which are not separate Classes, when originally made, are included in each Borrowing of outstanding Term Loans on a pro rata basis. This may be accomplished by requiring each outstanding Borrowing of Term Loans that are SOFR Loans to be converted into a Borrowing of Term Loans that are Base Rate Loans on the date of each such Incremental Term Loan, or by allocating a portion of each such Incremental Term Loan to each outstanding Borrowing of Term Loans that are SOFR Loans on a pro rata basis. Any conversion of SOFR Loans to Base Rate Loans required by the preceding sentence shall be subject to Section 11.4. If any Incremental Term Loan is to be allocated to an existing Interest Period for a Borrowing of SOFR Loans, then the interest rate thereon for such Interest Period shall be as set forth in the applicable Incremental Joinder Agreement. In addition, the scheduled amortization payments under Section 2.8(a) required to be made after the making of any Incremental Term Loans which are not separate Classes shall be ratably increased by the aggregate principal amount of such Incremental Term Loans for all Lenders on a pro rata basis to the extent necessary to avoid any reduction in the amortization payments to which the Term Lenders were entitled before such recalculation. Each of the parties hereto hereby agrees that Agent may, in consultation with the Borrower, take any and all action and make other amendments to this Agreement as may be reasonably necessary to ensure that (A) all Incremental Term Loans which are not separate Classes are fungible with any then outstanding Term Loans and (B) upon the effectiveness of each Incremental Revolving Loan Commitment, (1) Revolving Loans made under such Incremental Revolving Loan Commitment are included in each Borrowing of outstanding Revolving Loans on a pro rata basis and (2) the Lender providing each Incremental Revolving Loan Commitment shares ratably in the aggregate principal amount of all outstanding Revolving Loans, Swing Loans and Letter of Credit Obligations.

2.2 Evidence of Loans; Notes. The Term Loans made by any Lender are evidenced by this Agreement and, if requested by such Lender, a Note payable to such Lender in an amount equal to the unpaid balance of the Term Loans held by such Lender. The Revolving Loans and Swing Loans made by each Revolving Lender and the Swing Lender, respectively, are evidenced by this Agreement and, if requested by such Lender, a Note payable to such Lender in an amount equal to such Lender's Revolving Loan Commitment or Swingline Commitment.

2.3 Interest.

(a) Subject to Sections 2.3(c) and 2.3(d), each Loan shall bear interest on the outstanding principal amount thereof from the date when made, and all interest which is not paid when due shall bear interest, at a rate per annum equal to Term SOFR or the Base Rate, as the case may be, plus the Applicable Margin; provided Swing Loans may not be SOFR Loans. Each determination of an interest rate by Agent shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. All computations of fees and interest (other than interest accruing on Base Rate Loans) payable under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. All computations of interest accruing on Base Rate Loans payable under this Agreement shall be made on the basis of a 365-day year (366 days in the case of a leap year) and actual days elapsed. Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Interest on each Loan shall be paid in arrears on each Interest Payment Date.

Interest shall also be paid on the date of any payment or prepayment of Term Loans in full (including the Term Loan Maturity Date) and Revolving Loans on the Revolving Termination Date.

(c) While any Event of Default under Section 8.1(a), 8.1(f) or 8.1(g) exists, the Borrower shall pay interest on (i) the past due principal amount of all Loans outstanding in the case of an Event of Default under Section 8.1(a) and (ii) on the principal amount of all Loans outstanding (whether or not past due) and past due interest thereon, if any, in the case of an Event of Default under Section 8.1(f) or (g), from the date of occurrence of such Event of Default, at a rate per annum which is determined by adding two percent (2.0%) per annum to the Applicable Margin then in effect for such Loans (and, as to past due interest, the Applicable Margin applicable to the principal on which such interest accrued) (plus Term SOFR or Base Rate, as the case may be). All such interest shall be payable in cash on demand of Agent or the Required Lenders.

(d) Anything herein to the contrary notwithstanding, the obligations of the Borrower hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Borrower shall pay such Lender interest at the highest rate permitted by applicable law ("**Maximum Lawful Rate**"); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrower shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Restatement Date as otherwise provided in this Agreement.

#### 2.4 Loan Accounts; Register.

(a) Agent, on behalf of the Lenders, shall record on its books and records the amount of each Loan made, the interest rate applicable, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding. Agent shall deliver to the Borrower on a monthly basis a loan statement setting forth such record for the immediately preceding calendar month. Such record shall, absent manifest error, be conclusive evidence of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so, or any failure to deliver such loan statement shall not, however, limit or otherwise affect the obligation of the Borrower hereunder (and under any Note) to pay any amount owing with respect to the Loans or provide the basis for any claim against Agent.

(b) Agent, acting as a non-fiduciary agent of the Borrower solely for tax purposes and solely with respect to the actions described in this Section 2.4(b), shall establish and maintain at its address referred to in Section 10.2 (or at such other address as Agent may notify the Borrower) (A) a record of ownership (the "**Register**") in which Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of Agent, each Lender and each L/C Issuer in the Term Loans, Revolving Loans, Swing Loans, L/C Reimbursement Obligations and Letter of Credit Obligations, each of their obligations under this Agreement to participate in each Loan, Letter of Credit, Letter of Credit Obligations and L/C Reimbursement Obligations, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses

of the Lenders and the L/C Issuers (and each change thereto pursuant to Sections 10.9 and 10.20), (2) the Commitments of each Lender, (3) the amount of each Loan and each funding of any participation described in clause (A) above, and for SOFR Loans, the Interest Period applicable thereto, (4) the amount of any principal or interest due and payable or paid, (5) the amount of the L/C Reimbursement Obligations due and payable or paid in respect of Letters of Credit and (6) any other payment received by Agent from the Borrower or other Credit Party and its application to the Obligations under the Loan Documents.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Loans (including (i) any Notes evidencing such Loans or Commitments and (ii) in the case of Revolving Loans, the corresponding obligations to participate in Letter of Credit Obligations and Swing Loans) and the L/C Reimbursement Obligations are registered obligations, the right, title and interest of the Lenders and the L/C Issuers and their assignees in and to such Loans or L/C Reimbursement Obligations, as the case may be, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.4 and Section 10.9 shall be construed so that the Loans and L/C Reimbursement Obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h) (2) and 881(c)(2) of the Code.

(d) The Credit Parties, Agent, the Lenders and the L/C Issuers shall treat each Person whose name is recorded in the Register as a Lender or L/C Issuer, as applicable, for all purposes of this Agreement. Information contained in the Register with respect to any Lender or any L/C Issuer shall be available for access by the Borrower, Agent, such Lender or such L/C Issuer during normal business hours and from time to time upon at least one Business Day's prior notice. No Lender or L/C Issuer shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender or L/C Issuer unless otherwise agreed by the Agent.

## 2.5 Procedure for Revolving Credit Borrowing.

(a) Each Borrowing of a Revolving Loan shall be made upon the Borrower's irrevocable (subject to Section 11.5) written notice delivered to Agent substantially in the form of a Notice of Borrowing or in a writing in any other form acceptable to Agent, which notice must be received by Agent prior to 2:00 p.m. (i) on the date which is three (3) Business Days prior to the requested Borrowing date in the case of each SOFR Loan and (ii) on the date which is one (1) Business Day prior to the requested Borrowing date of each Base Rate Loan. Such Notice of Borrowing shall specify:

- (i) the amount of the Borrowing (which shall be in an aggregate minimum principal amount of \$100,000);
- (ii) the requested Borrowing date, which shall be a Business Day;
- (iii) whether the Borrowing is to be comprised of SOFR Loans or Base Rate Loans; and
- (iv) if the Borrowing is to be SOFR Loans, the Interest Period applicable to such Loans.

(b) Upon receipt of a Notice of Borrowing, Agent will promptly notify each Revolving Lender of such Notice of Borrowing and of the amount of such Lender's Commitment Percentage of the Borrowing.

(c) Unless Agent is otherwise directed in writing by the Borrower, the proceeds of each requested Borrowing after the Restatement Date will be made available to the Borrower by Agent by wire transfer of such amount to the Borrower pursuant to the wire transfer instructions specified in the Notice of Borrowing.

## 2.6 Conversion and Continuation Elections.

(a) The Borrower shall have the option to (i) request that any Revolving Loan be made as a SOFR Loan, (ii) convert at any time all or any part of outstanding Loans (other than Swing Loans) from Base Rate Loans to SOFR Loans, (iii) convert any SOFR Loan to a Base Rate Loan, subject to Section 11.4 if such conversion is made prior to the expiration of the Interest Period applicable thereto, or (iv) continue all or any portion of any Loan as a SOFR Loan upon the expiration of the applicable Interest Period. Any such election must be made by the Borrower by 2:00 p.m. on the third Business Day prior to (1) the date of any proposed Loan which is to bear interest at Term SOFR, (2) the end of each Interest Period with respect to any SOFR Loans to be continued as such, or (3) the date on which the Borrower wishes to convert any Base Rate Loan to a SOFR Loan for an Interest Period designated by the Borrower in such election. If no election is received with respect to a SOFR Loan by 2:00 p.m. on the third Business Day prior to the end of the Interest Period with respect thereto, that SOFR Loan shall be converted to a Base Rate Loan at the end of its Interest Period. The Borrower must make such election by notice to Agent in writing, including by Electronic Transmission. In the case of any conversion or continuation, such election must be made pursuant to a written notice (a “**Notice of Conversion/Continuation**”) substantially in the form of Exhibit 2.6 or in a writing in any other form acceptable to Agent. No Loan shall be made, converted into or continued as a SOFR Loan if (x) an Event of Default has occurred and is continuing and Agent or Required Lenders have determined not to make or continue any Loan as a SOFR Loan as a result thereof or (y) Agent is or Required Lenders are stayed by the Bankruptcy Code from making such determination.

(b) Upon receipt of a Notice of Conversion/Continuation, Agent will promptly notify each Lender thereof. In addition, Agent will, with reasonable promptness, notify the Borrower and the Lenders of each determination of Term SOFR; provided that any failure to do so shall not relieve the Borrower of any liability hereunder or provide the basis for any claim against Agent. All conversions and continuations shall be made pro rata according to the respective outstanding principal amounts of the Loans held by each Lender with respect to which the notice was given.

(c) Notwithstanding any other provision contained in this Agreement, after giving effect to any Borrowing, or to any continuation or conversion of any Loans, there shall not be more than seven (7) different Interest Periods in effect; provided that after the establishment of any new Class of Loans pursuant to an Extension or an Incremental Facility, such number of Interest Periods shall increase by two (2) Interest Periods for each such new Class of Loans so established.

## 2.7 Optional Prepayments and Reductions in Revolving Loan Commitments.

(a) Optional Prepayments Generally. The Borrower may at any time upon at least two (2) Business Days’ (or such shorter period as is acceptable to Agent) prior written notice by the Borrower to Agent, prepay the Loans in whole or in part in an amount greater than or equal to \$100,000 (other than Revolving Loans and Swing Loans for which prior written notice is not required and for which no minimum shall apply), in each instance, without penalty or premium except as provided in Section 11.4. Optional partial prepayments of Revolving Loans shall be applied in accordance with Section 2.10(a). Optional partial prepayments of Term Loans shall, subject to Section 2.10(a), be applied to scheduled installments thereof, if any, as specified by the

Borrower in such notice of prepayment; provided that the same order of application shall apply to each Class of Term Loan and, in the absence of such direction, in the manner set forth in Section 2.8(f). The foregoing provisions shall not apply with respect to any Discounted Buyback governed by Section 2.7(d).

(b) Reductions in Revolving Loan Commitments. Borrower may at any time upon at least two (2) Business Days' (or such shorter period as Agent may agree in writing) prior written notice by the Borrower to Agent permanently reduce the Revolving Loan Commitments; provided that (A) such reductions shall be in an amount greater than or equal to \$500,000 and (B) after giving effect to such reduction, Revolving Credit Exposure shall not exceed the aggregate principal amount of the Revolving Loan Commitments. All reductions of the Revolving Loan Commitments shall be allocated ratably. A permanent reduction of the Revolving Loan Commitments shall not require a corresponding pro rata reduction in the L/C Sublimit or the Swingline Commitment; provided that the L/C Sublimit and/or the Swingline Commitment, as applicable, shall be permanently reduced by the amount thereof in excess of the Revolving Loan Commitments.

(c) Notices. Notice of prepayment or commitment reduction pursuant to clauses (a) and (b) above shall not thereafter be revocable by the Borrower (unless such notice expressly conditions such prepayment upon consummation of a transaction which is contemplated to result in prepayment of the Loans, in which event such notice may be revocable or conditioned upon such consummation) and Agent will promptly notify each Lender thereof and of such Lender's Commitment Percentage of such prepayment or reduction. The payment amount specified in a notice of prepayment or reduction shall be due and payable on the date specified therein. Together with each prepayment under this Section 2.7, the Borrower shall pay any amounts required pursuant to Section 11.4.

(d) Discounted Buybacks.

(i) Generally. So long as no Default or Event of Default has occurred and is continuing on both the date a Discounted Buyback Notice (as defined below) is delivered to Agent and Lenders and the date a Discounted Buyback (as defined below) is made (both before and after giving effect thereto), Borrower shall be permitted to make voluntary prepayments of the Term Loans from internally generated funds (each, a "**Discounted Buyback**") during the term of this Agreement pursuant to the provisions of this Section 2.7(d).

(ii) Procedures. In connection with any Discounted Buyback, the Borrower will notify Agent and Lenders holding the Term Loans in writing (the "**Discounted Buyback Notice**") that Borrower desires to prepay the Term Loans on a specified Business Day (the "**Discounted Buyback Amount**") at a discount to par (which shall be expressed as a range of percentages of par of the principal amount of the Term Loans) specified by the Borrower with respect to each Discounted Buyback, the "**Discount Price Range**"; provided that such notice shall be received by Agent and Lenders no earlier than 10 Business Days nor more than 60 days prior to the proposed date of such Discounted Buyback. In connection with a Discounted Buyback, the Borrower will allow each Lender holding the Term Loans to specify a discount to par (which shall 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**") for a principal amount (subject to rounding requirements specified by Agent) of the Term Loans held by such Lender at which such Lender is willing to permit such voluntary prepayment. Based on the Acceptable Discount Prices and principal amounts of the Term Loans specified by

Lenders, if any, Agent, in consultation with the Borrower, will determine the applicable discount price (the “**Applicable Discount Price**”) for the applicable Discounted Buyback, which will be the lower of (i) the lowest Acceptable Discount Price at which the Borrower can complete the Discounted Buyback for the Discounted Buyback Amount and (ii) if the Lenders’ response is such that the Discounted Buyback could not be completed for the full Discounted Buyback Amount, the highest Acceptable Discount Price specified by the Lenders that is within the Discount Price Range specified by the Borrower. For the avoidance of doubt, (x) all Discounted Buybacks shall be offered to all Lenders holding Term Loans on a pro rata basis and (y) no Lender shall be obligated to participate in a Discounted Buyback.

(iii) **Prepayments; Application.** Borrower shall prepay the Term Loans (or the respective portion thereof) offered by Lenders at the Acceptable Discount Prices specified by each such Lender that are equal to or less than 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 2.7(d)) would exceed the Discounted Buyback Amount for such Discounted Buyback, the Borrower shall 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 Agent). The portion of the Term Loans prepaid by the Borrower pursuant to this Section 2.7(d) shall 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 2.7(d) shall be applied to reduce the remaining installments of the respective Term Loans owing to the Lenders so prepaid pro rata against all such scheduled installments based upon the respective amounts thereof (without affecting the amount of the installment payments owing to the Lenders not prepaid pursuant to this Section 2.7(d)). The par principal amount of the Term Loans prepaid pursuant to this Section 2.7(d) shall be deemed immediately cancelled upon payment of the applicable Discounted Buyback.

(iv) **Lender Consent.** The Lenders hereby consent to the transactions described in this Section 2.7(d) and waive the requirements of any provision of this Agreement or any other Loan Document that might otherwise result in a Default or Event of Default as a result of a Discounted Buyback.

(v) **Miscellaneous.** Each Discounted Buyback shall be consummated pursuant to procedures (including as to timing, rounding and minimum amounts (including with respect to amounts prepaid), type and Interest Periods of accepted Term Loans, conditions for terminating a Discounted Buyback or rescinding an acceptance of prepayment, forms of other notices (including notices of offer and acceptance) by the Borrower and Lenders and determination of Applicable Discount Price) established by Agent acting in its reasonable discretion in consultation with the Borrower. The making of a Discounted Buyback shall be deemed to be a representation and warranty by the Borrower that all conditions precedent to such Discounted Buyback set forth in this Section 2.7(d) were satisfied in all respects.

## 2.8 Mandatory Prepayments of Loans and Commitment Reductions

(a) **Scheduled Term Loan Payments.** (i) The principal amount of the Term Loans shall be paid in installments on the last Business Day of each month referenced below in the respective amounts shown below:

<u>Date of Payment</u>	<u>Percentage of Term Loans to be Paid</u>
Each of September 2024, December 2024, March 2025 and June 2025	1.250%
Each of September 2025, December 2025, March 2026 and June 2026	1.250%
Each of September 2026, December 2026, March 2027 and June 2027	1.875%
Each of September 2027, December 2027, March 2028 and June 2028	1.875%
Each of September 2028, December 2028 and March 2029	2.500%

The final scheduled installment of each such Term Loan shall, in any event, be in an amount equal to the entire remaining principal balance of such Term Loan and shall be due and payable in full on the Term Loan Maturity Date.

(ii) Scheduled installments for any Incremental Term Loan, Extended Term Loan shall be as specified in the applicable amendment, Extension or joinder agreement.

(b) The Borrower shall repay to the Lenders in full on the Revolving Termination Date the aggregate principal amount of the Revolving Loans and Swing Loans outstanding on the Revolving Termination Date.

(c) Asset Dispositions: Events of Loss. If a Credit Party or any Subsidiary of a Credit Party shall at any time or from time to time:

- (i) make a Disposition (other than sales or other dispositions expressly permitted under Sections 6.2(a), 6.2(c) through 6.2(l)); or
- (ii) suffer an Event of Loss;

and the aggregate amount of the Net Proceeds received by the Credit Parties and their Subsidiaries in connection with such Disposition or Event of Loss and all other such Dispositions and Events of Loss occurring during the Fiscal Year exceeds \$5,000,000, then (A) the Borrower shall promptly, but in any event within three (3) Business Days, notify Agent of such proposed Disposition or Event of Loss (including the amount of the estimated Net Proceeds to be received by a Credit Party and/or such Subsidiary in respect thereof) and (B) promptly upon receipt by a Credit Party and/or such Subsidiary of the Net Proceeds of such Disposition or Event of Loss, the Borrower shall deliver, or cause to be delivered, such excess Net Proceeds to Agent for distribution to the Lenders as a prepayment of the Loans, which prepayment shall be applied in accordance with Section 2.8(f) hereof. Notwithstanding the foregoing and provided no Event of Default has occurred and is continuing, such prepayment shall not be required to the extent a Credit Party or such Subsidiary reinvests the Net Proceeds of such Disposition or Event of Loss in (x) productive assets (other than Inventory (except to the extent Inventory was subject to such an Event of Loss)) of a kind then used or usable in the business of the Borrower or such Subsidiary or (y) Permitted Acquisitions, in each case, within three hundred sixty five (365) days after the date of such Disposition or Event of Loss, or enters into a binding commitment thereof within such three hundred sixty five (365) day period and subsequently makes such reinvestment

within an additional one hundred eighty (180) days thereafter; provided that the Borrower notifies Agent of the Borrower's or such Subsidiary's intent to reinvest and of the completion of such reinvestment at the time such proceeds are received and when such reinvestment occurs, respectively. Pending such reinvestment, the Net Proceeds shall be delivered to Agent, for distribution first, to the Swing Lender as a prepayment of Swing Loans (to the extent of Swing Loans outstanding), but not as a permanent reduction of the Swingline Commitment) and thereafter to the Revolving Lenders, as a prepayment of the Revolving Loans (to the extent of Revolving Loans then outstanding) but not as a permanent reduction of the Aggregate Revolving Loan Commitment.

(d) Incurrence of Debt. Immediately upon, but in any event no later than one (1) Business Day after, receipt by any Credit Party or any Subsidiary of any Credit Party of the Net Issuance Proceeds of the incurrence of Indebtedness (other than Net Issuance Proceeds from the incurrence of Indebtedness permitted hereunder), the Borrower shall deliver, or cause to be delivered, to Agent an amount equal to such Net Issuance Proceeds for application to the Loans in accordance with Section 2.8(f).

(e) [Reserved].

(f) Application of Prepayments. Subject to Section 2.10 and except as may otherwise be set forth in any Extension Offer with respect to any Extended Term Loan or Extended Revolving Loan, any prepayments pursuant to Section 2.8(c) or 2.8(d) shall be applied first to prepay the next eight installments of each Class of Term Loan, if any, in direct order of maturity and then to prepay all remaining installments thereof (including the final payment due at maturity) pro rata against all such scheduled installments based upon the respective amounts thereof, second to prepay outstanding Swing Loans, third to prepay outstanding Revolving Loans without permanent reduction of the Aggregate Revolving Loan Commitment and fourth to cash collateralize Letters of Credit in an amount determined in accordance with Section 8.4. Notwithstanding the foregoing, each Lender may reject all or a portion of its *pro rata* share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of any Class of Loans required to be made pursuant to clauses (c) and (d) of this Section 2.8 by providing written notice (each, a "**Rejection Notice**") to Agent and the Borrower no later than 5:00 p.m. one (1) Business Day after the date of such Lender Representative's receipt of notice from Agent regarding such prepayment. Each Rejection Notice from a Lender shall specify the principal amount of the mandatory prepayment of Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of such Loans. Any Declined Proceeds may be retained by the Borrower. To the extent permitted by the foregoing, amounts prepaid shall be applied first to any Base Rate Loans then outstanding and then to outstanding SOFR Loans with the shortest Interest Periods remaining. Together with each prepayment under this Section 2.8, the Borrower shall pay any amounts required pursuant to Section 11.4 hereof.

(g) No Implied Consent. Provisions contained in this Section 2.8 for the application of proceeds of certain transactions shall not be deemed to constitute consent of the Lenders to transactions that are not otherwise permitted by the terms hereof or the other Loan Documents.

## 2.9 Fees.

(a) Fees. The Borrower shall pay to Agent, for Agent's own account or as otherwise provided therein, fees in the amounts and at the times set forth in a letter agreement between the

Borrower and Agent, dated the Restatement Date (as amended, modified and/or supplemented from time to time in accordance with its terms, the **"Agent Fee Letter"**).

(b) **Unused Revolving Commitment Fee.** The Borrower shall pay to Agent a fee (the **"Unused Commitment Fee"**) for the account of each Revolving Lender in an amount equal to: (i) the daily balance of the Revolving Loan Commitment of such Revolving Lender during the preceding calendar quarter, less (ii) the sum of (x) the daily balance of all Revolving Loans held by such Revolving Lender plus (y) the daily amount of Letter of Credit Obligations held by such Revolving Lender, plus (z) in the case of the Swing Lender, the daily balance of all outstanding Swing Loans held by such Swing Lender, in each case, during the preceding calendar quarter; provided, in no event shall the amount computed pursuant to clauses (i) and (ii) with respect to the Swing Lender be less than zero, multiplied by (iii) Applicable Unused Commitment Fee. The total Unused Commitment Fee paid by the Borrower will be equal to the sum of all Unused Commitment Fees due to the Lenders, subject to Section 2.11(e)(vi). Such fee shall be payable quarterly in arrears on the last day of each calendar quarter following the Restatement Date. The Unused Commitment Fee described herein shall accrue at all times from and after the execution and delivery of this Agreement.

(c) **Letter of Credit Fee.** The Borrower agrees to pay to Agent for the ratable benefit of the Revolving Lenders, as compensation to such Lenders for Letter of Credit Obligations incurred hereunder, (i) without duplication of costs and expenses otherwise payable to Agent or Lenders hereunder or fees otherwise paid by the Borrower, all reasonable costs and expenses incurred by Agent or any Lender on account of such Letter of Credit Obligations, and (ii) for each calendar quarter during which any Letter of Credit Obligation shall remain outstanding, a fee (the **"Letter of Credit Fee"**) in an amount equal to the sum of (A) all reasonable costs and expenses incurred by Agent or any Lender on account of Letter of Credit Obligations, plus (B) for each calendar quarter during which any Letter of Credit Obligation remains outstanding, the product of the daily undrawn face amount of all Letters of Credit Issued, guaranteed or supported by risk participation agreements multiplied by a per annum rate equal to the Applicable Margin with respect to Revolving Loans which are SOFR Loans; provided, however, at Agent's or Required Revolving Lenders' option, while an Event of Default under Section 8.1(a) exists or automatically while an Event of Default under Section 8.1(f) or 8.1(g) exists, such rate shall be increased by two percent (2.00%) per annum automatically while an Event of Default under Section 8.1(a), 8.1(f) or 8.1(g) exists. Such fee shall be paid to Agent for the benefit of the Revolving Lenders in arrears, on the last day of each calendar quarter and on the date on which all L/C Reimbursement Obligations have been discharged. In addition, the Borrower shall pay to Agent, any L/C Issuer or any prospective L/C Issuer, as appropriate, on demand, such L/C Issuer's or prospective L/C Issuer's customary fees at then prevailing rates (which, in any event, shall include a fronting fee, payable to each L/C Issuer for its own account, which shall accrue at the rate of 0.125% per annum on the average daily amount available to be drawn under any Letters of Credit Issued and shall be payable on the last day of each Fiscal Quarter and on the date on which all L/C Reimbursement Obligations have been discharged), without duplication of fees otherwise payable hereunder (including all per annum fees), charges and expenses of such L/C Issuer or prospective L/C Issuer in respect of the application for, and the Issuance, negotiation, acceptance, amendment, transfer and payment of, each Letter of Credit or otherwise payable pursuant to the application and related documentation under which such Letter of Credit is Issued.

(d) All fees payable pursuant to this Section 2.9 shall be applied in accordance with Section 2.10(a).

## 2.10 Payments by the Borrower

(a) All payments (including prepayments) to be made by each Credit Party on account of principal, interest, fees and other amounts required hereunder shall be made without set-off, recoupment, counterclaim or deduction of any kind, shall, except as otherwise expressly provided herein, be made to Agent and for the ratable account of the Persons holding the applicable Obligations at the address (including wire instructions) for payment specified by Agent from time to time in accordance with Section 10.2), including payments utilizing the ACH system, and shall be made in Dollars and by wire transfer or ACH transfer in immediately available funds (which shall be the exclusive means of payment hereunder), no later than 1:00 p.m. on the date due. Any payment which is received by Agent later than 1:00 p.m. may in Agent's discretion be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue. The Borrower and each other Credit Party hereby irrevocably waives the right to direct the application during the continuance of an Event of Default of any and all payments in respect of any Obligation and any proceeds of Collateral. The Borrower hereby authorizes Agent and each Lender to make a Revolving Loan (which shall be a Base Rate Loan and which may be a Swing Loan) to pay (i) interest, principal (including Swing Loans), L/C Reimbursement Obligations, fees payable under the Agent Fee Letter, Unused Commitment Fees and Letter of Credit Fees, in each instance, on the date due, or (ii) after five (5) days' prior notice to the Borrower, other fees, costs or expenses payable by the Borrower or any of its Subsidiaries hereunder or under the other Loan Documents.

(b) Subject to the provisions set forth in the definitions of "Interest Payment Date" and "Interest Period" herein, if any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be excluded in the computation, and if applicable, payment, of interest or fees, as the case may be, on such next succeeding Business Day; provided that such extension of time shall be included in the next succeeding computation and payment of interest and fees; provided further that if the scheduled payment date is the maturity date of any Loan such extension of time shall include such interest and fees, which shall be payable on such next succeeding Business Day.

(c) Notwithstanding any contrary provision set forth herein or in any other Loan Document, (i) during the continuance of an Event of Default, Agent may, and shall upon the direction of Required Lenders apply any and all payments received by Agent in respect of any Obligation in accordance with clauses first through sixth below; and (ii) all payments made by Credit Parties to Agent after any or all of the Obligations under the Loan Documents have been accelerated (so long as such acceleration has not been rescinded) or have otherwise matured, including proceeds of Collateral, shall be applied as follows:

first, to payment of costs, expenses and indemnities, including Attorney Costs, of Agent payable or reimbursable by the Credit Parties under the Loan Documents;

second, to payment of Attorney Costs of Lenders payable or reimbursable by the Credit Parties under this Agreement;

third, to payment of all accrued unpaid interest on the Obligations and fees owed to Agent, Lenders and L/C Issuers (whether or not accruing after the filing of any case under the Bankruptcy Code with respect to any Obligations and whether or not a claim for such post-filing or post-petition interest, fees, and charges is allowed or allowable in any such proceeding);

fourth, to payment of principal of the Obligations (including L/C Reimbursement Obligations) then due and payable, the Secured Rate Contract Obligations then due and payable, the Secured Cash Management Obligations then due and payable, and cash collateralization of unmatured L/C Reimbursement Obligations to the extent not then due and payable;

fifth, to payment of any other amounts owing constituting Obligations; and

sixth, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (i) amounts received shall be applied to each category in the numerical order provided until exhausted prior to the application to the immediately succeeding category, (ii) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to clauses third, fourth and fifth above and (iii) no payments by a Guarantor and no proceeds of Collateral of a Guarantor shall be applied to Obligations, the guaranty of which by such Guarantor would constitute an Excluded Rate Contract Obligation. Notwithstanding the foregoing, Secured Rate Contract Obligations and Secured Cash Management Obligations with parties that are not Affiliates of Agent shall be excluded from the application described above unless at least three Business Days prior to any distribution, Agent has received written notice from the applicable Secured Swap Provider or Secured Cash Management Bank of the amount of Secured Rate Contract Obligations or Secured Cash Management Obligations then due and payable, together with such supporting documentation as Agent may request.

(d) Notwithstanding anything to the contrary herein, no prepayment of a SOFR Loan hereunder shall be made on any day that is not a U.S. Government Securities Business Day, and if any prepayment to be made by the Borrower shall fall due on a day that is not a U.S. Government Securities Business Day, payment shall be made on the next succeeding U.S. Government Securities Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

#### 2.11 Payments by the Lenders to Agent; Settlement

(a) Agent may, on behalf of Lenders, disburse funds to the Borrower for Loans requested. Each Lender shall reimburse Agent on demand for all funds disbursed on its behalf by Agent, or if Agent so requests, each Lender will remit to Agent its Commitment Percentage of any Loan before Agent disburses same to the Borrower. If Agent elects to require that each Lender make funds available to Agent prior to disbursement by Agent to the Borrower, Agent shall advise each Lender by telephone or fax of the amount of such Lender's Commitment Percentage of the Loan requested by the Borrower no later than the Business Day prior to the scheduled Borrowing date applicable thereto, and each such Lender shall pay Agent such Lender's Commitment Percentage of such requested Loan, in same day funds, by wire transfer to Agent's account, as designated in writing by the Agent to Borrower from time to time, no later than 1:00 p.m. on such scheduled Borrowing date. Nothing in this Section 2.11(a) or elsewhere in this Agreement or the other Loan Documents, including the remaining provisions of Section 2.11, shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Agent any Lender or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

(b) At least once each calendar week or more frequently at Agent's election (each, a "**Settlement Date**"), Agent shall advise each Lender by telephone or fax of the amount of such Lender's Commitment Percentage of principal, interest and fees paid for the benefit of Lenders with respect to each applicable Loan. Agent shall pay to each Lender such Lender's Commitment Percentage (except as otherwise provided in Section 2.1(c)(vi) and Section 2.11(e)(iv)) of principal, interest and fees paid by the Borrower since the previous Settlement Date for the benefit of such Lender on the Loans held by it; provided, however, that in the case of any payment of principal received by Agent from Borrower in respect of any Loan prior to 1:00 p.m. on any Business Day, Agent shall pay to each applicable Lender such Lender's Commitment Percentage of such payment on such Business Day, and, in the case of any payment of principal received by Agent from the Borrower in respect of any Loan later than 1:00 p.m. on any Business Day, Agent shall pay to each applicable Lender such Lender's Commitment Percentage of such payment on the next Business Day. Except as provided in the preceding proviso with respect to Loan payments, such payments shall be made by wire transfer to such Lender) not later than 2:00 p.m. on the next Business Day following each Settlement Date.

(c) Availability of Lender's Commitment Percentage. Agent may assume that each Revolving Lender will make its Commitment Percentage of each Revolving Loan available to Agent on each Borrowing date. If such Commitment Percentage is not, in fact, paid to Agent by such Revolving Lender when due, Agent will be entitled to recover such amount on demand from such Revolving Lender without setoff, counterclaim or deduction of any kind. If any Revolving Lender fails to pay the amount of its Commitment Percentage forthwith upon Agent's demand, Agent shall promptly notify the Borrower and the Borrower shall promptly (but no later than one (1) Business Day thereafter) repay such amount to Agent. Nothing in this Section 2.11(c) or elsewhere in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Revolving Lender or to relieve any Revolving Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that the Borrower may have against any Revolving Lender as a result of any default by such Revolving Lender hereunder. Without limiting the provisions of Section 2.11(b), to the extent that Agent advances funds to the Borrower on behalf of any Revolving Lender and is not reimbursed therefor on the same Business Day as such advance is made, Agent shall be entitled to retain for its account all interest accrued on such advance from the date such advance was made until reimbursed by the applicable Revolving Lender.

(d) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from the Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim, defense, or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement or any other Loan Document must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to the Borrower or such other Person, without setoff, counterclaim or

deduction of any kind, and Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(iii) (A) If the Agent notifies a Lender, L/C Issuer, or other Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer, or other Secured Party (any such Lender, L/C Issuer, other Secured Party or other recipient, a "**Payment Recipient**"), that the Agent has determined in its sole discretion that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, L/C Issuer, other Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and held in trust for the benefit of the Agent, and such Lender, L/C Issuer, or other Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this Section 2.11(d)(iii) shall be conclusive, absent manifest error.

(B) Without limiting immediately preceding Section 2.11(d)(iii)(A), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "**Payment Notice**"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case, then (1) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (2) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment.

(C) Each Lender, L/C Issuer and Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender, L/C Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by the Agent to such Lender, L/C Issuer or Secured Party from any source, against any amount due to the Agent under Section 2.11(d)(iii)(A) above or under the indemnification provisions of this Agreement.

(D) The Borrower and each other Credit Party hereby agree that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be contractually subrogated (irrespective of whether the Agent may be equitably subrogated) to all the rights of such Lender, L/C Issuer, or other Secured Party under the Loan Documents with respect to such amount, (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment, and (z) to the extent that an Erroneous Payment was in any way or at any time credited as a payment or satisfaction of any of the Obligations, the Obligations or part thereof that were so credited, and all rights of the applicable Lender, L/C Issuer, other Secured Party or Agent, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received; provided, however, the amount of such Erroneous Payment that is comprised of funds received by the Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment shall be credited as a payment or satisfaction of the Obligations and the Obligations or part thereof that were so credited shall not be reinstated.

(E) To the extent permitted by applicable Requirements of Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(F) Each party's obligations, agreements and waivers under this Section 2.11(d)(iii) shall survive the resignation or replacement of the Agent or any transfer of rights or obligations by, or the replacement of, a Lender, L/C Issuer, or other Secured Party, the termination of any Commitment or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(e) Defaulting Lenders.

(i) Responsibility. The failure of any Defaulting Lender to make any Revolving Loan, or to fund any purchase of any participation to be made or funded by it (including with respect to any Letter of Credit or Swing Loan), or to make any payment required by it under any Loan Document on the date specified therefor shall not relieve any other Lender of its obligations to make such loan, fund the purchase of any such participation, or make any other such required payment on such date, and neither Agent nor, other than as expressly set forth herein, any other Lender shall be responsible for the failure of any Defaulting Lender to make a loan, fund the purchase of a participation or make any other required payment under any Loan Document.

(ii) Reallocation. If any Revolving Lender is a Defaulting Lender, all or a portion of such Defaulting Lender's Letter of Credit Obligations (unless such Lender is

the L/C Issuer that Issued such Letter of Credit) and reimbursement obligations with respect to Swing Loans shall, at Agent's election at any time or upon any L/C Issuer's or Swing Lender's, as applicable, written request delivered to Agent (whether before or after the occurrence of any Default or Event of Default), be reallocated to and assumed by the Revolving Lenders that are not Defaulting Lenders pro rata in accordance with their Commitment Percentages of the Aggregate Revolving Loan Commitment (calculated as if the Defaulting Lender's Commitment Percentage was reduced to zero and each other Revolving Lender's (other than any other Defaulting Lender's) Commitment Percentage had been increased proportionately), provided that no Revolving Lender shall be reallocated any such amounts or be required to fund any amounts that would cause the sum of its outstanding Revolving Loans, outstanding Letter of Credit Obligations, amounts of its participations in Swing Loans and its pro rata share of unparticipated amounts in Swing Loans to exceed its Revolving Loan Commitment. Subject to Section 10.25, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iii) Voting Rights. Notwithstanding anything set forth herein to the contrary, including Section 10.1, a Defaulting Lender (other than a Defaulting Lender who holds no unfunded Commitment) shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" or a "Revolving Lender" (or be, or have its Loans and Commitments, included in the determination of "Required Lenders", "Required Revolving Lenders" or "Lenders directly affected" pursuant to Section 10.1) for any voting or consent rights under or with respect to any Loan Document, provided that (A) the Commitment of a Defaulting Lender may not be increased, extended or reinstated, (B) the principal of a Defaulting Lender's Loans may not be reduced or forgiven, and (C) the interest rate applicable to Obligations under the Loan Documents owing to a Defaulting Lender may not be reduced in such a manner that by its terms affects such Defaulting Lender more adversely than other Lenders, in each case, without the consent of such Defaulting Lender. Moreover, for the purposes of determining Required Lenders and Required Revolving Lenders, the Loans, Letter of Credit Obligations, and Commitments held by Defaulting Lenders shall be excluded from the total Loans and Commitments outstanding.

(iv) Borrower Payments to a Defaulting Lender. Agent shall be authorized to use all payments received by Agent for the benefit of any Defaulting Lender pursuant to this Agreement to pay in full the Aggregate Excess Funding Amount to the appropriate Secured Parties. Agent shall be entitled to hold as cash collateral in a non-interest bearing account up to an amount equal to such Defaulting Lender's pro rata share, without giving effect to any reallocation pursuant to Section 2.11(e)(ii), of all Letter of Credit Obligations until the Facility Termination Date. Upon any such unfunded obligations owing by a Defaulting Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Defaulting Lender. With respect to such Defaulting Lender's failure to fund Revolving Loans or purchase participations in Letters of Credit or Letter of Credit Obligations, any amounts applied by Agent to satisfy such funding shortfalls shall be deemed to constitute a Revolving Loan or amount of the participation required to be funded and, if necessary to effectuate the foregoing, the other Revolving Lenders shall be deemed to have sold, and such Defaulting Lender shall be deemed to have purchased, Revolving Loans or Letter of Credit participation interests from the other Revolving Lenders until such time as the

aggregate amount of the Revolving Loans and participations in Letters of Credit and Letter of Credit Obligations are held by the Revolving Lenders in accordance with their Commitment Percentages of the Aggregate Revolving Loan Commitment. Any amounts owing by a Defaulting Lender to Agent which are not paid when due shall accrue interest at the interest rate applicable during such period to Revolving Loans that are Base Rate Loans. In the event that Agent is holding cash collateral of a Defaulting Lender that cures pursuant to clause (v) below or ceases to be a Defaulting Lender pursuant to the definition of Defaulting Lender, Agent shall return the unused portion of such cash collateral to such Lender. The **"Aggregate Excess Funding Amount"** of a Defaulting Lender shall be the aggregate amount of (A) all unpaid obligations owing by such Lender to Agent, L/C Issuers, Swing Lender, and other Lenders under the Loan Documents, including such Lender's pro rata share of all Revolving Loans, Letter of Credit Obligations and Swing Loans, plus, without duplication, (B) all amounts of such Defaulting Lender's Letter of Credit Obligations and reimbursement obligations with respect to Swing Loans reallocated to other Lenders pursuant to Section 2.11(e)(ii).

(v) Cure. A Lender may cure its status as a Defaulting Lender under clause (a) of the definition of Defaulting Lender if such Lender fully pays to Agent, on behalf of the applicable Secured Parties, the Aggregate Excess Funding Amount, plus all interest due thereon. Any such cure shall not relieve any Lender from liability for breaching its contractual obligations hereunder and shall not constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(vi) Fees. A Lender that is a Defaulting Lender pursuant to clause (a) of the definition of Defaulting Lender shall not earn and shall not be entitled to receive, and the Borrower shall not be required to pay, such Lender's portion of the Unused Commitment Fee during the time such Lender is a Defaulting Lender pursuant to clause (a) thereof. In the event that any reallocation of Letter of Credit Obligations occurs pursuant to Section 2.11(e)(ii), during the period of time that such reallocation remains in effect, the Letter of Credit Fee payable with respect to such reallocated portion shall be payable to (A) all Revolving Lenders based on their pro rata share of such reallocation or (B) to the L/C Issuer for any remaining portion not reallocated to any other Revolving Lenders. So long as a Lender is a Defaulting Lender, the Letter of Credit Fee payable with respect to any Letter of Credit Obligation of such Defaulting Lender that has not been reallocated pursuant to Section 2.11(e)(ii) shall be payable to the L/C Issuer.

(f) Procedures. Agent is hereby authorized by each Credit Party and each other Secured Party to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion, on E-Systems.

(g) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans or Commitments in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, Agent and such Lender.

### ARTICLE III

#### CONDITIONS PRECEDENT

3.1 Conditions Precedent to Effectiveness of Restatement This Agreement shall not become effective, the Original Credit Agreement shall remain in full force and effect without amendment, and the terms and conditions shall not apply unless and until each of the following conditions have been satisfied or waived in accordance with the terms of this Agreement (subject to Section 5.15):

- (a) Loan Documents. The Agent's receipt of executed counterparts of this Agreement, the Guaranty and Security Agreement, and the Agent Fee Letter, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower on behalf of each Credit Party and dated the Restatement Date;
- (b) Notes. A Note executed by the Borrower in favor of each Lender requesting a Note;
- (c) Evidence of Solvency. The Agent shall have received a solvency certificate from a Responsible Officer of the Borrower;
- (d) Organization Documents. The Agent shall have received (in each case, in form and substance reasonably satisfactory to the Agent):
  - (i) copies of the Organization Documents of the Credit Parties certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a Responsible Officer of the Credit Parties to be true and correct as of the Restatement Date;
  - (ii) such certificates of resolutions or other action, incumbency certificates of Responsible Officers of the Credit Parties as the Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Credit Party is a party; and
  - (iii) such certificates of good standing (to the extent such concept exists in any applicable jurisdiction) from the applicable secretary of state of the state (or equivalent authority) of organization of each Credit Party;
- (e) Material Adverse Effect. Since December 31, 2023, there have been no events, circumstances, developments or other changes in facts that would, in the aggregate, have a Material Adverse Effect;
- (f) Opinion of Counsel. The Agent shall have received a customary legal opinion of Baker McKenzie LLP, counsel to the Credit Parties, dated as of the Restatement Date in form and substance reasonably satisfactory to the Agent;
- (g) Fees and Expenses. The Agent and Lenders shall have received payment for all fees and expenses, including Attorney's Costs, required to be paid on the Restatement Date pursuant to any Loan Document or other applicable Contractual Obligation;
- (h) KYC Information. At least five days prior to the Restatement Date, (x) all documentation and other information required by regulatory authorities under applicable "know

your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, shall have been delivered to the Agent and (y) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to the Borrower; and

(i) Officer's Certificate. The Agent shall have received a certificate of a Responsible Officer of the Borrower certifying as to confirmation of the matters in Section 3.1(e), 3.2(a) and 3.2(b).

For the purpose of determining satisfaction with the conditions specified in this Section 3.1, each Lender that has signed and delivered this Agreement shall be deemed to have accepted, and to be satisfied with, each document or other matter required under this Section 3.1 unless Agent shall have received written notice from such Lender prior to the Restatement Date specifying its objection thereto.

3.2 Conditions Precedent to All Borrowings. The obligation of each Lender to make Loans and of each L/C Issuer to Issue, or cause to be Issued, any Letters of Credit hereunder (including the funding of Loans on the Restatement Date), is subject to satisfaction of the following conditions:

(a) each representation or warranty by any Credit Party contained herein or in any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall be true and correct in all material respect (without duplication of any materiality qualifier contained therein) as of such earlier date);

(b) no Default or Event of Default shall have occurred and be continuing or shall immediately result after giving effect to such Loan (or the incurrence of such Letter of Credit Obligation) and the application of the proceeds thereof;

(c) after giving effect to any Revolving Loan (or the incurrence of any Letter of Credit Obligations), the aggregate outstanding amount of the Revolving Loans shall not exceed the Maximum Revolving Loan Balance; and

(d) the Agent shall have received a duly completed Notice of Borrowing in accordance with Section 2.5.

The request by the Borrower and acceptance by the Borrower of the proceeds of any Loan or the incurrence of any Letters of Credit Obligations shall be deemed to constitute, as of the date thereof, (i) a representation and warranty by the Borrower that (x) except with respect to Incremental Term Loans if and as applicable as provided in Section 3.2(a) above, each representation and warranty by any Credit Party contained herein or in any other Loan Document is true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties were true and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date) and (y) the conditions in this Section 3.2 (without regard to any determination or agreement made or to be made by Agent or providers of any Incremental Term Loan under Section 3.2(a)) have been satisfied and (ii) a reaffirmation by each Credit Party of the granting and continuance of Agent's Liens, on behalf of itself and the Secured Parties, pursuant to the Collateral Documents.

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES

The Credit Parties, jointly and severally, represent and warrant to Agent and each Lender that the following are, on and as of each date on which such representation and warranty is made, true, correct and complete:

4.1 Corporate Existence and Power. Each Credit Party and each of their respective Subsidiaries: (a) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable; (b) has the power and authority and all governmental licenses, authorizations, Permits, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver, and perform its obligations under the Loan Documents to which it is a party; (c) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification or license; and (d) is in compliance with all Requirements of Law; except, in each case referred to in clause (b)(i), (c) or clause (d), to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

4.2 Corporate Authorization; No Contravention. The execution, delivery and performance by the Credit Parties of this Agreement and by each Credit Party of any other Loan Document to which such Person is party, have been duly authorized by all necessary action, and do not and will not (a) contravene the terms of any of that Person's Organization Documents; (b) conflict with or result in any material breach or contravention of, or result in the creation of any Lien (other than Liens in favor of Agent created under the Loan Documents) under, any document evidencing any material Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its Property is subject, or (c) violate any material Requirement of Law in any material respect.

4.3 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document except (a) for recordings and filings in connection with the Liens granted to Agent under the Collateral Documents, (b) those obtained or made on or prior to the Restatement Date and (c) filings with the Commission after the date of this Agreement to disclose the entry into, and terms of, this Agreement and the Loan Documents.

4.4 Binding Effect. This Agreement and each other Loan Document to which any Credit Party is a party constitute the legal, valid and binding obligations of each such Person which is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

4.5 Litigation. Except as set forth on Schedule 4.5, there are no actions, suits, proceedings, claims or disputes pending, or to the Knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries that (a) would reasonably be expected to result in monetary judgment(s) or relief, individually or in the aggregate, in excess of \$7,000,000 (as determined by the Borrower in good faith) or (b) would reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document, or

directing that the transactions provided for herein or therein not be consummated as herein or therein provided. As of the Restatement Date, no Credit Party or any Subsidiary of any Credit Party is the subject of an audit, or to the Knowledge of the Borrower, any material review or investigation by any Governmental Authority (excluding the IRS and other taxing authorities) concerning the violation or possible violation of any Requirement of Law (as determined by the Borrower in good faith).

4.6 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by any Credit Party or the grant or perfection of Agent's Liens on the Collateral. No Credit Party and no Subsidiary of any Credit Party is in default under or with respect to any Contractual Obligation in any respect which would reasonably be expected to have a Material Adverse Effect.

4.7 ERISA Compliance.

(a) (i) Except as could not reasonably be expected, in the aggregate, to have a Material Adverse Effect, each Employee Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies, (ii) each Employee Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, except where a failure to be in compliance could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iii) there are no existing or pending (or to the knowledge of any Credit Party or any Subsidiary of a Credit Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Employee Benefit Plan to which any Credit Party or any Subsidiary of a Credit Party incurs or otherwise has or could have an obligation or any Liability, that could, in the aggregate, reasonably be expected to have a Material Adverse Effect, (iv) no ERISA Event has occurred or is reasonably expected to occur that, in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect or result in the imposition of a Lien on any asset of any Credit Party or any Subsidiary of a Credit Party, (v) as of the most recent valuation date for any Title IV Plan, any amount of Unfunded Benefit Liabilities, would not reasonably be expected to have a Material Adverse Effect, and (vi) as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrower and its ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 101(1) of ERISA, could not reasonably be expected to have a Material Adverse Effect. On the Restatement Date, no ERISA Event has occurred in connection with which material obligations or material Liabilities of any Credit Party or a Subsidiary of any Credit Party remain outstanding.

(b) Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except to the extent that any such failure to comply could not reasonably be expected, in the aggregate, to have a Material Adverse Effect. All contributions required to be made with respect to a Non-U.S. Plan have been timely made, except to the extent where failure to make such contributions could not reasonably be expected, in the aggregate, to have a Material Adverse Effect or result in a Lien on the assets of any Credit Party or Subsidiary of any Credit Party. Neither any Credit Party nor any of their Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan, except where such obligation could not reasonably be expected, in the aggregate, to have a Material Adverse Effect or result in a Lien on the assets of any Credit Party or Subsidiary of any Credit Party. Except as could not reasonably be expected, in the aggregate, to have a Material Adverse Effect, the present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Credit Party's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities.

4.8 Use of Proceeds; Margin Regulations. The proceeds of the Loans are intended to be and shall be used solely for the purposes set forth in and permitted by Section 5.10. No Credit Party and no Subsidiary of any Credit Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. As of the Restatement Date, except as set forth on Schedule 4.8, no Credit Party and no Subsidiary of any Credit Party owns any Margin Stock.

4.9 Ownership of Property; Liens. As of the Restatement Date, the Real Estate listed in Schedule 4.9 constitutes all of the Real Estate of each Credit Party and each of their respective Subsidiaries. Each of the Credit Parties and each of their respective Subsidiaries has good record title or valid leasehold interests in all Real Estate and personal property and valid leasehold interests in all leased personal property, in each instance, necessary or used in the ordinary conduct of their respective businesses. None of the Property of any Credit Party or any Subsidiary of any Credit Party is subject to any Liens other than Permitted Liens.

4.10 Taxes. All material federal, state, local and foreign income and franchise and other material Tax returns, reports and statements (collectively, the "**Tax Returns**") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities, all such Tax Returns are true and correct in all material respects, and all Taxes reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. As of the Restatement Date, no Tax Return is under audit or examination by any Governmental Authority and no notice of any audit or examination or any assertion of any claim for Taxes has been given or made in writing by any Governmental Authority that has not been fully resolved. Complete and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the Tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities.

4.11 Financial Condition.

(a) Each of (i) the audited consolidated balance sheet of the Borrower and its Subsidiaries dated December 31, 2023, and the related audited consolidated statements of income or operations, shareholders' equity and cash flows for the Fiscal Year ended on that date and (ii) the unaudited interim consolidated balance sheet of the Borrower and its Subsidiaries dated December 31, 2023 and the related unaudited consolidated statements of income, shareholders' equity and cash flows for the three fiscal months then ended:

(x) except as set forth on Schedule 4.11(a), were prepared in accordance with GAAP consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and

(y) present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as of the dates thereof and results of operations for the periods covered thereby.

(b) [Reserved].

(c) Since December 31, 2023, there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected to result in a Material Adverse Effect.

(d) All financial performance projections delivered to Agent, including the financial performance projections delivered on or prior to the Restatement Date, represent the Borrower's good faith estimate of future financial performance and are based on assumptions believed by the Borrower to be fair and reasonable in light of current market conditions, it being acknowledged and agreed by Agent and Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

4.12 Environmental Matters. Except as set forth in Schedule 4.12 and except where any failures to comply would not reasonably be expected to result in a Material Adverse Effect, each Credit Party and each Subsidiary of each Credit Party (a) are currently, and for the five year period immediately prior to the Restatement Date have been, in compliance with all applicable Environmental Laws, including obtaining and maintaining all Permits required by any applicable Environmental Law, (b) is not party to, and no Real Estate currently (or to the Knowledge of the Borrower previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any Contractual Obligation or any pending or, to the Knowledge of the Borrower, threatened, order, action, investigation, suit, proceeding, audit, Lien, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Law, (c) has not caused or suffered to occur a Release of Hazardous Materials at, to or from any Real Estate and (d) does not currently (or to the Knowledge of the Borrower, previously) own, lease, sublease, operate or otherwise occupy Real Estate that is contaminated by any Hazardous Materials.

4.13 Regulated Entities. None of any Credit Party, any Person controlling any Credit Party, or any Subsidiary of any Credit Party, is (a) an "investment company" within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its obligations under the Loan Documents.

4.14 Solvency. Both before and after giving effect to (a) the Loans made, or Commitments extended, or Letters of Credit Issued, as applicable, on or prior to the date this representation and warranty is made or remade, (b) the disbursement of the proceeds of such Loans to or as directed by the Borrower and (c) the payment and accrual of all transaction costs in connection with the foregoing, the Credit Parties taken as a whole are Solvent.

4.15 Labor Relations. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the Knowledge of the Borrower, threatened) against or involving any Credit Party or any Subsidiary of any Credit Party, except for those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.15, as of the Restatement Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Credit Party or any Subsidiary of any Credit Party, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Credit Party or any Subsidiary of any Credit Party and (c) to the Credit Parties' knowledge, no such representative has sought certification or recognition with respect to any employee of any Credit Party or any Subsidiary of any Credit Party.

4.16 Intellectual Property. Each Credit Party and each Subsidiary of each Credit Party owns, or is licensed or has the right to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license would not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Credit Party, (a) the conduct and operations of the businesses of each Credit Party and each Subsidiary of each Credit Party does not infringe, misappropriate, dilute or violate any Intellectual Property owned by any other Person and (b) no other Person has contested in writing any right, title or interest of any Credit Party or any

Subsidiary of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.17 Brokers' Fees; Transaction Fees. Except as disclosed on Schedule 4.17 and except for fees payable to Agent and Lenders, none of the Credit Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the transactions contemplated hereby.

4.18 Ventures, Subsidiaries and Affiliates; Outstanding Stock. Except as set forth in Schedule 4.18, as of the Restatement Date, no Credit Party and no Subsidiary of any Credit Party (a) has any Subsidiaries, or (b) is engaged in any joint venture or partnership with any other Person. All issued and outstanding Stock of the Borrower and each of its Subsidiaries are duly authorized and validly issued, fully paid, non-assessable, and free and clear of all Liens other than, with respect to the Stock of the Borrower and Subsidiaries of the Borrower, those in favor of Agent, for the benefit of the Secured Parties. Set forth in Schedule 4.18 is a true and complete organizational chart of the Borrower and each of its Subsidiaries, which the Credit Parties shall update upon notice to Agent promptly following the completion of any Permitted Acquisition or other Investment and promptly following the incorporation, organization or formation of any Subsidiary.

4.19 Jurisdiction of Organization; Chief Executive Office. Schedule 4.19 lists each Credit Party's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Credit Party's chief executive office or sole place of business, in each case as of the date hereof, and such Schedule 4.19 also lists all jurisdictions of organization and legal names of such Credit Party for the five years preceding the Restatement Date.

4.20 Deposit Accounts and Other Accounts. Schedule 4.20 lists all banks and other financial institutions securities intermediary or commodity intermediary at which any Credit Party maintains deposit, securities, commodities or similar accounts as of the Restatement Date, and such Schedule correctly identifies the name, address and any other relevant contact information reasonably requested by Agent with respect to each depository or intermediary, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

4.21 Full Disclosure; Beneficial Ownership. (a) None of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Credit Party or any of their Subsidiaries in connection with the Loan Documents and the Transactions (including the offering and disclosure materials, if any, delivered by or on behalf of any Credit Party to Agent or the Lenders prior to the Restatement Date, but excluding any financial performance projections), when taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not materially misleading as of the time when made or delivered.

(b) As of the Restatement Date, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

4.22 Foreign Assets Control Regulations; Anti-Money Laundering; Anti-Corruption Practices.

(a) Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations ("Sanctions") as administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") and the U.S. State Department. No Credit Party and no Subsidiary of a Credit Party (i) is a Person on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List"), (ii) is a person who is otherwise the target of U.S. economic sanctions laws such that a U.S. person cannot deal or otherwise engage in business transactions with such

person, (iii) is a Person organized or resident in a country or territory subject to comprehensive Sanctions (a **Sanctioned Country**"), or (iv) is owned or controlled by (including by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a government of a Sanctioned Country such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited by U.S. law.

(b) Each Credit Party and each Subsidiary of each Credit Party is in compliance with all laws related to terrorism or money laundering ("Anti-Money Laundering Laws") including: (i) all applicable requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 5311 et. seq., (the Bank Secrecy Act)), as amended by Title III of the USA Patriot Act, (ii) the Trading with the Enemy Act, (iii) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (66 Fed. Reg. 49079), any other enabling legislation, executive order or regulations issued pursuant or relating thereto and (iv) other applicable federal or state laws relating to "know your customer" or anti-money laundering rules and regulations. No action, suit or proceeding by or before any court or Governmental Authority with respect to compliance with such Anti-Money Laundering Laws is pending or threatened to the knowledge of each Credit Party and each Subsidiary of each Credit Party.

(c) Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 ("FCPA") and the U.K. Bribery Act 2010 ("Anti-Corruption Laws"). None of the Credit Party or any Subsidiary, nor to the knowledge of the Credit Party, any director, officer, agent, employee, or other person acting on behalf of the Credit Party or any Subsidiary, has taken any action, directly or indirectly, that would result in a violation of applicable Anti-Corruption Laws.

(d) The Credit Party and each Subsidiary has instituted and will continue to maintain policies and procedures designed to ensure compliance by the Credit Parties, their Subsidiaries and their respective directors, officers, employees and agents with Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.

4.23 Insurance. Schedule 4.23 sets forth a description of all material insurance maintained by or on behalf of the Borrower and its Subsidiaries as of the Restatement Date. The Borrower and its Subsidiaries (after giving effect to all self-insurance) have insurance in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar business of the same size and character as the Borrower or such Subsidiary (as applicable) and, to the extent relevant, owning similar properties in localities where such Person operates.

4.24 Senior Indebtedness; Subordination. The Obligations hereunder and under the other Loan Documents are within the definition of "First Lien Debt", "Senior Debt" (or any comparable terms) and "Designated Senior Debt" (or any comparable terms), to the extent applicable, under and as defined in the subordination provisions in the documents governing Subordinated Indebtedness and Indebtedness secured by a Lien junior to the Lien securing the Obligations hereunder, if any.

ARTICLE V  
AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date:

5.1 Financial Statements. Each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP (provided that unaudited interim financial statements shall not be required to have footnote disclosures and are subject to normal year-end adjustments). The Borrower shall deliver to Agent and each Lender by Electronic Transmission and in detail reasonably satisfactory to Agent and the Required Lenders:

(a) as soon as available, but not later than ninety (90) days after the end of each Fiscal Year, a copy of the audited consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, and accompanied by the report of any "Big Four" or other nationally-recognized independent certified public accounting firm reasonably acceptable to Agent which report shall (i) contain an unqualified opinion, stating that such consolidated financial statements present fairly in all material respects the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and (ii) not include any explanatory paragraph expressing substantial doubt as to going concern status; and

(b) as soon as available, but not later than forty-five (45) days after the end of each Fiscal Quarter of each year, a copy of the unaudited consolidated and consolidating balance sheets of the Borrower and its Subsidiaries, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows as of the end of such Fiscal Quarter and for the portion of the Fiscal Year then ended, all certified on behalf of the Borrower by an appropriate Responsible Officer of the Borrower as being complete and correct and fairly presenting, in all material respects, in accordance with GAAP, the financial position and the results of operations of the Borrower and its Subsidiaries, subject to normal year-end adjustments and absence of footnote disclosures.

Notwithstanding the foregoing, the obligations in Sections 5.1(a) and (b) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by the Borrower delivering to the Agent (and the Agent thereafter making available to each Lender) (I) the applicable financial statements of the Borrower or (II) the Borrower's, as applicable, Form 10-K or 10-Q, as applicable filed with the Commission; provided that, with respect to clauses (I) and (II), to the extent such information is in lieu of information required to be provided under Section 5.1(a), such materials are accompanied by a report and opinion of KPMG LLP or an independent registered public accounting firm of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" explanatory language or any qualification or exception as to the scope of such audit (other than as is expressly solely with respect to, or solely as a result of (i) the debt maturity of the Loans, or any other Indebtedness occurring within one year from the time such opinion is delivered and (ii) a breach of any financial covenant set forth in Article VII hereof).

5.2 Certificates; Other Information. The Borrower shall furnish to Agent (and Agent shall thereafter make available to each Lender) by Electronic Transmission:

(a) together with each delivery of annual and quarterly financial statements pursuant to Section 5.1, (i) a management discussion and analysis report, in reasonable detail, signed by

the chief financial officer of the Borrower, describing the financial condition and results of operation of the Credit Parties and their Subsidiaries for the Fiscal Quarter and the portion of the Fiscal Year then ended (or for the Fiscal Year then ended in the case of annual financial statements), and (ii) a report setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the most recent projections for the current Fiscal Year delivered pursuant to Section 5.2(d) and discussing the reasons for any significant variations;

(b) concurrently with the delivery of the annual financial statements pursuant to Section 5.1(a) and quarterly financial statements for the first three Fiscal Quarters of each Fiscal Year pursuant to Section 5.1(b), a fully and properly completed certificate in the form of Exhibit 5.2(b) (a "**Compliance Certificate**"), certified on behalf of the Borrower by a Responsible Officer of the Borrower, which Compliance Certificate shall set forth in reasonable detail any Margin Stock owned by each Credit Party and each Subsidiary of each Credit Party and a calculation of the Available Amount, in each instance, as of the last day of each Fiscal Quarter;

(c) promptly after the same are sent, copies of all financial statements and reports (excluding such reports which are delivered solely to the board of directors (or other similar body)) which any Credit Party sends to its shareholders or other equity holders, as applicable, generally and promptly after the same are filed, copies of all financial statements and regular, periodic or special reports which such Person may make to, or file with, the Commission or any successor or similar Governmental Authority;

(d) as soon as available and in any event no later than sixty (60) days after the last day of each Fiscal Year of the Borrower, projections of the Credit Parties (and their Subsidiaries) consolidated and consolidating financial performance for the immediately following Fiscal Year;

(e) promptly upon receipt thereof, copies of any reports submitted by the Borrower's certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of any Credit Party made by such accountants;

(f) from time to time, with respect to any Property subject to a Mortgage or required to be subject to a Mortgage under the Loan Documents, if Agent determines that obtaining appraisals is necessary in order for Agent or any Lender to comply with applicable laws or regulations (including any appraisals required to comply with FIRREA), and at any time if an Event of Default shall have occurred and be continuing, Agent may, or may require the Borrower to, in either case at the Borrower's expense, obtain appraisals in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market value of all or any portion of the personal property of any Credit Party or any Subsidiary of any Credit Party and the fair market value or such other value as determined by Agent (for example, replacement cost for purposes of Flood Insurance) of any Real Estate of any Credit Party or any Subsidiary of any Credit Party;

(g) promptly following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws; and

(h) promptly, such additional business, financial, corporate affairs, perfection certificates and other information as Agent may from time to time reasonably request.

5 . 3 Notices. The Borrower shall notify promptly Agent (and Agent shall thereafter notify each Lender) of each of the following promptly after the Borrower obtains Knowledge thereof:

(a) the occurrence or existence of any Default or Event of Default;

(b) any breach or non-performance of, or any default under, (x) any agreement or document governing Material Indebtedness or (y) any Contractual Obligation of any Credit Party or any Subsidiary of any Credit Party, or any violation of, or non-compliance with, any Requirement of Law that in the case of this clause (y) would reasonably be expected to result in a Material Adverse Effect, and in the case of clauses (x) and (y) including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, such Person has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Credit Party or any Subsidiary of any Credit Party and any Governmental Authority which would reasonably be expected to result in a Material Adverse Effect;

(d) the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party, any Subsidiary of any Credit Party or any of their respective property, which (a) would reasonably be expected to result in monetary judgment(s) or relief, individually or in the aggregate, in excess of \$7,000,000 (as determined by the Borrower in good faith) or (b) would reasonably be expected to result in a Material Adverse Effect;

(e) (i) upon the Borrower obtaining Knowledge (A) of the existence of any condition that could reasonably be expected to result in Environmental Liabilities or violations of any Environmental Law or (B) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging Environmental Liabilities or a violation of any Environmental Laws which in the case of clauses (A) and (B) above, in the aggregate for all such clauses, would reasonably be expected to result in Material Environmental Liabilities, (ii) the receipt by any Credit Party of notification that any Property of any Credit Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities, a certificate of a Responsible Officer of the Borrower specifying the nature and period of existence of any such condition or event, or specifying the notice given or action taken by such holder or Person, and what action the applicable Credit Party has taken, is taking or proposes to take with respect thereto;

(f) (i) the occurrence of any ERISA Event, together with all notices and any other documents received by any Credit Party or ERISA Affiliate in connection with such ERISA Event; and (ii) providing any other documents the Agent may reasonably request in connection with such ERISA Event;

(g) any Material Adverse Effect subsequent to the date of the most recent audited financial statements delivered to Agent and Lenders pursuant to this Agreement; and

(h) any material changes in accounting policies or financial reporting practices by any Credit Party or any Subsidiary of any Credit Party except as required by GAAP.

Each notice pursuant to this Section shall be an Electronic Transmission accompanied by a statement by a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein, and stating what action the Borrower or other Person proposes to take with respect thereto. Each notice under Section 5.3(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached.

5.4 Preservation of Corporate Existence, Etc. Each Credit Party shall, and shall cause each of its Subsidiaries to:

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, as applicable, except as permitted by Section 6.3; and

(b) preserve and maintain its rights (charter and statutory), privileges, franchises and Permits necessary or desirable in the normal conduct of its business except as permitted by Sections 6.2 and 6.3 and except as would not reasonably be expected to have a Material Adverse Effect.

5.5 Maintenance of Property. Each Credit Party shall, except as otherwise permitted by this Agreement, maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its Property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.6 Insurance. The Credit Parties shall, and shall cause each of their Subsidiaries to, maintain with financially sound and reputable insurance companies insurance with respect to their assets, properties and business, against such hazards and liabilities, of such types and in such amounts, as is customarily maintained by companies in the same or similar businesses similarly situated, including Flood Insurance. Each such policy of insurance shall (i) in the case of each liability policy, name 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 loss payable clause or endorsement that names Agent, on behalf of the Secured Parties, as the loss payee thereunder and, to the extent available, provide for at least thirty (30) days' prior written notice to Agent of any modification or cancellation of such policy (or ten (10) days' prior written notice in the case of the failure to pay any premiums thereunder). A true and complete listing of such insurance, including issuers, coverages and deductibles, shall be provided to Agent promptly following Agent's request. Notwithstanding the requirements above, Flood Insurance shall not be required for (x) Real Estate not located in a Special Flood Hazard Area, or (y) Real Estate located in a Special Flood Hazard Area in a community that does not participate in the National Flood Insurance Program.

5.7 Payment of Tax Obligations. Each Credit Party shall, and shall cause each of its Subsidiaries to, pay, discharge and perform as the same shall become due and payable or required to be performed all Tax liabilities, assessments and governmental charges or levies upon it or its Property, unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the enforcement of any Lien and for which adequate reserves in accordance with GAAP are being maintained by such Person.

5.8 Compliance with Laws. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, except where the failure to comply would not reasonably be expected to have, a Material Adverse Effect. Each Credit Party shall maintain in effect and enforce policies and procedures designed to ensure compliance by the Credit Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

5.9 **Inspection of Property and Books and Records.** Each Credit Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased, or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and Agent shall have access at any and all times during the continuance thereof): (a) provide access to such property to Agent and any of its Related Persons, as frequently as Agent determines to be appropriate; and (b) permit Agent and any of its Related Persons to conduct field examinations, appraise, inspect, and make extracts and copies (or take originals if reasonably necessary) from all of such Credit Party's books and records, and evaluate and conduct appraisals and evaluations in any manner and through any medium that Agent considers advisable, in each instance, at the Credit Parties' expense; provided the Credit Parties shall only be obligated to reimburse Agent for the expenses of one such appraisal, evaluation and inspection per calendar year or more frequently if an Event of Default has occurred and is continuing. Any Lender may accompany Agent or its Related Persons in connection with any inspection at such Lender's expense.

5.10 **Use of Proceeds.** The Borrower shall use the proceeds of the Loans (other than Incremental Term Loans) solely as follows: (a) to pay costs and expenses required to be paid pursuant to Section 3.1, and (b) for working capital, capital expenditures and other general corporate purposes not in contravention of any Requirement of Law and not in violation of this Agreement (including to finance Permitted Acquisitions and Permitted Investments (and pay costs and expenses in connection therewith)); provided, however, in no event may proceeds of Revolving Loans or Swing Loans be used, directly or indirectly, to make an optional prepayment of Term Loans. The Borrower shall use proceeds of Incremental Term Loans solely as provided in Section 2.1(e)(ii)(C). No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, use any Loan proceeds, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of any Credit Party or others incurred to purchase or carry Margin Stock.

5.11 **Cash Management Systems.** Each Credit Party shall enter into, and cause each depository, securities intermediary or commodities intermediary to enter into, Control Agreements with respect to each deposit, securities, commodity or similar account maintained by such Person (other than (a) any payroll account so long as such payroll account is a zero balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same, (b) petty cash accounts, amounts on deposit in which do not exceed \$2,500,000 in the aggregate at any one time and (c) withholding tax and fiduciary accounts (such excluded accounts, "**Excluded Accounts**") as of and after the Restatement Date; provided, it is agreed and understood that (A) the Credit Parties shall have until the date that is ninety (90) days following the Restatement Date or the closing date of such Permitted Acquisition, as applicable (or such later date as may be agreed to by Agent in its sole discretion) to comply with the provisions of this Section 5.11 with regard to accounts (other than Excluded Accounts) of the Credit Parties existing on the Restatement Date or acquired in connection with such Permitted Acquisition, as applicable and (B) during the periods described in clause (A), the absence of a Control Agreement as to cash or Cash Equivalents in the applicable accounts referred to therein shall not (in and of itself) prevent the cash or Cash Equivalents therein from being netted in the calculation of Consolidated Total Leverage Ratio.

5.12 [Reserved].

5.13 **Further Assurances.**

(a) Each Credit Party shall ensure that all written information, exhibits and reports furnished to Agent or the Lenders, when taken as a whole, do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to Agent and the Lenders and correct

any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(b) Promptly upon request by Agent, the Credit Parties shall (and, subject to the limitations set forth herein and in the Collateral Documents, shall cause each of their Subsidiaries to) take such additional actions and execute such documents as Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the Properties, rights or interests covered by any of the Collateral Documents, (iii) subject to customary "Funds Certain Provisions" with respect to perfection of Liens on assets acquired in a Limited Condition Acquisition, to perfect and maintain the validity, effectiveness and (to the extent required hereby) priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, grant, preserve, protect and confirm to the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document.

(c) Without limiting the generality of the foregoing and except as otherwise approved in writing by Required Lenders, the Credit Parties shall cause each of their Domestic Subsidiaries (other than Excluded Subsidiaries) promptly after formation or acquisition thereof, to guaranty the Obligations and to cause each such Domestic Subsidiary to grant to Agent, for the benefit of the Secured Parties, a security interest in, subject to the limitations set forth herein and in the Collateral Documents, all of such Domestic Subsidiary's Property to secure such guaranty. If at the time of delivery of any financial statements pursuant to Section 5.1 there are Subsidiaries of the Borrower which are classified as "Immaterial Subsidiaries" but which collectively (a) generate more than 5% of consolidated revenue on a pro forma basis or (b) have total assets (including Stock in other Subsidiaries and excluding investments that are eliminated in consolidation) with a book value of equal to or greater than 5% of the Consolidated Total Assets, then the Borrower shall promptly cause one or more of such Immature Subsidiaries that does not otherwise qualify as an Excluded Subsidiary to comply with the provisions of Section 5.13, such that, after such Subsidiaries become Guarantors hereunder (and provide all Collateral required to be provided by Guarantors), all "Immaterial Subsidiaries" that are not Guarantors shall (A) generate not more than 5% of consolidated revenue in the aggregate and (B) have total assets with a book value of not more than 5% of Consolidated Total Assets. Furthermore, the Borrower shall notify promptly Agent of the issuance by or to any Credit Party of any Stock and, except as otherwise approved in writing by Required Lenders, each Credit Party shall pledge all of the Stock of each of its Domestic Subsidiaries (other than Excluded Domestic Subsidiaries) and Foreign Subsidiaries (other than Excluded Foreign Subsidiaries) and sixty-five percent (65%) (or such greater percentage as would not reasonably be expected to result in any material adverse tax consequences to any Credit Party) of the outstanding voting Stock and one hundred percent (100%) of the outstanding non-voting Stock of each Excluded Foreign Subsidiary directly owned by a Credit Party and each Excluded Domestic Holdco directly owned by a Credit Party (and no Stock of an Excluded Foreign Subsidiary or Excluded Domestic Holdco not directly owned by a Credit Party), in each instance, to Agent, for the benefit of the Secured Parties, to secure the Obligations, promptly after formation or acquisition of such Subsidiary.

(d) The Credit Parties shall deliver, or cause to be delivered, to Agent, appropriate resolutions, secretary certificates, certified Organization Documents and, if requested by Agent, legal opinions relating to the matters described in this Section 5.13 (which opinions shall be in form and substance reasonably acceptable to Agent and, to the extent applicable, substantially similar to the opinions delivered on the Restatement Date), in each instance with respect to each Credit Party formed or acquired, and each Credit Party or Person (other than a Credit Party)

whose Stock is being pledged, after the Restatement Date. In connection with each pledge of Stock, the Credit Parties shall deliver, or cause to be delivered, to Agent, irrevocable proxies and stock powers and/or assignments, as applicable, duly executed in blank. In the event any Credit Party acquires fee title to any Real Estate with a fair market value in excess of \$5,000,000, within thirty (30) days after (or such later date as may be agreed by Agent in its sole discretion) such acquisition, such Person shall execute and/or deliver, or cause to be executed and/or delivered, to Agent, (w) an appraisal complying with FIRREA, (x) a fully executed Mortgage, in form and substance reasonably satisfactory to Agent together with an A.L.T.A. lender's title insurance policy issued by a title insurer reasonably satisfactory to Agent, in form and substance and in an amount reasonably satisfactory to Agent insuring that the Mortgage is a valid and enforceable first priority Lien on the respective property, free and clear of all defects, encumbrances and Liens other than Permitted Liens, and (y) then current A.L.T.A. surveys, certified to Agent by a licensed surveyor sufficient to allow the issuer of the lender's title insurance policy to issue such policy without a survey exception. In the event any Credit Party or any Subsidiary of any Credit Party acquires any Real Estate required to be subject to a Mortgage pursuant to the foregoing sentence, at Agent's request, the Credit Parties shall cause to be delivered to Agent, within sixty (60) days (or such later date as the Agent may agree by Agent in its sole discretion) after such acquisition, Environmental Assessments prepared by a qualified firm reasonably acceptable to Agent, in form and substance satisfactory to Agent. In addition to the obligations set forth in Section 5.6(a), the Credit Parties shall, in connection with the grant to Agent for the benefit of the Secured Parties of any Mortgage with respect to any Real Estate, and prior to or concurrently with such grant, provide all documents and information required by, and otherwise comply with, the Flood Insurance Requirements as they apply to the applicable Real Estate. In addition, within forty-five (45) days (or such longer period as the Agent may agree in its reasonable discretion) after written notice from Agent to the Credit Parties that any Real Estate (that is or is required to be subject to a Mortgage) is located in a Special Flood Hazard Area, the Credit Parties shall satisfy (to the extent theretofore not previously satisfied) the Flood Insurance Requirements as to the applicable Real Estate. Without limitation of the foregoing, each Credit Party shall, and shall cause each of its Subsidiaries to, cooperate with Agent in connection with compliance with laws governing the National Flood Insurance Program, including by providing any information reasonably required by Agent in order to confirm compliance with such laws.

(e) Without limiting the generality of the foregoing, to the extent reasonably necessary to maintain the continuing priority of the Lien of any existing Mortgages as security for the Obligations in connection with the incurrence of an Incremental Facility, as determined by Agent in its reasonable discretion, the applicable Credit Party to any Mortgages shall within ninety (90) days of such funding or incurrence (or such later date as agreed by Agent) (i) enter into and deliver to Agent, at the direction and in the reasonable discretion of Agent, a mortgage modification or new Mortgage in proper form for recording in the relevant jurisdiction and in a form reasonably satisfactory to Agent (and to the extent applicable, substantially similar to the form of the Mortgage on the applicable Real Estate theretofore held by Agent), (ii) cause to be delivered to Agent for the benefit of the Secured Parties an endorsement to the title insurance policy, date down(s) or other evidence reasonably satisfactory to Agent insuring that the priority of the Lien of the Mortgages as security for the Obligations has not changed and confirming and/or insuring that since the issuance of the title insurance policy there has been no change in the condition of title and there are no intervening liens or encumbrances which may then or thereafter take priority over the Lien of the Mortgages (other than those expressly permitted by Section 6.1(c)) and (iii) deliver, at the request of Agent, to Agent and/or all other relevant third parties, all other items reasonably necessary to maintain the continuing priority (to the extent required by this Agreement) of the Lien of the Mortgages as security for the Obligations.

(f) [Reserved].

(g) Without limiting the foregoing, each Credit Party shall, promptly upon receipt of request from Agent in connection with either (x) any Requirement of Law binding on the Agent or its Affiliates or (y) any Mortgage required to be delivered hereunder or under any other Loan Document, cause the performance of such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as Agent may from time to time reasonably request. Such audits, assessments and reports shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to Agent and shall be in form and substance reasonably acceptable to Agent.

(h) Without limiting the foregoing, the Credit Parties shall cause the Borrower to be the named insured under any representation and warranty insurance obtained in connection with any Permitted Acquisition and such insurance policy shall be collaterally assigned to Agent in a manner reasonably satisfactory to Agent.

(i) Without limiting the foregoing, in the event that any Credit Party Divides itself into two or more Persons, any Persons formed as a result of such Division, unless otherwise consented to by the Agent, shall be required to comply with the requirements and obligations set forth in this Section 5.13 and the other future assurances obligations set forth in the Loan Documents and become the Borrower or Guarantor as required by this Agreement or the other Loan Documents.

**5.14 Environmental Matters.** Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its Real Estate, whether owned, leased, subleased or otherwise operated or occupied, in compliance with all applicable Environmental Laws or that is required by orders and directives of any Governmental Authority except where the failure to comply would not reasonably be expected to result in a Material Environmental Liability.

**5.15 Post-Closing Covenants.** Each Credit Party shall, and shall cause each of its Subsidiaries to, deliver each document and take each action set forth on Schedule 5.15 within the applicable time limit specified therein.

## ARTICLE VI

### NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date:

**6.1 Limitation on Liens.** No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its Property, whether now owned or hereafter acquired, other than the following ("**Permitted Liens**"):

- (a) any Lien existing on the Property of a Credit Party or a Subsidiary of a Credit Party on the Restatement Date and set forth in Schedule 6.1 securing Indebtedness outstanding on such date and permitted by Section 6.5(b), including replacement Liens on the Property currently subject to such Liens securing Indebtedness permitted by Section 6.5(b);
- (b) any Lien created under any Loan Document;
- (c) Liens for Taxes, assessments or governmental charges (other than any Lien imposed under ERISA) (i) that are not overdue, or (ii) 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 to the extent required by GAAP or (iii) where the failure to pay or discharge the same would not reasonably be expected to result in a Material Adverse Effect;

(d) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not delinquent for more than ninety (90) days or remain payable without penalty or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the Property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;

(e) Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation or to secure the performance of tenders, statutory obligations, surety, stay, customs and appeals bonds, bids, leases, governmental contract, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Consolidated Funded Indebtedness) or to secure liability to insurance carriers;

(f) Liens consisting of judgment or judicial attachment liens (other than for payment of Taxes), provided that the enforcement of such Liens is effectively stayed and the existence of such judgment does not constitute an Event of Default under Section 8.1(h);

(g) easements, rights-of-way, zoning and other restrictions, minor defects or other irregularities in title, and other similar encumbrances incurred in the ordinary course of business which, either individually or in the aggregate, do not in any case materially detract from the value of the Property subject thereto or interfere in any material respect with the ordinary conduct of the businesses of any Credit Party or any Subsidiary of any Credit Party;

(h) Liens on any Property acquired or held by any Credit Party or any Subsidiary of any Credit Party securing Indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such Property and permitted under Section 6.5(c); provided that (i) such Lien attaches solely to the Property so acquired in such transaction and the proceeds thereof and (ii) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such Property;

(i) Liens securing Capital Lease Obligations permitted under Section 6.5(c);

(j) any interest or title of a lessor or sub lessor, licensor or sub-licensor under leases, subleases, licenses or sublicenses entered into by the Borrower or any Subsidiary in the ordinary course of business;

(k) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease not prohibited by this Agreement;

(l) non-exclusive licenses and sublicenses (including the provision of Software or the licensing of other Intellectual Property rights) granted by a Credit Party or any Subsidiary of a Credit Party and leases and subleases (by a Credit Party or any Subsidiary of a Credit Party as lessor or sublessor) to third parties in the ordinary course of business not interfering with the business of the Credit Parties or any of their Subsidiaries in any material respect;

(m) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the UCC or, with respect to collecting banks located in the State of New York, under Section 4-208 of the UCC;

(n) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(o) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business;

(p) Liens (i) in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business or (ii) Liens on specific items of inventory or other goods of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(q) Liens on Property acquired pursuant to a Permitted Acquisition, or on Property of a Subsidiary of the Borrower in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition in each instance, other than Accounts, Inventory, deposit accounts and cash on deposit therein; provided that (i) any Indebtedness that is secured by such Liens is permitted to exist under Section 6.5(f), and (ii) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any Property of the Borrower or any of its Subsidiaries;

(r) Liens on unearned insurance premiums securing the financing thereof to the extent permitted under Section 6.5(i);

(s) Liens solely on cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement for an Acquisition or other Investment that would be permitted hereunder;

(t) Liens on equity interests in joint ventures which are not Subsidiaries arising solely under the Organization Documents for such joint ventures to secure buy/sell arrangements not prohibited hereunder;

(u) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole;

(v) Liens on Property of Subsidiaries that are not Credit Parties securing Indebtedness or other obligations permitted to be incurred by such Subsidiaries hereunder; provided, that, such Liens do not at any time encumber Property of any Credit Party;

(w) Liens that are contractual rights of set-off (i) relating to pooled deposit or sweep accounts of the Borrower or any Credit Party to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Credit Party or (ii) relating to

purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practice;

(x) other Liens securing obligations otherwise permitted hereunder not exceeding \$10,000,000 in the aggregate;

(y) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(z) [Reserved]; and

(aa) Liens arising by operation of law in the United States under Article 2 of the UCC in favor of a reclaiming seller of goods or buyer of goods.

**6.2 Disposition of Assets.** No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, directly or indirectly Dispose of (whether in one or a series of transactions) any Property (including the Stock of any Subsidiary of any Credit Party, whether in a public or private offering or otherwise, and accounts and notes receivable, with or without recourse), except:

(a) Dispositions of Inventory, goods or services or of worn-out obsolete, damaged or surplus equipment or fixtures, all in the ordinary course of business;

(b) Dispositions not otherwise permitted hereunder which are made for fair market value and the mandatory prepayment in the amount of the Net Proceeds of such disposition is made if and to the extent required by Section 2.8; provided, that (i) at the time of any Disposition, no Event of Default shall exist or shall result from such Disposition, (ii) not less than 75% of the aggregate sales price from such disposition shall be paid in cash, (iii) the aggregate fair market value of all assets (as reasonably determined by the Borrower in good faith) so sold by the Credit Parties and their Subsidiaries, together, shall not exceed in any Fiscal Year \$20,000,000 and (iv) after giving effect to such Disposition, the Credit Parties are in compliance on a pro forma basis with the covenants set forth in Article VII, recomputed for the most recent Fiscal Quarter for which financial statements have been delivered (or are required to have been delivered) under Section 5.1;

(c) (i) Dispositions of Cash Equivalents in the ordinary course of business made to a Person that is not an Affiliate of any Credit Party and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(d) transactions permitted under Section 6.1(l);

(e) Investments permitted under Section 6.4, to the extent such Investment constitutes a Disposition;

(f) the sale or issuance of (i) the Stock in the Borrower or a Subsidiary to any Credit Party or (ii) the Stock of a Foreign Subsidiary that is not a Credit Party to another Foreign Subsidiary that is not a Credit Party;

(g) the transfer of Property (i) by a Credit Party to a Credit Party or (ii) by a Subsidiary that is not a Credit Party to (A) a Credit Party for no more than fair market value or (B) any other Subsidiary;

(h) any Foreign Subsidiary may issue Stock to qualified directors where required by or to satisfy any applicable Requirement of Law, including any Requirement of Law with respect to ownership of Stock in Foreign Subsidiaries;

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

(j) transactions permitted by Section 6.3;

(k) Dispositions of past due accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or, in the case of accounts receivable in default, in connection with the collection or compromise thereof and in any event, not involving any securitization thereof;

(l) (i) any termination or abandonment of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property (iii) the licensing or sublicensing, on a non-exclusive basis, of Intellectual Property in the ordinary course of business, (iv) the lapse or abandonment of Intellectual Property that in the good faith judgment of the Borrower is immaterial and no longer economically practical or commercially desirable to maintain or useful in the conduct of its business and (v) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business; and

(m) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding).

Any reference in this Section 6.2 or in Section 6.3 to a combination, merger, consolidation, Disposition, dissolution, liquidation or transfer shall be deemed to apply to a Division (or the unwinding of such a Division) as if it were a combination, merger, consolidation, Disposition, dissolution, transfer or similar term, as applicable, to or with a separate Person.

**6.3 Consolidations and Mergers.** No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, merge with, consolidate with or into, dissolve or liquidate into or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except upon not less than five (5) Business Days prior written notice to Agent, (a) any Subsidiary of the Borrower may merge with, consolidate with or into, dissolve or liquidate into a Wholly-Owned Subsidiary of the Borrower which is a Domestic Subsidiary, provided that such Wholly-Owned Subsidiary which is a Domestic Subsidiary shall be the continuing or surviving entity and all actions reasonably required by Agent, including actions required to maintain perfected Liens on the Stock of the surviving entity and other Collateral in favor of Agent, shall have been completed; provided, if a Credit Party is a constituent entity in such merger, dissolution or liquidation, a Credit Party must be the continuing or surviving entity, (b) any Foreign Subsidiary may merge with or dissolve or liquidate into another Foreign Subsidiary provided if a Foreign Subsidiary which is not an Excluded Foreign Subsidiary is a constituent entity in such merger, dissolution or liquidation, a Foreign Subsidiary which is not an Excluded Foreign Subsidiary shall be the continuing or surviving entity, (c) any other Subsidiary of the Borrower may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and it is not materially disadvantageous to the Lenders and (ii) to the extent such Subsidiary is a Guarantor, any assets or business not otherwise Disposed of in accordance with Section 6.2 or, in the case of any such business, discontinued, shall be transferred to, or

otherwise owned or conducted by, a Credit Party after giving effect to such liquidation or dissolution and (d) any Person that is the target of a Permitted Acquisition may merge into a Credit Party or a Subsidiary of a Credit Party formed solely for the purpose of consummating such Permitted Acquisition; provided that the Credit Party or Subsidiary thereof (which shall become a Credit Party concurrently with the consummation of such Permitted Acquisition) shall be the continuing or surviving entity and all actions reasonably required by Agent, including actions required to grant perfected Liens on the Stock of the surviving entity and other Collateral in favor of Agent, shall have been completed.

6.4 Loans and Investments. No Credit Party shall and no Credit Party shall suffer or permit any of its Subsidiaries to (i) purchase or acquire any Stock, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, or (ii) make any Acquisitions, or (iii) make, purchase or acquire any advance, loan, extension of credit (other than trade payables in the ordinary course of business) or capital contribution to or any other investment in, any Person including the Borrower, any Affiliate of the Borrower or any Subsidiary of the Borrower (the items described in clauses (i), (ii) and (iii) are referred to as "**Investments**"), except for ("**Permitted Investments**"):

(a) Investments in cash and Cash Equivalents;

(b) Investments consisting of (i) extensions of credit or capital contributions by any Credit Party to or in any other then existing Credit Party, (ii) extensions of credit or capital contributions by the Borrower or any other Credit Party to or in any then existing Subsidiaries of the Borrower which are not Credit Parties not to exceed the greater of (x) \$10,000,000 and (y) 20% of LTM Consolidated EBITDA in the aggregate at any time outstanding for all such extensions of credit and capital contributions; provided, if the Investments described in foregoing clauses (i) and (ii) are evidenced by notes, such notes shall be pledged to Agent, for the benefit of the Secured Parties, and have such terms as Agent may reasonably require, and (iii) extensions of credit or capital contributions by a Subsidiary of the Borrower which is not a Credit Party to or in another then existing Subsidiary of the Borrower which is not a Credit Party;

(c) loans and advances to employees in the ordinary course of business not to exceed the greater of (i) \$250,000 and (ii) 0.90% of LTM Consolidated EBITDA in the aggregate at any time outstanding;

(d) Investments received as the non-cash portion of consideration received in connection with transactions permitted pursuant to Section 6.2(b);

(e) Investments acquired in connection with the settlement of delinquent Accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

(f) Investments consisting of non-cash loans made by Borrower to officers, directors and employees of a Credit Party which are used by such Persons to purchase simultaneously Stock of Borrower;

(g) Investments existing on the Restatement Date and set forth on Schedule 6.4;

(h) Investments comprised of Indebtedness permitted by Section 6.5(o);

(i) Subsidiaries of the Borrower may be established or created so long as the Credit Parties and such Subsidiary comply with the provisions of Section 5.13 to the extent applicable;

(j) [reserved];

(k) Permitted Acquisitions;

(l) other Investments by a Credit Party in another Credit Party in an aggregate amount equal to the Available Amount as of the applicable date of such Investment; provided no Event of Default shall have occurred and be continuing or would result therefrom;

(m) bank deposits in the ordinary course of business;

(n) the establishment and creation of a Subsidiary, subject to the satisfaction of any applicable requirements in Section 5.13 and the provisions of Section 6.4(b);

(o) the prepayment of expenses or deposits made in the ordinary course of business; and

(p) other Investments not to exceed the greater of (x) \$10,000,000 and (y) 20% of LTM Consolidated EBITDA in the aggregate at any time outstanding; provided that before and immediately after giving effect to such Investment, no Default or Event of Default has occurred and is continuing.

**6.5 Limitation on Indebtedness.** No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, create, incur, assume, permit to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness existing on the Restatement Date and set forth in Schedule 6.5 including Permitted Refinancings thereof;

(c) Indebtedness not to exceed \$3,000,000 in the aggregate at any time outstanding, consisting of Capital Lease Obligations or secured by Liens permitted by Section 6.1(h) or Section 6.1(i) and Permitted Refinancings thereof;

(d) unsecured intercompany Indebtedness permitted pursuant to Section 6.4(b);

(e) [Reserved]; and

(f) Indebtedness of a Subsidiary of the Borrower acquired pursuant to a Permitted Acquisition (or a similar Investment permitted by Section 6.4) or Indebtedness of a Target assumed at the time of a Permitted Acquisition of or such other Investment in such Target, in each case, other than revolving credit facilities or commitments therefor; provided that (i) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition or other Investment and (ii) the aggregate principal amount of all Indebtedness permitted by this Section 6.5(f) shall not at any time outstanding exceed \$5,000,000;

(g) unsecured Indebtedness of the Borrower or any of its Subsidiaries consisting of Contingent Acquisition Consideration; provided that (i) the maximum aggregate amount payable with respect to all such Contingent Acquisition Consideration does not exceed \$10,000,000 in the aggregate at any time outstanding (assuming the remaining maximum performance standards related thereto are satisfied, except to the extent all or any portion thereof becomes a fixed,

matured or earned amount, in which case such amount shall be deemed the actual amount of such Contingent Acquisition Consideration), and (ii) with respect to any Contingent Acquisition Consideration agreed to after the Restatement Date, such Contingent Acquisition Consideration is subordinated to the Obligations on terms and conditions satisfactory to Agent;

(h) [Reserved];

(i) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(j) [Reserved];

(k) endorsements for collection or deposit in the ordinary course of business;

(l) Rate Contracts entered into in the ordinary course of business for bona fide hedging purposes and not for speculation with (i) any Lender or an Affiliate of any Lender or (ii) otherwise with Agent's prior written consent;

(m) Indebtedness arising under indemnity agreements to title insurers to cause such title insurers to issue to Agent title insurance policies;

(n) Indebtedness arising with respect to customary indemnification obligations and purchase price adjustments in favor of (i) sellers in connection with Acquisitions or similar Investments permitted hereunder and (ii) purchasers in connection with Dispositions permitted under Section 6.2(b);

(o) Indebtedness arising under guaranties made in the ordinary course of business of obligations of any Credit Party, which obligations are otherwise permitted hereunder; provided that if such obligation is subordinated to the Obligations, such guaranty shall be subordinated to the same extent;

(p) Indebtedness incurred in the ordinary course of business with respect to surety and appeals bonds, performance bonds and other similar obligations;

(q) [Reserved];

(r) Indebtedness consisting of promissory notes issued by Borrower to any stockholder of Borrower or any current or former director, officer, employee, member of management, manager or consultant of the any Credit Party (or their respective immediate family members) to finance the purchase or redemption of Stock permitted by Section 6.8(b); and

(s) other Indebtedness not exceeding in the aggregate at any time outstanding \$10,000,000.

6.6 Transactions with Affiliates. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (w) enter into any transaction with the any Affiliate of the Borrower or of any such Subsidiary (other than, in each case, transactions between or among Credit Parties) or any director (or similar official) of any of the foregoing, (x) pay any management, consulting or similar fees to any of the foregoing, (y) pay or reimburse any of the foregoing for any costs, expenses and similar, except:

(a) (i) with respect to transactions between or among the Credit Parties and (ii) with respect to any other Affiliate or any other such Person as expressly permitted by Sections 6.4(f) and (j) and 6.8 of this Agreement;

(b) in the ordinary course of business and pursuant to the reasonable requirements of the business of such Credit Party or such Subsidiary upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of the Borrower or such Subsidiary; provided, further, that in no event shall a Credit Party or any Subsidiary of a Credit Party perform or provide any management, consulting, administrative or similar services to or for any Person other than another Credit Party, a Subsidiary of a Credit Party or a customer in the ordinary course of business;

(c) payment of directors' fees and reimbursement of actual out-of-pocket expenses incurred in connection with attending board of director meetings; and

(d) employment agreements, equity incentive agreements and other employee management arrangements entered into in the ordinary course of business as conducted as of the Restatement Date (so long as any such agreement is not adverse to the Lenders in any material respect as compared to the applicable agreement as in effect on the Restatement Date).

6.7 Compliance with ERISA. No Credit Party shall, or shall permit any ERISA Affiliate to, cause or suffer to exist (a) any ERISA Event that could reasonably be expected to result in the imposition of a Lien on any assets of a Credit Party or Subsidiary of a Credit Party with respect to any Title IV Plan or Multiemployer Plan and (b) any other ERISA Event, that would, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.8 Restricted Payments. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any Stock or (ii) purchase, redeem or otherwise acquire for value any Stock now or hereafter outstanding (the items described in clauses (i) and (ii) above are referred to as "**Restricted Payments**"); except that any Wholly-Owned Subsidiary of the Borrower may declare and pay dividends to the Borrower or any Wholly-Owned Subsidiary of the Borrower, and except that:

(a) Borrower may declare and make dividend payments or other distributions payable solely in its Stock;

(b) the Borrower may purchase, redeem, retire or otherwise acquire for value any of its Stock from (A) Adams Street Partners and GP Investment Acquisition Corp., (B) current or former directors, officers, employees, members of management, managers or consultants of the Borrower or any subsidiary (or their respective immediate family members) (and/or make payments on promissory notes issued by Borrower pursuant to Section 6.5(r)) and (C) any other holder of any of its Stock; provided all of the following conditions are satisfied:

(i) no Default or Event of Default has occurred and is continuing or would arise as a result of such Restricted Payment; and

(ii) the aggregate Restricted Payments permitted under this paragraph (b) (x) in any Fiscal Year of the Borrower shall not exceed the greater of \$12,500,000 and 20.0% of LTM Consolidated EBITDA and (y) during the term of this Agreement shall not

exceed the greater of \$50,000,000 and 100.0% of LTM Consolidated EBITDA; provided, that, for the avoidance of doubt, to the extent constituting a Restricted Payment under this Section 6.8(b), the Borrower may enter into and consummate any transaction permitted pursuant to Section 6.4;

(c) [Reserved];

(d) any Subsidiary may make distributions to Borrower to the extent necessary to permit Borrower to pay franchise taxes, expenses and other fees, in each case, the extent necessary to permit Borrower to maintain its legal existence and to pay reasonable out-of-pocket general administrative costs and expenses (which may include out-of-pocket legal, accounting and filing costs, other reasonable and customary corporate overhead expenses incurred in the ordinary course of business and customary transaction-based fees and expenses of third-party investment bankers and advisers for services rendered to Borrower relating to Borrower and its Subsidiaries not prohibited hereunder), so long as Borrower applies the amount of any such Restricted Payment for any such purpose within 30 days of receipt;

(e) the Borrower may make distributions and pay dividends to its equityholders not otherwise permitted to be made by this Section 6.8, and in an aggregate amount not to exceed the Available Amount as of the applicable date of such Restricted Payments; provided, all of the following conditions are satisfied:

(i) no Event of Default shall have occurred and be continuing or would result therefrom; and

(ii) after giving effect to such Restricted Payment, on a pro forma basis as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or are required to have been delivered) pursuant to Section 5.1, the Consolidated Total Leverage Ratio is not greater than 2.25 to 1.00;

(f) for any taxable period in which any Subsidiary of the Borrower is a member of a U.S. consolidated, combined or similar income tax group of which the Borrower is the common parent (a "**Tax Group**"), to pay federal, state and local income taxes of such Tax Group that are attributable to the taxable income of any such Subsidiary, provided, that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the applicable Subsidiaries would have been required to pay as a standalone U.S. consolidated, combined or similar income tax group;

(g) the Borrower may make distributions and pay dividends to equityholders not otherwise permitted to be made by this Section 6.8 in an aggregate amount not to exceed \$3,500,000; provided no Event of Default shall have occurred and be continuing or would result therefrom;

6.9 Change in Business. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in any line of business other than those lines of business carried on by it on the Restatement Date and any business reasonably related, complementary or ancillary thereto.

6.10 Change in Structure. Except as expressly permitted under Section 6.3, no Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, amend any of its Organization Documents in any respect materially adverse to Agent or Lenders.

6.11 Changes in Accounting, Name and Jurisdiction of Organization. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP, (ii) change the Fiscal Year or method for determining Fiscal Quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party, (iii) change its name as it appears in official filings in its jurisdiction of organization or (iv) change its jurisdiction of organization or formation, in the case of clauses (iii) and (iv), without at least ten (10) days' prior written notice to Agent (or such shorter period as may be agreed by Agent in its sole discretion).

6.12 Limitation on Payments of Certain Indebtedness. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, make any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Subordinated Indebtedness ("Restricted Debt Payments") except that:

(a) [Reserved];

(b) [Reserved];

(c) [Reserved];

(d) [Reserved];

(e) [Reserved];

(f) the Credit Parties may make any Restricted Debt Payment not otherwise permitted to be made by this Section 6.12, and in an aggregate amount not to exceed the Available Amount as of the applicable date of such Restricted Debt Payments; provided, all of the following conditions are satisfied for each Restricted Debt Payment:

(i) no Event of Default shall have occurred and be continuing or would result therefrom; and

(ii) after giving effect to such Restricted Debt Payment, on a pro forma basis as of the last day of the most recently ended Fiscal Quarter for which financial statements have been delivered (or are required to have been delivered) pursuant to Section 5.1 the Consolidated Total Leverage Ratio is not greater than 2.25 to 1.00;

(g) the Credit Parties may make any Restricted Debt Payment, in each case, not otherwise permitted to be made by this Section 6.12 in an aggregate amount not to exceed \$3,500,000; provided no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(h) [Reserved]; and

(i) the Credit Parties may make payments of intercompany Indebtedness permitted under Section 6.5; provided that if an Event of Default is continuing, only payments owing to Credit Parties shall be made thereunder.

6.13 Amendments to Certain Indebtedness. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries directly or indirectly to, change or amend the terms of any Subordinated Indebtedness not subject to a subordination agreement or other applicable subordination terms if the effect

of such change or amendment is to: (A) increase the interest rate on such Indebtedness; (B) shorten the dates upon which payments of principal or interest are due on such Indebtedness; (C) add or change in a manner adverse to the Credit Parties any event of default or add or make more restrictive any covenant with respect to such Indebtedness; (D) change in a manner adverse to the Credit Parties the prepayment provisions of such Indebtedness; (E) change the subordination provisions thereof (or the subordination terms of any guaranty thereof); or (F) change or amend any other term if such change or amendment would materially increase the obligations of the Credit Parties or confer additional material rights on the holder of such Indebtedness in a manner adverse to the Credit Parties, Agent or Lenders

6.14 No Negative Pledges. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any Credit Party or Subsidiary to pay dividends or make any other distribution on any of such Credit Party's or Subsidiary's Stock or to pay fees, including management fees, or make other payments and distributions to the Borrower or any other Credit Party, in each case except pursuant to this Agreement as in effect on the Restatement Date and (ii) to the extent no more restriction than those contained in this Agreement, so long as not more restriction than this Agreement with regarding to *pari passu* Indebtedness and not restricted Subordinated Indebtedness with all other debt. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, directly or indirectly, enter into, assume or become subject to any Contractual Obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent, whether now owned or hereafter acquired except in connection with any document or instrument governing Liens permitted pursuant to Sections 6.1(h) and 6.1(i) provided that any such restriction contained therein relates only to the asset or assets subject to such permitted Liens.

6.15 OFAC; USA Patriot Act; Anti-Corruption Laws. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to fail to comply with the laws, regulations and executive orders referred to in Section 4.22. No Credit Party or Subsidiary, nor to the knowledge of the Credit Party, any director, officer, agent, employee, or other person acting on behalf of the Credit Party or any Subsidiary, will request or use the proceeds of any Loan or Letter of Credit, directly or indirectly, (A) for any payments to any Person, including 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, or otherwise take any action, directly or indirectly, that would result in a violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Person on the SDN List or a government of a Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Furthermore, the Credit Parties will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person participating in the transaction of any Sanctions.

6.16 Sale-Leasebacks. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

## ARTICLE VII

### FINANCIAL COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date:

7.1 Consolidated Total Leverage Ratio. The Credit Parties shall not suffer or permit the Consolidated Total Leverage Ratio as of the last day of any Fiscal Quarter of the Borrower to exceed 3.75:1.00.

7.2 Fixed Charge Coverage Ratio. The Credit Parties shall not suffer or permit the Consolidated Fixed Charge Coverage Ratio as of the last day of any Fiscal Quarter of the Borrower to be less than 1.25:1.00.

7.3 Minimum Liquidity Covenant. The Borrower shall, as of the last day of each Fiscal Quarter, maintain a minimum average daily balance of \$20,000,000 of domestic unrestricted cash for each day in such Fiscal Quarter.

7.4 Equity Cure. In the event the Credit Parties fail to comply with the financial covenant set forth in Section 7.1 as of the last day of any Fiscal Quarter, any cash equity contribution to Borrower (funded with the proceeds of common equity issued by the Borrower or other equity issued by the Borrower having terms reasonably acceptable to Agent and in any case, not constituting Disqualified Stock) after the last day of such Fiscal Quarter and on or prior to the day that is fifteen (15) Business Days after the day on which financial statements are required to be delivered for that Fiscal Quarter will, at the irrevocable election of the Borrower, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with such covenant in Section 7.1 at the end of such Fiscal Quarter (each, a "**Cure Quarter**") and any subsequent period that includes such Cure Quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a "**Specified Equity Contribution**"); provided that (a) notice of Borrower's intent to accept a Specified Equity Contribution shall be delivered by the Borrower no later than the day on which financial statements are required to be delivered for the applicable Fiscal Quarter, (b) in each consecutive four (4) Fiscal Quarter period there will be at least two (2) Fiscal Quarters in which no Specified Equity Contribution is made, (c) the amount of any Specified Equity Contribution will be no greater than the amount required to cause the Credit Parties to be in compliance with such financial covenant (the "**Cure Amount**"), (d) all Specified Equity Contributions will be disregarded for purposes of the calculation of Consolidated EBITDA for all other purposes, including calculating basket levels, pricing, determining compliance with incurrence based or pro forma calculations or conditions and any other items governed by reference to Consolidated EBITDA, (e) there shall be no more than five (5) Specified Equity Contributions made in the aggregate after the Restatement Date, and (f) there shall be no pro forma or other reduction in Consolidated Total Net Indebtedness (through either netting of cash or prepayment of Indebtedness) in connection with any Specified Equity Contribution (or the application of the proceeds thereof) for determining compliance with each financial covenant under Article VII for the periods including the Cure Quarter unless actually utilized to pay down the Term Loans; *provided* that there shall be no de-leveraging credit for the period ending on the last day of the Cure Quarter in respect of which the equity cure is exercised. Upon the Agent's receipt of notice from the Borrower of its intent to make a Specified Equity Contribution pursuant to this Section 7.4 no later than the day on which financial statements are required to be delivered for the applicable Fiscal Quarter, then, until the day that is fifteen (15) Business Days after such date, neither Agent nor any Lender shall exercise the right to accelerate the Loans or terminate the Commitments and neither Agent nor any Lender shall exercise any right to foreclose on or take possession of the Collateral solely on the basis of an Event of Default having occurred and being continuing under Sections 7.1 in respect of the period ending on the last day of such Fiscal Quarter; provided that in no event shall the Lenders have any obligation to fund any Loan or issue and Letter of Credit until such Specified Equity Contribution is made.

## ARTICLE VIII

### EVENTS OF DEFAULT

8.1 Event of Default Any of the following shall constitute an '**Event of Default**':

(a) Non-Payment. Any Credit Party fails to pay when and as required to be paid herein (i) any amount of principal of any Loan when due, including, but not limited to, after maturity of the Loans, or to pay any L/C Reimbursement Obligation or (ii) to pay within three (3) Business Days after the same becomes due, interest on any Loan, or any fee or (iii) within five (5) Business Days after the earlier of (A) the Borrower obtaining Knowledge that the same has become due or (B) written notice from the Agent to the Borrower, any other fee payable herein or any other amount payable hereunder or pursuant to any other Loan Document becomes due; or

(b) Representation or Warranty. Any representation, warranty or certification made by the Borrower or deemed made by the Borrower on behalf of the Borrower or any other Credit Party and contained herein, in any other Loan Document, or which is contained in any document delivered in connection herewith or therewith shall be incorrect in any material respect (without duplication of other materiality qualifiers contained therein) on or as of the date made or deemed made; or

(c) Specific Covenants. Any Credit Party fails to perform or observe any term, covenant or agreement contained in (i) Section 5.1, Section 5.2(b) and Section 5.9, in each case, within ten (10) Business Days after the same becomes due or required or (ii) Section 5.3(a), Section 5.6, Section 5.10, Article VI or Article VII hereof (subject to Section 7.4); or

(d) Other Defaults. Any Credit Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in this Agreement or any other Loan Document, and such failure continues for thirty (30) days after the earlier of (i) the date upon which a Responsible Officer of any Credit Party becomes aware of such default; or (ii) written notice thereof is given to the Borrower by Agent or Required Lenders; or

(e) Cross-Default. Any Credit Party (i) fails to make any payment in respect of any Material Indebtedness when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure (other than Indebtedness hereunder); or (ii) fails to perform or observe any other agreement or condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Material Indebtedness, if the effect of which event of default is to cause, or to permit the holder or holders of such Material Indebtedness or beneficiary or beneficiaries of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause with the giving of notice if required, such Material Indebtedness to be declared to be due and payable (or otherwise required immediately to be prepaid, redeemed, purchased or defeased) prior to its stated maturity or cash collateral in respect thereof to be demanded; or

(f) Insolvency: Voluntary Proceedings. The Borrower ceases or fails, or the Credit Parties and their Subsidiaries (other than an Immaterial Subsidiary) on a consolidated basis, cease or fail, to be Solvent, or any Credit Party or any Subsidiary (other than an Immaterial Subsidiary) of any Credit Party: (i) generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or

otherwise; (ii) except as expressly permitted under Section 6.3, voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any Credit Party or any Subsidiary of any Credit Party (other than an Immaterial Subsidiary), or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any such Person's Properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any Credit Party or any Subsidiary of any Credit Party (other than an Immaterial Subsidiary) admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) any Credit Party or any Subsidiary of any Credit Party (other than an Immaterial Subsidiary) acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a material portion of its Property or business; or

(h) Judgments. (i) For matters publicly disclosed prior to the Original Closing Date, one or more final and non-appealable judgments or non-interlocutory orders by a court of competent jurisdiction shall be entered against any one or more of the Credit Parties or any of their respective Subsidiaries involving in the aggregate a liability exceeding \$75,000,000 (excluding amounts covered by insurance to the extent the relevant independent third-party insurer has not denied coverage therefor or another creditworthy (as determined by the Borrower in good faith in consultation with the Agent) indemnitor), and the same shall remain unsatisfied, unvacated, undischarged and unstayed or unbonded pending appeal for a period of seventy-five (75) consecutive days after the entry thereof; or (ii) for all other matters not covered by clause (i) above, one or more final and non-appealable judgments or non-interlocutory orders by a court of competent jurisdiction shall be entered against any one or more of the Credit Parties or any of their respective Subsidiaries involving in the aggregate a liability of the greater of \$18,000,000 and 25% of Consolidated EBITDA (excluding amounts covered by insurance to the extent the relevant independent third-party insurer has not denied coverage therefor or another creditworthy (as determined by the Borrower in good faith in consultation with the Agent) indemnitor), and the same shall remain unsatisfied, unvacated, undischarged and unstayed or unbonded pending appeal for a period of sixty (60) consecutive days after the entry thereof; or

(i) [Reserved].

(j) Collateral. Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party or any Subsidiary of any Credit Party thereto or any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral (to the extent that such perfection or priority is required hereby) purported to be covered thereby or such security interest shall for any reason (other than the failure of Agent to take any action within its control) cease to be a perfected and first priority security interest subject only to Permitted Liens; or

(k) Change of Control. A Change of Control shall occur; or

(1) ERISA. One or more ERISA Events shall have occurred which would reasonably be expected to result in a Material Adverse Effect.

8.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Agent may, and shall at the request of the Required Lenders:

(a) declare all or any portion of any one or more of the Commitments of each Lender to make Loans or of the L/C Issuer to Issue Letters of Credit to be terminated, whereupon all or such portion of such Commitments shall forthwith be terminated;

(b) declare all or any portion of the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Credit Party; and/or

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided, however, that upon the occurrence of any event specified in Section 8.1(f) or 8.1(g) above (in the case of clause (i) of Section 8.1(g) upon the expiration of the sixty (60) day period mentioned therein), the obligation of each Lender to make Loans and the obligation of the L/C Issuer to Issue Letters of Credit 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 without further act of Agent, any Lender or the L/C Issuer.

8.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

8.4 Cash Collateral for Letters of Credit. If an Event of Default has occurred and is continuing, this Agreement (or the Revolving Loan Commitment) shall be terminated for any reason or if otherwise required by the terms hereof, Agent may, and upon request of Required Revolving Lenders, shall, demand (which demand shall be deemed to have been delivered automatically upon any acceleration of the Loans and other obligations hereunder pursuant to Section 8.2), and the Borrower shall thereupon deliver to Agent, to be held for the benefit of the L/C Issuer, Agent and the Lenders entitled thereto, an amount of cash equal to 105% (or such greater percentage as the L/C Issuer may reasonably require in the case of any Letter of Credit with an expiration date later than one year after the date of providing such cash collateral) of the amount of Letter of Credit Obligations as additional collateral security for Obligations in respect of any outstanding Letter of Credit. Agent may at any time apply any or all of such cash and cash collateral to the payment of any or all of the Credit Parties' Obligations in respect of any Letters of Credit. Pending such application, Agent may (but shall not be obligated to) invest the same in an interest bearing account in Agent's name, for the benefit of the L/C Issuer, Agent and the Lenders entitled thereto, under which deposits are available for immediate withdrawal, at such bank or financial institution as the L/C Issuer and Agent may, in their discretion, select.

## ARTICLE IX

### AGENT

#### 9.1 Appointment and Duties.

(a) Appointment of Agent. Each Secured Party hereby appoints Capital One (together with any successor Agent pursuant to Section 9.9) as Agent hereunder and authorizes Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such other actions on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Each Secured Party further consents to and authorizes Agent's execution and delivery of any additional intercreditor or subordination agreements from time to time as contemplated by the terms hereof on behalf of such Secured Party and agrees to be bound by the terms and provisions thereof, including any purchase option contained therein.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, Agent shall have the sole and exclusive right and authority (to the exclusion of the Secured Parties), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders and the L/C Issuers with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in Sections 8.1(f) or 8.1(g) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to 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) or 8.1(g) 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 Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Agent and the other Secured Parties with respect to the Credit Parties and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Secured Party to act as collateral sub-agent for Agent, the Secured Parties 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 Secured Party, and may further authorize and direct the Secured Parties to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Agent, and each Secured Party hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 2.4(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Agent", the terms "agent", "Agent" and "collateral agent" and similar terms in any Loan Document to refer to Agent, which terms are used for title purposes only, (ii) is not assuming and shall not have any actual or implied obligations, functions, responsibilities, duties, under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary

or trustee of or for any Secured Party or any other Person, and each Secured Party, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) and (ii) above.

**9.2 Binding Effect.** Each Secured Party, by accepting the benefits of the Loan Documents, agrees that (i) any action taken (or omitted to be taken) by Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken (or omitted to be taken) by Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Agent or the Required 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, shall be authorized and binding upon all of the Secured Parties.

**9.3 Use of Discretion.**

(a) **No Action without Instructions.** Agent shall not 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 Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, the Required Revolving Lenders or a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding clause (a) above, Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Agent, any other Person) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Agent or any Related Person thereof or (ii) that is, in the opinion of Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

(c) **Exclusive Right to Enforce Rights and Remedies.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all the Secured Parties; provided that the foregoing shall not prohibit (i) Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) each of the L/C Issuer and the Swing Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Lender, as the case may be) hereunder and under the other Loan Documents, (iii) any Lender from exercising setoff rights in accordance with Section 10.11 and this Section 9.3 or (iv) any Secured Party from filing proofs of claim (and thereafter 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), but in the case of this clause (iv) if, and solely if, Agent has not filed such proof of claim or other instrument of similar character in respect of the Obligations under the Loan Documents within five (5) days before the expiration of the time to file the same.

**9.4 Delegation of Rights and Duties.** 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 Loan Document by or through any trustee, co-agent,

employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article IX to the extent provided by Agent.

**9.5 Reliance and Liability.** Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 10.9, (ii) rely on the Register to the extent set forth in Section 2.4, (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.

(a) None of Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Secured Party, the Borrower and each other Credit Party hereby waive and shall not assert (and the Borrower shall 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 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, Agent and its Related Persons:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Agent, when acting on behalf of Agent);

(ii) shall not be responsible to any Secured Party 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 Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Agent in connection with the Loan Documents;

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower or any Secured Party describing such Default or Event of Default clearly labeled "notice of default" (in which case Agent shall promptly give notice of such receipt to all Lenders);

(v) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution;

(vi) shall not be responsible to any Secured Party, the Borrower, any Credit Party or any other Person, or have any liability for, any incorrect or inaccurate determination of Term SOFR or the Base Rate for any purpose under any Loan Document (except for gross negligence or willful misconduct of the Agent or its Related Persons as determined in a final, non-appealable judgment by a court of competent jurisdiction); and

(vii) do not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Base Rate, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain Base Rate, the Term SOFR Reference Rate, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

and, for each of the items set forth in clauses (i) through (vii) above, each Secured Party and the Borrower hereby waives and agrees not to assert (and the Borrower shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action it might have against Agent based thereon.

**9.6 Agent Individually.** Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock of, engage in any kind of business with, any Credit Party or Affiliate thereof as though it were not acting as Agent and may receive separate fees and other payments therefor. To the extent Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "**Lender**", "**Revolving Lender**", "**Required Lender**", "**Required Revolving Lender**" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include Agent or such Affiliate, as the case may be, in its individual capacity as

Lender, Revolving Lender, one of the Required Lenders or one of the Required Revolving Lenders, respectively.

9.7 Lender Credit Decision. Each Secured Party acknowledges that it shall, independently and without reliance upon Agent, any other Secured Party 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 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 Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Agent to the Lenders or L/C Issuers, Agent shall not have any duty or responsibility to provide any Secured Party 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 Agent or any of its Related Persons.

9.8 Expenses; Indemnities; Withholding.

(a) Each Lender agrees to reimburse Agent and each of its Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally and ratably, 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 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 Loan Document.

(b) Each Lender further agrees to indemnify Agent, each L/C Issuer and each of their respective Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, 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 Agent, any L/C Issuer or any of their respective Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Letter of Credit 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 Agent, any L/C Issuer or any of their respective Related Persons under or with respect to any of the foregoing; provided, that with respect to any indemnification owed to any L/C Issuer or any of its Related Persons in connection with any Letter of Credit, only Revolving Lenders shall be required to indemnify, such indemnification to be made severally and ratably based on such Revolving Lender's Commitment Percentage of the Aggregate Revolving Loan Commitment (determined as of the time the applicable indemnification is sought by such L/C Issuer or Related Person from the Revolving Lenders); provided, further, that no Lender shall be liable to Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of 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.

(c) To the extent required by any Requirement of Law, Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable

withholding Tax (including withholding Taxes imposed under Chapters 3 and 4 of Subtitle A of the Code). If the IRS or any other Governmental Authority asserts a claim that 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 Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, failed to maintain a Participant Register or for any other reason), or Agent reasonably determines that it was required to withhold Taxes from a prior payment but failed to do so, such Lender shall promptly indemnify Agent fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including penalties and interest, and together with all expenses incurred by Agent, including legal expenses, allocated internal costs and out-of-pocket expenses. Agent may offset against any payment to any Lender under a Loan 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 Agent is entitled to indemnification from such Lender under this Section 9.8(c).

**9.9 Resignation of Agent or L/C Issuer.**

(a) 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 shall be effective in accordance with the terms of this Section 9.9. If Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Agent. If, after 30 days after the date of the retiring Agent's notice of resignation, no successor Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders. Each appointment under this clause (a) (other than an appointment by Agent) shall be subject to the prior consent of the Borrower, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(b) Effective immediately upon its resignation, (i) the retiring Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of Agent until a successor Agent shall have accepted a valid appointment hereunder, (iii) the retiring Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document 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 Agent under the Loan Documents and (iv) subject to its rights under Section 9.3, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Agent, a successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent under the Loan Documents.

(c) Any L/C Issuer may resign at any time by delivering notice of such resignation to Agent, effective on the date set forth in such notice or, if no such date is set forth therein, on the date such notice shall be effective. Upon such resignation, the L/C Issuer shall remain an L/C Issuer and shall retain its rights and obligations in its capacity as such (other than any obligation to Issue Letters of Credit but including the right to receive fees or to have Lenders participate in any L/C Reimbursement Obligation thereof) with respect to Letters of Credit Issued by such L/C Issuer on or prior to the date of such resignation and shall otherwise be discharged from all other duties and obligations under the Loan Documents.

**9.10 Release of Collateral or Guarantors.** Each Secured Party hereby consents to the release

and hereby directs Agent to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Subsidiary of the Borrower from its guaranty of any Obligation if all of the Stock of such Subsidiary owned by any Credit Party are sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to Section 5.13; and

(b) any Lien held by Agent for the benefit of the Secured Parties against (i) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 5.13 after giving effect to such transaction have been granted, (ii) any Property subject to a Lien permitted hereunder in reliance upon Section 6.1(h) or 6.1(i) and (iii) all of the Collateral and all Credit Parties, upon (A) the occurrence of the Facility Termination Date and (B) to the extent requested by Agent, receipt by Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance reasonably acceptable to Agent.

Each Secured Party hereby directs Agent, and Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary at the Borrower's expense to release the guaranties and Liens when and as directed in this Section 9.10.

**9.11 Additional Secured Parties.** The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender or L/C Issuer party hereto as long as, by accepting such benefits, such Secured Party agrees, as among Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Agent, shall confirm such agreement in a writing in form and substance acceptable to Agent) Section 2.10, this Article IX, Section 10.3, Section 10.9, Section 10.10, Section 10.11, Section 10.15, Section 10.16, Section 10.17, Section 10.20, Section 10.23 and Section 11.1 (and, solely with respect to L/C Issuers, Section 2.1(c)), all terms and provisions contained herein applicable to Secured Swap Providers or Secured Cash Management Banks, as applicable, and the decisions and actions of Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 9.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) each of Agent, the Lenders and the L/C Issuers party hereto shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as otherwise set forth herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

**9.12 Additional Titles.** Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Lead Arranger and the Syndication Agent shall not have any duties or responsibilities, nor shall the Lead Arranger and the Syndication Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan

Document or otherwise exist against the Lead Arranger and the Syndication Agent.

9.13 **Credit Bid.** Each of the Lenders hereby irrevocably authorizes (and by entering into a Secured Rate Contract or Secured Cash Management Agreement, each Secured Swap Provider or Secured Cash Management Bank, as the case may be, hereby authorizes and shall be deemed to authorize) Agent, on behalf of all Secured Parties to take any of the following actions upon the instruction of the Required Lenders:

- (a) consent to the Disposition of all or any portion of the Collateral free and clear of the Liens securing the Obligations in connection with any Disposition pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;
- (b) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;
- (c) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;
- (d) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or
- (e) estimate the amount of any contingent or unliquidated Obligations of such Lender or other Secured Party;

it being understood that no Lender shall be required to fund any amount (other than by means of offset) in connection with any purchase of all or any portion of the Collateral by Agent pursuant to the foregoing clauses (b), (c) or (d) without its prior written consent.

Each Secured Party agrees that Agent is under no obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral; *provided* that, in connection with any credit bid or purchase described under clauses (b), (c) or (d) of the preceding paragraph, the Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by Agent on a ratable basis.

With respect to each contingent or unliquidated claim that is an Obligation, Agent is hereby authorized, but is not required, to estimate the amount thereof for purposes of any credit bid or purchase described in the second preceding paragraph so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of Agent to credit bid the Obligations or purchase the Collateral in the relevant Disposition. In the event that Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of Agent to consummate any credit bid or purchase in accordance with the second preceding paragraph, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph shall be entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Obligations of such Secured Party that were credit bid in such credit bid or other Disposition, by (y) the aggregate amount of all Obligations that were credit bid in such credit bid or other Disposition.

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 Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, or participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

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 Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## ARTICLE X

### MISCELLANEOUS

#### 10.1 Amendments and Waivers.

(a) Amendments Generally. Subject to the provisions of Section 10.1(e), (f), and (g) hereof, no amendment or waiver of, or supplement or other modification (which shall include any direction to Agent pursuant to, any Loan Document (other than the Agent Fee Letter, any Control Agreement, any Mortgage, any letter of credit reimbursement or similar agreement or any landlord, bailee or mortgagee agreement) or any provision thereof, and no consent with respect to any departure by any Credit Party from any such Loan Documents, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent with the consent of the Required Lenders), and the Borrower and then such waiver shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, supplement (including any additional Loan Document) or consent shall, unless in writing and signed by all the Lenders directly and adversely affected thereby (or by Agent with the consent of all the Lenders directly and adversely affected thereby), in addition to the Required Lenders (or by Agent with the consent of the Required Lenders) and the Borrower, do any of the following:

- (i) increase or extend the Commitment of such Lender (or reinstate any Commitment terminated pursuant to Section 8.2(a));
- (ii) postpone or delay any date fixed for, or reduce or waive, any scheduled installment of principal or any payment of interest, fees or other amounts (other than principal) due to the Lenders (or any of them) or L/C Issuer hereunder or under any other Loan Document (for the avoidance of doubt, mandatory prepayments pursuant to Section 2.8 (other than scheduled installments under Section 2.8(a)) may be postponed, delayed, reduced, waived or modified with the consent of the Required Lenders);
- (iii) reduce the principal of, or the rate of interest specified herein (it being agreed that waiver of the default interest margin shall only require the consent of Required Lenders) or the amount of interest payable in cash specified herein on any Loan, or of any fees or other amounts payable hereunder or under any other Loan Document, including L/C Reimbursement Obligations;
- (iv) (A) change or have the effect of changing the priority or pro rata treatment of any payments (including voluntary and mandatory prepayments), Liens, proceeds of Collateral or reductions in Commitments (including as a result in whole or in part of allowing the issuance or incurrence, pursuant to this Agreement or otherwise, of new loans or other Indebtedness having any priority over any of the Obligations in respect of payments, Liens, Collateral or proceeds of Collateral, in exchange for any Obligations or otherwise), (B) change Section 2.10(c) or Section 10.11(b) of this Agreement or Section 6.1 of the Guaranty and Security Agreement or (C) advance the date fixed for, or increase, any scheduled installment of principal due to any of the

Lenders under any Loan Document;

(v) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;

(vi) amend this Section 10.1 (other than Section 10.1(c)) or, subject to the terms of this Agreement, the definition of Required Lenders, the definition of Required Revolving Lenders or any provision providing for consent or other action by all Lenders;

(vii) discharge any Credit Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral, except as otherwise may be provided in this Agreement or the other Loan Documents; or

(viii) subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien (including, without limitation, any Indebtedness or Lien issued under this Agreement or any other Agreement), as the case may be;

it being agreed that (X) all Lenders shall be deemed to be directly and adversely affected by an amendment, waiver or supplement described in the preceding clauses (iv)(B), (v), (vi) or (vii) and (Y) notwithstanding the preceding clause (X), only those Lenders that have not been provided a reasonable opportunity, as determined in the good faith judgment of Agent, to receive the most-favorable treatment under or in connection with the applicable amendment, waiver or supplement described in the preceding clause (iv) (other than the right to receive customary administrative agency, arranging, underwriting and other similar fees) or (viii) that is provided to any other Person, including the opportunity to participate on a pro rata basis on the same terms in any new loans or other Indebtedness permitted to be issued as a result of such amendment, waiver or supplement, shall be deemed to be directly and adversely affected by such amendment, waiver or supplement.

(b) Agent, Swing Lender and L/C Issuer. No amendment, waiver or consent shall, unless in writing and signed by Agent, the Swing Lender or the L/C Issuer, as the case may be, in addition to the Required Lenders or all Lenders directly affected thereby, as the case may be (or by Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of Agent, the Swing Lender or the L/C Issuer, as applicable, under this Agreement or any other Loan Document. No amendment, modification or waiver of this Agreement or any Loan Document altering the ratable treatment of Secured Rate Contract Obligations or Secured Cash Management Obligations resulting in such Secured Rate Contract Obligations or Secured Cash Management Obligations being junior in right of payment to principal on the Loans or resulting in such Secured Rate Contract Obligations or Secured Cash Management Obligations becoming unsecured (other than releases of Liens applicable to all Lenders permitted in accordance with the terms hereof), in each case in a manner adverse to any Secured Swap Provider or any Secured Cash Management Bank, shall be effective without the written consent of such Secured Swap Provider or such Secured Cash Management Bank, as the case may be.

(c) Required Revolving Lenders. No amendment or waiver shall, unless signed by Required Revolving Lenders (or by Agent with the consent of the Required Revolving Lenders) in addition to the Required Lenders (or by Agent with the consent of the Required Lenders) and the Borrower: (i) amend or waive compliance with the conditions precedent to the obligations of Lenders to make any Revolving Loan (or of any L/C Issuer to Issue any Letter of Credit) in Section 3.2; or (ii) waive any Default or Event of Default for the purpose of satisfying the

conditions precedent to the obligations of Lenders to make any Revolving Loan (or of any L/C Issuer to Issue any Letter of Credit) in Section 3.2. No amendment shall: (x) amend or waive this Section 10.1(c) or the definitions of the terms used in this Section 10.1(c) insofar as the definitions affect the substance of this Section 10.1(c); (y) change the definition of the term Required Revolving Lenders; or (z) change the percentage of Lenders which shall be required for Revolving Lenders to take any action hereunder, in each case, without the consent of all Revolving Lenders.

(d) Additional Credit Facilities. This Agreement may be amended with the written consent of Agent, the Borrower and the Required Lenders to (i) add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the outstanding principal and accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(e) Schedules; Corrections; Liens; Incrementals. Notwithstanding anything to the contrary contained in this Section 10.1, (i) the Borrower may amend Schedules 4.19 and 4.20 upon notice to Agent, (ii) Agent may amend Schedules 2.1(a) and 2.1(b) to reflect Incremental Facilities and Sales entered into pursuant to Section 10.9, (iii) Agent and the Borrower may amend or modify this Agreement and any other Loan Document to (1) cure any obvious error or any ambiguity, defect, inconsistency or omission of a technical nature, (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional Property for the benefit of the Secured Parties or join additional Persons as Credit Parties, and (3) add one or more Incremental Facilities to this Agreement pursuant to Section 2.1(e) and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the Revolving Loans and the accrued interest and fees in respect thereof and to include appropriately the Lenders holding such credit facilities in any determination of the Required Revolving Lenders and Required Lenders; and (iv) in connection with an amendment in which any Class of Term Loans or Class of Revolving Loan Commitments (or outstandings thereunder) is refinanced with a replacement Class of Term Loans or Revolving Loan Commitments (or outstandings thereunder), as applicable, bearing (or is modified in such a manner such that the resulting Term Loans or Revolving Loan Commitments (or outstandings thereunder) bear) a lower All-In Yield and other customary amendments related thereto (a “**Permitted Repricing Amendment**”), only the consent of each of the Lenders holding the Term Loans or Revolving Loan Commitments (or outstandings thereunder) subject to such permitted repricing transaction that will continue as a Lender in respect of the modified Term Loans or Revolving Loan Commitments (or outstandings thereunder) shall be required for such Permitted Repricing Amendment.

(f) Extensions. 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 with a like maturity date or all Revolving Lenders having Revolving Loan Commitments with a like commitment termination date, in each case on a pro rata basis (based on the aggregate outstanding principal amount of such respective Term Loans or amounts of Revolving Loan Commitments) 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 any such Extension Offers to extend the maturity date and/or commitment termination of each such Lender’s Term Loans and/or Revolving Loan Commitments, and, subject to the terms hereof, otherwise modify the terms of such Term Loans

and/or Revolving Loan Commitments 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/or Revolving Loan Commitments (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 or Revolving Loan Commitments, as applicable, in each case as so extended, as well as the original Term Loans and the original Revolving Loan Commitments (in each case not so extended), being a separate Class), so long as the following terms are satisfied:

- (i) no Default or Event of Default shall have occurred and be continuing at the time the applicable Extension Offer is delivered to the Lenders;
- (ii) except as to final commitment termination date (which shall be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the Extended Revolving Lenders), the Revolving Loan Commitment of any Revolving Lender that agrees to an Extension with respect to such Revolving Loan Commitment (an "**Extended Revolving Lender**") extended pursuant to an Extension (an "**Extended Revolving Loan Commitment**" and the Loans thereunder, "**Extended Revolving Loans**") and the related outstandings shall be a Revolving Loan Commitment (or related outstandings, as the case may be) with the same terms (or terms not less favorable to existing Revolving Lenders) as the original Revolving Loan Commitments (and related outstandings); provided that (1) the borrowing and payments (except for (A) payments of interest and/or fees at different rates on Extended Revolving Loan Commitments (and related outstandings), (B) repayments required upon the commitment termination date of the non-extended Class of Revolving Loan Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments) of Revolving Loans with respect to Extended Revolving Loan Commitments after the applicable Extension date shall be made on a pro rata basis with all other Revolving Loan Commitments, (2) subject to Section 10.1(b), all Swing Loans and Letters of Credit shall be participated on a pro rata basis by all Lenders with Revolving Loan Commitments (including Extended Revolving Loan Commitments) in accordance with their percentage of the Aggregate Revolving Loan Commitments, (3) the permanent repayment of Revolving Loans with respect to, and termination of, Extended Revolving Loan Commitments after the applicable Extension date shall be made on a pro rata basis with all other Revolving Loan Commitments, except that the Borrower shall be permitted to repay permanently and terminate commitments of any such Class on a better than pro rata basis as compared to any other Class with a later commitment termination date than such Class, (4) assignments and participations of Extended Revolving Loan Commitments and related Revolving Loans shall be governed by the same assignment and participation provisions applicable to the other Classes of Revolving Loan Commitments and Revolving Loans and (5) at no time shall there be Revolving Loan Commitments hereunder (including Extended Revolving Loan Commitments and any original Revolving Loan Commitments) which have more than two (2) different maturity dates;
- (iii) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iv), (v) and (vi), be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the Extending Term Lenders), the Term Loans of any Term Lender that agrees to an Extension (such commitment, an "**Extended Term Loan Commitment**") with respect to such Term Loans owed to it (an "**Extending Term Lender**") extended pursuant to any

Extension ("**Extended Term Loans**") shall have the same terms as the Class of Term Loans subject to such Extension Offer (except for covenants or other provisions contained therein applicable only to periods after the then Latest Maturity Date);

(iv) the final maturity date of any Extended Term Loans shall be no earlier than the Latest Maturity Date of the Term Loans extended thereby and the amortization schedule applicable to Loans pursuant to Section 2.8(a) for periods prior to the original maturity date of the Term Loans shall not be increased;

(v) the Weighted Average Life to Maturity of any Extended Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans extended thereby;

(vi) any Extended Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than pro rata basis) with non-extended Classes of Term Loans in any voluntary or mandatory prepayments hereunder, in each case as specified in the respective Extension Offer; and

(vii) if the aggregate principal amount of Term Loans (calculated on the outstanding principal amount thereof) and/or Revolving Loan Commitments, as the case may be, in respect of which Term Lenders or Revolving Lenders, as applicable, shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans or Revolving Loan Commitments, as the case may be, offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans and/or Revolving Loans of such Term Lenders or Revolving Lenders, as applicable, shall be extended ratably up to such maximum amount based on the respective principal or commitment amounts with respect to which such Term Lenders and/or Revolving Lenders, as the case may be, have accepted such Extension Offer.

With respect to all Extensions consummated by the Borrower pursuant to this Section, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.7 or 2.8 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 or Revolving Loan Commitments (as applicable) of any or all applicable Classes be tendered. 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 and/or Extended Revolving Loan Commitments on the 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 Loan Document that may otherwise prohibit or conflict with any such Extension or any other transaction contemplated by this Section. Any Lender that does not respond to an Extension Offer by the applicable due date shall be deemed to have rejected such Extension Offer.

No consent of Agent or any Lender shall be required to effectuate any Extension, other than (A) the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans and/or Revolving Loan Commitments (or a portion thereof) and (B) with respect to any Extension of the Revolving Loan Commitments, the consent of the L/C Issuer and Swing Lender. All Extended Term Loans, Extended Revolving Loan Commitments and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents and secured by the Collateral on a *pari passu* basis with all other applicable Obligations. The Lenders hereby

irrevocably authorize Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower (on behalf of all Credit Parties) as may be necessary in order to establish new Classes or sub-Classes in respect of Revolving Loan Commitments or Term Loans so extended and such technical amendments as may be necessary in the reasonable opinion of Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section. In addition, if so provided in such amendment and with the consent of each L/C Issuer, participations in Letters of Credit expiring on or after the applicable commitment termination date shall be re-allocated from Lenders holding non-extended Revolving Loan Commitments to Lenders holding Extended Revolving Loan Commitments in accordance with the terms of such amendment; provided, however, that such participation interests shall, upon receipt thereof by the relevant Lenders holding Revolving Loan Commitments, be deemed to be participation interests in respect of such Revolving Loan Commitments and the terms of such participation interests shall be adjusted accordingly. Without limiting the foregoing, in connection with any Extensions the applicable Credit Parties shall (at their expense) amend (and Agent is hereby directed by the Lenders to amend) any Mortgage that has a maturity date prior to the Latest Maturity Date, so that such maturity date referenced therein is extended to the later of the then Latest Maturity Date (or such later date as may be advised by local counsel to Agent). Agent shall promptly notify each Lender of the effectiveness of each such amendment.

In connection with any Extension, the Borrower shall provide Agent at least five (5) Business Days (or such shorter period as may be agreed by Agent) prior written notice thereof, and shall 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, Agent, in each case acting reasonably to accomplish the purposes of this Section 10.1(f).

This Section 10.1(f) shall supersede any provisions of this Section 10.1 or Section 10.11 to the contrary.

(g) Certain other Loan Documents. The Agent Fee Letter, any Control Agreement, any Mortgage, any letter of credit reimbursement or similar agreement, or any landlord, bailee or mortgagee agreement may be amended as provided therein and if not provided therein, by each of the parties thereto.

## 10.2 Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement shall be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on Schedule 10.2, (ii) posted to Syndtrak® (to the extent such system is available and set up by or at the direction of Agent prior to posting) in an appropriate location by uploading such notice, demand, request, direction or other communication to [www.syndtrak.com](http://www.syndtrak.com) or using such other means of posting to Syndtrak® as may be available and reasonably acceptable to Agent prior to such posting, (iii) posted to any other E-System approved by or set up by or at the direction of Agent or (iv) addressed to such other address as shall be notified in writing (A) in the case of the Borrower, Agent and the Swing Lender, to the other parties hereto and (B) in the case of all other parties, to the Borrower and Agent. Transmissions made by electronic mail or E-Fax to Agent shall 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 Agent applicable at the time and previously communicated to the Borrower, and (z) if receipt of such transmission is acknowledged by 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 shall 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 Agent pursuant to Article I shall be effective until received by Agent.

(ii) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Loan 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 shall notify 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 Agent shall reasonably request.

10.3 Electronic Transmissions.

(a) Authorization. Subject to the provisions of Section 10.2(a), each of Agent, 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 Loan 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.

(b) Signatures. Subject to the provisions of Section 10.2(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of 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 shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which 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 shall, 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 Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall 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.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 10.2 and this Section 10.3, 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 Agent and Credit Parties in connection with the use of such E-System.

(d) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE". NONE OF 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 FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY 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. Each of the Borrower, the other Credit Parties executing this Agreement and the Secured Parties agrees that 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.

10.4 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Credit Party, any Affiliate of any Credit Party, Agent or any Lender shall be effective to amend, modify or discharge any provision of this Agreement or any of the other Loan Documents.

10.5 Costs and Expenses. Any action taken by any Credit Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of Agent or Required Lenders, shall be at the expense of such Credit Party, and neither Agent nor any other Secured Party shall be required under any Loan Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein. In addition, the Borrower agrees to pay or reimburse upon demand (a) Agent for all reasonable and documented (in summary form) out-of-pocket costs and expenses incurred by it or any of its Related Persons, in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, in each case including Attorney Costs of Agent, the cost of environmental audits or other environmental investigations (e.g., monitoring), syndication, distribution, Collateral audits and appraisals, background checks and similar expenses, to the extent permitted hereunder, (b) Agent for all reasonable and documented (in summary form) costs and expenses incurred by it or any of its Related Persons in connection with internal audit reviews, field examinations and Collateral examinations (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by Agent for its examiners), (c) each of Agent, its Related Persons, and

L/C Issuer, for all costs and expenses incurred in connection with (i) the creation, perfection and maintenance of the perfection of Agent's Liens upon the Collateral, including Lien search, filing and recording fees, (ii) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" in any insolvency or bankruptcy proceeding or otherwise and whether or not consummated, (iii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or any attempt to inspect, verify, protect, insure, collect, sell, liquidate or otherwise dispose of any Collateral or (iv) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Credit Party, any Subsidiary of any Credit Party, Loan Document or Obligation, including Attorney Costs, (d) the cost of purchasing insurance that the Credit Parties fail to obtain as required by the Loan Documents and (e) fees and disbursements of Attorney Costs of one law firm on behalf of all Lenders (other than Agent) incurred in connection with any of the matters referred to in clause (c) above.

#### **10.6 Indemnity.**

(a) Each Credit Party agrees to indemnify, hold harmless and defend Agent, each Lender, each L/C Issuer and each of their respective Related Persons (each such Person being an "**Indemnitee**") from and against all Liabilities (including Attorney Costs, brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnitee (whether brought by a Credit Party, an Affiliate of a Credit Party or any other Person) in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), any Letter of Credit, the use or intended use of the proceeds of any Loan or the use of any Letter of Credit or any securities filing of, or with respect to, any Credit Party, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Target, any Credit Party or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors (and including Attorney Costs in any case), whether or not any such Indemnitee, 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 Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the "**Indemnified Matters**"); provided, however, that no Credit Party shall have any liability under this Section 10.6 to any Indemnitee with respect to any Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), (a) to the extent such liability has resulted primarily from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order or (b) such Indemnitee is in material breach of its duties hereafter, in each case, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, each Credit Party executing this Agreement waives and agrees not to assert against any Indemnitee, and shall cause each other Credit Party to waive and not assert against any Indemnitee, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person. This Section 10.6(a) shall not apply with respect to Taxes other than any Taxes that represent Liabilities arising from any non-Tax claim.

(b) Without limiting the foregoing, "**Indemnified Matters**" includes all Environmental Liabilities imposed on, incurred by or asserted against any Indemnitee, including those arising from, or otherwise involving, any Property of any Credit Party or any Related Person of any Credit Party or any actual, alleged or prospective damage to Property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such Property or natural resource or any Property on or contiguous to any Real Estate of any Credit Party or any Related Person of any Credit Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Credit Party or any Related Person of any Credit Party or the owner, lessee or operator of any Property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by Agent or following Agent or any Lender having become the successor-in-interest to any Credit Party or any Related Person of any Credit Party and (ii) are attributable solely to acts of such Indemnitee.

10.7 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any Property in favor of any Credit Party or any other Person or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from the Borrower, from any other Credit Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

10.8 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that any assignment by any Lender shall be subject to the provisions of Section 10.9, and provided further that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

10.9 Binding Effect; Assignments and Participations.

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, the other Credit Parties signatory hereto and Agent and when Agent shall have been notified by each Lender that such Lender has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of the Borrower, the other Credit Parties hereto (in each case except for Article VIII), Agent and each Lender and each L/C Issuer receiving the benefits of the Loan Documents and, to the extent provided in Section 9.11, each other Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 9.9), none of the Borrower, any other Credit Party, any L/C Issuer or Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign (a "**Sale**") all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans and Letters of Credit) to:

- (i) any existing Lender (other than a Defaulting Lender);

(ii) any Affiliate or Approved Fund of any existing Lender (other than a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person or a Defaulting Lender);

(iii) [reserved]; or

(iv) any other Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) who is an "accredited investor" (as defined in Regulation D of the Securities Act of 1933) acceptable (which acceptances shall not be unreasonably withheld or delayed) to (x) Agent, (y) as long as no Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g) is continuing, the Borrower, and (z) in the case of any Sale of a Revolving Loan, Letter of Credit or Revolving Loan Commitment, each L/C Issuer that is a Lender; provided that the acceptances of L/C Issuer and the Borrower shall be deemed to have been given unless an objection is delivered to Agent within five (5) Business Days after notice of a proposed Sale is delivered to the L/C Issuer and the Borrower. Notwithstanding any provision herein to the contrary:

(A) such Sales do not have to be ratable between the Revolving Loan and Term Loans but must be ratable among the obligations owing to and owed by such Lender with respect to the Revolving Loans or a Term Loan;

(B) for each Loan, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loans, Commitments and Letter of Credit Obligations subject to any such Sale shall be in a minimum amount of \$1,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in such facility or is made with the prior consent of the Borrower (to the extent the Borrower's consent is otherwise required) and Agent;

(C) interest accrued, other than any interest that is payable-in-kind, prior to and through the date of any such Sale may not be assigned;

(D) such Sales by Lenders who are Defaulting Lenders due to clause (a) of the definition of Defaulting Lender shall be subject to Agent's prior written consent in all instances, unless in connection with such sale, such Defaulting Lender cures, or causes the cure of, its Defaulting Lender status as contemplated in Section 2.11(e)(v); and

(E) assignments and participations to Disqualified Institutions shall be subject to the terms and conditions in Section 10.9(i).

Agent's refusal to accept a Sale to a Credit Party, a Subsidiary of a Credit Party or a Person that would be a Defaulting Lender, or the imposition of conditions or limitations (including limitations on voting) upon Sales to such Persons, shall not be deemed to be unreasonable. In the event of any purported assignment or transfer by a Lender of its rights or obligations under this Agreement and the other Loan Documents to any Affiliate of the Borrower, such Term Loans and all rights and obligations as a Term Lender related thereto, immediately and automatically, without any further action on the part of the Borrower, any Lender, Agent or any other Person, shall, for all purposes under this Agreement, the other Loan Documents and otherwise, be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and

effect and the Borrower shall neither obtain nor have any rights as a Lender hereunder or under the other Loan Documents by virtue of such assignment. Without limitation of Section 2.7(d)(iii), any Loan acquired by Borrower or any Subsidiary thereof shall immediately upon such acquisition be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect. Any purported assignment or transfer by a Lender of its rights or obligations under this Agreement and the other Loan Documents to any Person not Affiliated with the Borrower that does not comply with the terms hereof shall be treated for purposes of this Agreement as a sale by such Lender of a participation of such rights and obligations in accordance with Section 10.9(f) (subject to Section 10.9(i) in the case of a purported transfer to a Disqualified Institution), provided that such treatment shall not relieve any assigning Lender from any Liabilities arising as a consequence of its breach of this Agreement.

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to Agent an Assignment via an electronic settlement system designated by Agent (or, if previously agreed with Agent, via a manual execution and delivery of the Assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to Agent), any Tax forms required to be delivered pursuant to Section 11.1 and payment of an assignment fee in the amount of \$3,500 to Agent, unless waived or reduced by Agent; provided that (i) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (ii) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale (unless waived or reduced by Agent). Upon receipt of all the foregoing, and conditioned upon such receipt and, if such Assignment is made in accordance with clause (iv) of Section 10.9(b), upon Agent (and, if applicable, the Borrower and L/C Issuer) consenting to such Assignment, from and after the effective date specified in such Assignment, Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Effectiveness. Subject to the recording of an Assignment by Agent in the Register pursuant to Section 2.4(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

(e) Grant of Security Interests. In addition to the other rights provided in this Section 10.9, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in

accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

(f) Participants and SPVs. In addition to the other rights provided in this Section 10.9, but subject to the provisions of Section 10.9(i), each Lender may, (x) with notice to Agent and the Borrower, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from Agent or the Borrower, sell participations to one or more Persons (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Term Loans, Revolving Loans and Letters of Credit); provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Credit Parties and the Secured Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPV shall be entitled to the benefits of Section 10.11 and Article XI, but, with respect to Section 11.1, only to the extent such participant or SPV delivers the Tax forms such Lender is required to collect pursuant to Section 11.1(g) to the selling Lender and then only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation except to the extent such entitlement to receive a greater amount results from any change in, or in the interpretation of, any Requirement of Law that occurs after the date such grant or participation is made (and in consideration of the foregoing, each such participant and SPV shall be deemed to have acknowledged and agreed to be bound by the provisions of Section 10.20) and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (ii) and (iii) of Section 10.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in clause (vii) of Section 10.1(a). No party hereto shall institute (and the Borrower shall cause each other Credit Party not to institute) against any SPV grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to be reimbursed by such SPV for any such Liability). The agreement in the preceding sentence shall survive the termination of the

Commitments and the payment in full of the Obligations. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person other than Agent or the Borrower except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent shall have no responsibility for maintaining a Participant Register.

- (g) [Reserved].
- (h) [Reserved].
- (i) Disqualified Institutions.

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "**Trade Date**") on which the assigning or transferring Lender entered into a binding agreement to sell and assign, or grant a participation in, all or a portion of its rights and obligations under this Agreement, as applicable, to such Person unless Agent and, unless an Event of Default under Section 8.1(a), Section 8.1(f) or Section 8.1(g) has occurred and is continuing, the Borrower, has consented in writing in its sole and absolute discretion to such assignment or participation, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation. For the avoidance of doubt, (x) no assignment or participation shall be retroactively invalidated pursuant to this Section 10.9(i) if the Trade Date therefor occurred prior to the assignee's or participant's becoming a Disqualified Institution (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), and (y) the execution by the Borrower or Agent of an Assignment with respect to such an assignment will not by itself result in such assignee no longer being considered a Disqualified Institution.

(ii) Agent and each assignor of a Loan or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the assignee Lender or Participant in the relevant Assignment or participation agreement, as applicable, that such assignee or purchaser is not a Disqualified Institution. The Agent shall have the right, and the Borrower hereby expressly authorizes Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the "**DQ List**") on an E-System, including that portion of such E-System that is designated for "public side" Lenders and/or (B) provide the DQ List to each Lender requesting the same. Any assignment to a Disqualified Institution or grant or sale of participation to a Disqualified Institution in violation of this Section 10.9(i) shall not be void, but the other provisions of this Section 10.9(i) shall apply.

(iii) If any assignment or participation is made to any Disqualified Institution without the consents required by this Section 10.9(i) and/or Section 10.9(b), the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and Agent, (1) terminate the Revolving Loan Commitment of such Disqualified Institution and pay or cause to be paid all Obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Loan Commitment, (2) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay (or cause to be purchased or prepaid) such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (3) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions and conditions contained in this Section 10.9), all of its interest, rights and obligations under this Agreement and the other Loan Documents to one or more assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations of such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder. Any Term Loan so purchased by the Borrower under this Section 10.9(i) shall upon such purchase be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect.

(iv) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (1) will not have the right to (x) receive information, reports or other materials provided to Agent or Lenders by the Borrower, Agent or any other Lender, (y) attend or participate (including by telephone) in meetings attended by any of the Lenders and/or Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of Agent or the Lenders and (2) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization pursuant to Section 1126 of the Bankruptcy Code or any similar plan, each Disqualified Institution party hereto hereby agrees (1) not to vote on such plan, (2) if such Disqualified Institution does vote on such plan notwithstanding the restriction in the immediately foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other similar federal, state or foreign law affecting creditor's rights), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other similar federal, state or foreign law affecting creditor's rights) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(j) Waiver. No Disqualified Institution shall (i) be entitled to bring actions against Agent, in its role as such, (ii) receive advice of counsel or other advisors to Agent or any other Lenders or (iii) challenge the attorney client privilege of Agent or any Lender and their respective counsel.

10.10 Non-Public Information: Confidentiality.

(a) Non-Public Information.

(i) Distribution of Materials to Lenders and L/C Issuer. The Credit Parties acknowledge and agree that (A) the Loan Documents and all reports, notices, communications and other information or materials provided or delivered by, or on behalf of, the Credit Parties hereunder (collectively, the “**Borrower Materials**”) may be disseminated by, or on behalf of, Agent, and made available, to the Lenders and the L/C Issuers by posting such Borrower Materials on an E-System; and (B) certain of the Lenders (each a “**Public Lender**”) may have personnel who do not wish to receive material non-public information (“**MNPI**”) with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Credit Parties authorize Agent to download copies of their logos from its website and post copies thereof on an E-System.

(ii) Material Non-Public Information. The Credit Parties hereby agree that if either they, any parent company or any Subsidiary of the Credit Parties has publicly traded equity or debt securities in the United States, they shall (and shall cause such parent company or Subsidiary, as the case may be, to) (A) identify in writing, and (B) to the extent reasonably practicable, clearly and conspicuously mark such Borrower Materials that contain only information that is publicly available or that is not material for purposes of United States federal and state securities laws as “**PUBLIC**”. The Credit Parties agree that by identifying such Borrower Materials as “**PUBLIC**” or publicly filing such Borrower Materials with the Commission, then Agent and the Lenders and the L/C Issuers shall be entitled to treat such Borrower Materials as not containing any MNPI for purposes of United States federal and state securities laws. The Credit Parties further represent, warrant, acknowledge and agree that the following documents and materials shall be deemed to be **PUBLIC**, whether or not so marked, and do not contain any MNPI: (I) the Loan Documents, including the schedules and exhibits attached thereto, and (II) administrative materials of a customary nature prepared by the Credit Parties or Agent (including, Notices of Borrowing, Notices of Conversion/Continuation, L/C Requests, Swingline Requests and any similar requests or notices posted on or through an E-System). Before distribution of Borrower Materials, the Credit Parties agree to execute and deliver to Agent a letter authorizing distribution of the evaluation materials to prospective Lenders and their employees willing to receive MNPI, and a separate letter authorizing distribution of evaluation materials that do not contain MNPI and represent that no MNPI is contained therein. The Credit Parties acknowledge and agree that the list of Disqualified Institutions does not constitute MNPI and may be posted to all Lenders by Agent (including any updates thereto).

(iii) Each of Agent, each Lender and each L/C Issuer acknowledges and agrees that it may receive MNPI hereunder concerning the Credit Parties and their Affiliates and agrees to use such information in compliance with all relevant policies, procedures and applicable Requirements of Laws (including United States federal and state securities laws and regulations). Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “**Private Side Information**” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States

Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Parent or its securities for purposes of United States Federal or state securities laws.

(b) Confidential Information. Each of Agent, each Lender and each L/C Issuer agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document, except that such information may be disclosed (i) with the Borrower's consent, (ii) to Related Persons of such Lender, L/C Issuer or Agent, as the case may be, or to any Person that any L/C Issuer causes to Issuer Letters of Credit hereunder, (iii) to the extent such information presently is or hereafter becomes (A) publicly available other than as a result of a breach of this Section 10.10 or (B) available to or in the possession of such Lender, L/C Issuer or Agent or any of their Related Persons, as the case may be, from a source (other than any Credit Party) not known by them to be subject to disclosure restrictions, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority or any other regulatory or self-regulatory authority having jurisdiction over such Person or its Affiliates, (v) to the extent necessary or customary for inclusion in league table measurements, (vi) (A) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (B) otherwise to the extent consisting of general portfolio information that does not identify Credit Parties, (vii) to current or prospective assignees, SPVs (including the investors or prospective investors therein) or participants, financing sources, direct or contractual counterparties to any Secured Rate Contracts or Secured Cash Management Agreements, or direct or contractual counterparties (including insurers and reinsurers) to any other transactions under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder and to their respective Related Persons, in each case to the extent such assignees, investors, participants, financing sources, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 10.10 (and such Person may disclose information to their respective Related Persons in accordance with clause (ii) above), (viii) to any other party hereto, and (ix) in connection with the exercise or enforcement of any right or remedy under any Loan Document, in connection with any litigation or other proceeding to which such Lender, L/C Issuer, Secured Swap Provider, Secured Cash Management Bank or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Related Persons referring to a Lender, L/C Issuer, Secured Swap Provider, Secured Cash Management Bank or Agent or any of their Related Persons. In addition, Agent and the Lenders may disclose this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments and for purposes of general portfolio, benchmarking and market data analysis. In the event of any conflict between the terms of this Section 10.10 and those of any other Contractual Obligation entered into with any Credit Party (whether or not a Loan Document), the terms of this Section 10.10 shall govern.

(c) Tombstones. Each Credit Party consents to the publication by Agent, Lead Arranger or any Lender of any press releases, tombstones, advertising or other promotional materials (including via any Electronic Transmission) relating to the financing transactions contemplated by this Agreement using such Credit Party's name, product photographs, logo or trademark. Agent or such Lender shall provide a draft of any such press release, advertising or other promotional material to the Borrower for review and comment prior to the publication thereof.

(d) Press Release and Related Matters. No Credit Party shall, and no Credit Party shall permit any of its Affiliates to, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of securities of any Credit Party) using the name, logo or otherwise referring to Capital One or of any of its Affiliates, the Loan Documents or any transaction contemplated herein or therein to which Capital One or any of its Affiliates is party without the prior written consent of Capital One or such Affiliate except to the extent required to do so under applicable Requirements of Law and then, only after consulting with Capital One.

10.11 Set-off; Sharing of Payments.

(a) Right of Setoff. Each of Agent, each Lender, each L/C Issuer and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by each Credit Party), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by Agent, such Lender, such L/C Issuer or any of their respective Affiliates to or for the credit or the account of the Borrower or any other Credit Party against any Obligation of any Credit Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmatured. No Lender or L/C Issuer shall exercise any such right of setoff without the prior consent of Agent or Required Lenders. Each of Agent, each Lender and each L/C Issuer agrees promptly to notify the Borrower and Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 10.11 are in addition to any other rights and remedies (including other rights of setoff) that Agent, the Lenders, the L/C Issuer, their Affiliates and the other Secured Parties, may have.

(b) Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of any Credit Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) (and other than pursuant to Section 10.9, Section 10.20, Article XI or a Discounted Buyback or any payment to a Lender that has not accepted an Extension Offer in respect of the original terms of those of its Loan and Commitments that, as to Lenders that accepted such Extension Offer, were extended as to such Lenders) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been received by Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrower, applied to repay the Obligations in accordance herewith); provided, however, that (i) if such payment is rescinded or otherwise recovered from such Lender or L/C Issuer in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender or L/C Issuer without interest and (ii) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Credit Party in the amount of such participation. If a Defaulting Lender receives any such payment as described in the previous sentence, such Lender shall turn over such payments to Agent in an amount that would satisfy the cash collateral requirements set

forth in Section 2.11(e).

10.12 Counterparts; Facsimile Signature. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. 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 shall be as effective as delivery of a manually executed counterpart hereof.

10.13 Severability; Captions; Independence of Provisions. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder. The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

10.14 Interpretation. This Agreement is the result of negotiations among and has been reviewed by counsel to Credit Parties, Agent, each Lender and other parties hereto, and is the product of all parties hereto. Accordingly, this Agreement and the other Loan Documents shall not be construed against the Lenders or Agent merely because of Agent's or Lenders' involvement in the preparation of such documents and agreements. Without limiting the generality of the foregoing, each of the parties hereto has had the advice of counsel with respect to Sections 10.16 and 10.17.

10.15 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Borrower, the Lenders, the L/C Issuers party hereto, Agent and, subject to the provisions of Section 9.11, each other Secured Party, and their permitted successors and assigns, and no other Person shall 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 Loan Documents. Neither Agent nor any Lender shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

10.16 Governing Law and Jurisdiction.

(a) Governing Law. The laws of the State of New York shall govern all matters arising out of, in connection with or relating to this Agreement, including its validity, interpretation, construction, performance and enforcement (including any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to post-judgment interest).

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America sitting in the Southern District of New York and, by execution and delivery of this Agreement, the Borrower and each other Credit Party executing this Agreement hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts; provided that nothing in this Agreement shall limit the right of Agent to commence any proceeding in the federal or state courts of any other jurisdiction to the extent Agent determines that such action is necessary or appropriate to exercise its rights or remedies under the Loan Documents. The parties hereto (and, to the extent set forth in any other Loan Document, each other Credit Party)

hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(c) Service of Process. Each Credit Party hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of the Borrower specified herein (and shall be effective when such mailing shall be effective, as provided therein). Each Credit Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Non-Exclusive Jurisdiction. Nothing contained in this Section 10.16 shall affect the right of Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Credit Party in any other jurisdiction.

**10.17 Waiver of Jury Trial.** THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PERSON OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS, AS APPLICABLE, BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.18 Entire Agreement; Release; Survival.**

(a) THE LOAN DOCUMENTS EMBODY THE ENTIRE AGREEMENT OF THE PARTIES AND SUPERSEDE ALL PRIOR AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER THEREOF AND ANY PRIOR LETTER OF INTEREST, COMMITMENT LETTER, CONFIDENTIALITY AND SIMILAR AGREEMENTS INVOLVING ANY CREDIT PARTY AND ANY LENDER OR ANY L/C ISSUER OR ANY OF THEIR RESPECTIVE AFFILIATES RELATING TO A FINANCING OF SUBSTANTIALLY SIMILAR FORM, PURPOSE OR EFFECT OTHER THAN THE AGENT FEE LETTER. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, THE TERMS OF THIS AGREEMENT SHALL GOVERN (UNLESS OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENTS OR SUCH TERMS OF SUCH OTHER LOAN DOCUMENTS ARE NECESSARY TO COMPLY WITH APPLICABLE REQUIREMENTS OF LAW, IN WHICH CASE SUCH TERMS SHALL GOVERN TO THE EXTENT NECESSARY TO COMPLY THEREWITH).

(b) Execution of this Agreement by the Credit Parties constitutes a full, complete and irrevocable release of any and all claims which each Credit Party may have at law or in equity in

respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each Credit Party signatory hereto hereby waives, releases and agrees (and shall cause each other Credit Party to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) (i) Any indemnification or other protection provided to any Indemnitee pursuant to this Section 10.18, Sections 10.5 (Costs and Expenses), and 10.6 (Indemnity), and Article IX (Agent) and Article XI (Taxes, Yield Protection and Illegality), and (ii) the provisions of Section 8.1 of the Guaranty and Security Agreement, in each case, shall (x) survive the termination of the Commitments and the payment in full of all other Obligations and (y) with respect to clause (i) above, inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns.

10.19 USA Patriot Act. Each Lender that is subject to the USA Patriot Act (and Agent (for itself and not on behalf of any Lender)) hereby notifies the Credit Parties that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or Agent to identify each Credit Party in accordance with the USA Patriot Act.

10.20 Replacement of Lender. Within forty-five days after: (i) receipt by the Borrower of written notice and demand from (A) any Lender (an "**Affected Lender**") for payment of additional costs as provided in Sections 11.1, 11.3 and/or 10.6 or that has become a Defaulting Lender or (B) any SPV or participant (an "**Affected SPV/Participant**") for payment of additional costs as provided in Section 10.9(f), unless the option or participation of such Affected SPV/Participant shall have been terminated prior to the exercise by the Borrower of its rights hereunder; or (ii) any failure by any Lender (other than Agent or an Affiliate of Agent) to consent to a requested amendment, waiver or modification to any Loan Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender (or each Lender directly affected thereby, as applicable) is required with respect thereto or any failure by any Lender to accept any Extension Offer, the Borrower may, at its option, notify (A) in the case of clause (i)(A) or (ii) above, Agent and such Affected Lender (or such non-consenting Lender) of the Borrower's intention to obtain, at the Borrower's expense, a replacement Lender ("**Replacement Lender**") for such Affected Lender (or such non-consenting Lender), or (B) in the case of clause (i)(B) above, Agent, such Affected SPV/Participant, if known, and the applicable Lender (such Lender, a "**Participating Lender**") that (1) granted to such Affected SPV/Participant the option to make all or any part of any Loan that such Participating Lender would otherwise be required to make hereunder or (2) sold to such Affected SPV/Participant a participation in or to all or a portion of its rights and obligations under the Loan Documents, of the Borrower's intention to obtain, at the Borrower's expense, a Replacement Lender for such Participating Lender, in each case, which Replacement Lender shall be reasonably satisfactory to Agent. In the event the Borrower obtains a Replacement Lender within forty-five (45) days following notice of its intention to do so, the Affected Lender (or such non-consenting Lender) or Participating Lender, as the case may be, shall sell and assign its Loans and Commitments to such Replacement Lender, at par, provided that the Borrower has reimbursed such Affected Lender or Affected SPV/Participant, as applicable, for its increased costs for which it is entitled to reimbursement under this Agreement through the date of such sale and assignment, and in the case of a Participating Lender being replaced by a Replacement Lender, (x) all right, title and interest in and to the Obligations and Commitments so assigned to the Replacement Lender shall be assigned free and clear of all Liens or other claims (including pursuant to the underlying option or participation granted or sold to

the Affected SPV/Participant, but without affecting any rights, if any, of the Affected SPV/Participant to the proceeds constituting the purchase price thereof) of the Affected SPV/Participant, and (y) to the extent required by the underlying option or participation documentation, such Participating Lender shall apply all or a portion of the proceeds received by it as a result of such assignment, as applicable, to terminate in full the option or participation of such Affected SPV/Participant. In the event that a replaced Lender does not execute an Assignment pursuant to Section 10.9 within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 10.20 and presentation to such replaced Lender of an Assignment evidencing an assignment pursuant to this Section 10.20, the Borrower shall be entitled (but not obligated) to execute such an Assignment on behalf of such replaced Lender, and any such Assignment so executed by the Borrower, the Replacement Lender and Agent, shall be effective for purposes of this Section 10.20 and Section 10.9. Notwithstanding the foregoing, with respect to a Lender that is a Defaulting Lender, Agent may, but shall not be obligated to, obtain a Replacement Lender and execute an Assignment on behalf of such Defaulting Lender at any time with three (3) Business Days' prior notice to such Lender (unless notice is not practicable under the circumstances) and cause such Lender's Loans and Commitments to be sold and assigned, in whole or in part, at par. Upon any such assignment and payment and compliance with the other provisions of Section 10.9, such replaced Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such replaced Lender to indemnification hereunder shall survive.

**10.21 Joint and Several.** The obligations of the Credit Parties hereunder and under the other Loan Documents are joint and several. Without limiting the generality of the foregoing, reference is hereby made to Article II of the Guaranty and Security Agreement, to which the obligations of Borrower and the other Credit Parties are subject.

**10.22 Creditor-Debtor Relationship; No Advisory or Fiduciary Responsibility.** The relationship between Agent, each Lender and the L/C Issuer, on the one hand, and the Credit Parties, on the other hand, is solely that of creditor and debtor. No Secured Party has any fiduciary relationship or duty to any Credit Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and the Credit Parties by virtue of, any Loan Document or any transaction contemplated therein. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Agent and any Affiliate thereof, the Lead Arranger and the Lenders are arm's-length commercial transactions between the Borrower, each other Credit Party and their respective Affiliates, on the one hand, and the Agent and, as applicable, its Affiliates (including the Lead Arranger) and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (ii) each of the Borrower and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Agent and its Affiliates (including the Lead Arranger) and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower, any other Credit Party or any of their respective Affiliates, or any other Person and (ii) neither the Agent, any of its Affiliates (including the Lead Arranger) nor any Lender has any obligation to the Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Agent and its Affiliates (including the Lead Arranger) and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Credit Parties and their respective Affiliates, and neither the Agent, any of its Affiliates (including the Lead Arranger) nor any Lender has any obligation to

disclose any of such interests to the Borrower, any other Credit Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Credit Party hereby waives and releases any claims that it may have against the Agent, any of its Affiliates (including the Lead Arranger) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

10.23 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 the Guaranty and Security Agreement in respect of Swap Obligations under any Secured Rate Contract (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.23 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.23, or otherwise under the Guaranty and Security Agreement, voidable under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 10.23 shall remain in full force and effect until the guarantees in respect of Swap Obligations under each Secured Rate Contract have been discharged, or otherwise released or terminated in accordance with the terms of this Agreement. Each Qualified ECP Guarantor intends that this Section 10.23 constitute, and this Section 10.23 shall 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.

10.24 Secured Swap Providers and Secured Cash Management Banks. No Secured Swap Provider or Secured Cash Management Bank that obtains the benefits of the Guaranty and Security Agreement or any Collateral by virtue of the provisions hereof or of any other Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article X to the contrary, the Agent shall not be required to verify the existence, amount or payment of any Secured Rate Contract Obligations or Secured Cash Management Obligations. Upon the request of Agent, each Secured Swap Provider and Secured Cash Management Bank will promptly provide Agent with such information and supporting documentation with respect to its Secured Rate Contract Obligations and Secured Cash Management Obligations as Agent shall request, including the amounts (contingent and/or due and payable) thereof.

10.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such

shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.26 **Acknowledgement Regarding any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Rate Contracts or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a ‘**Covered Party**’) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.26, the following terms have the following meanings:

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

“**Covered Entity**” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

10.27 Continued Effectiveness; No Novation. On the Restatement Date upon the satisfaction of the conditions precedent set forth in Section 3.1, the Original Credit Agreement shall be amended and restated in its entirety by this Agreement. Notwithstanding anything to the contrary contained herein, this Agreement is not intended to and shall not serve to effect a novation of the Obligations under the Original Credit Agreement, as continued hereunder. Instead, it is the express intention of the parties hereto to reaffirm the Indebtedness created under the Original Credit Agreement which is evidenced by the notes provided for therein and secured by the Collateral. Each Credit Party acknowledges and confirms that (i) the Liens and security interests granted pursuant to the Loan Documents secure the Indebtedness, liabilities and obligations of the Borrower to Agent and the Lenders under the Original Credit Agreement, as amended and restated hereby, and that the term “Obligations” as used in the Loan Documents (or any other term used therein to describe or refer to the Indebtedness, liabilities and obligations of the Borrower and the other Credit Parties to Agent and the Lenders) includes, without limitation, the Indebtedness, liabilities and obligations of the Borrower under this Agreement and the Notes to be delivered hereunder, if any, and under the Original Credit Agreement, as amended and restated hereby, as the same further may be amended, restated, supplemented and/or modified from time to time and (ii) the grants of security interests, mortgages and Liens under and pursuant to the Loan Documents shall continue unaltered, and each other Loan Document shall continue in full force and effect in accordance with its terms unless otherwise amended by the parties thereto, and the parties hereto hereby ratify and confirm the terms thereof as being in full force and effect and unaltered by this Agreement. The Loan Documents and all agreements, instruments and documents executed or delivered in connection with any of the foregoing shall each be deemed to be amended to the extent necessary to give effect to the provisions of this Agreement. Cross-references in the Loan Documents to particular section numbers in the Original Credit Agreement shall be deemed to be cross-references to the corresponding sections, as applicable, of this Agreement. Each Credit Party signatory hereto, in the respective capacities, if any, of such Credit Party under each of the “Loan Documents” (as such term is defined in the Original Credit Agreement), other than the Original Credit Agreement (such Loan Documents other than the Original Credit Agreement are referred to herein as the “**Original Loan Documents**”), to which such Credit Party is a party (including the respective capacities of accommodation party, assignor, grantor, guarantor, indemnitee, mortgagor, obligor and pledgor, as applicable, and each other similar capacity, if any, in which such Credit Party granted Liens on all or any part of its properties and assets, or otherwise acted as an accommodation party, guarantor, indemnitee or surety with respect to all or any part of the Obligations under the Original Credit Agreement), hereby (i) agrees that the terms and provisions hereof shall not affect in any way any payment, performance, observance or other obligations or liabilities of such Credit Party under any of the Original Loan Documents, all of which obligations and liabilities are hereby ratified, confirmed and reaffirmed in all respects, and (ii) to the extent such Credit Party has granted Liens on any of its properties or assets pursuant to any of the Original Loan Documents to secure the payment, performance and/or observance of all or any part of the Obligations, acknowledges, ratifies, confirms and reaffirms such grant of Liens, and acknowledges and agrees that all of such Liens are intended and shall be deemed and construed to secure to the fullest extent set forth therein all now existing and hereafter arising Obligations under and as defined in this Agreement, as hereafter amended, restated, amended and restated, supplemented and otherwise modified and in effect from time to time.

## ARTICLE XI

### TAXES, YIELD PROTECTION AND ILLEGALITY

#### 11.1 Taxes.

(a) Except as required by a Requirement of Law, each payment by any Credit Party under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax, penalties or other Liabilities, with respect thereto (collectively, "**Taxes**").

(b) If any Taxes shall be required by any Requirement of Law to be deducted from or in respect of any amount payable under any Loan Document to any Secured Party (i) if such Tax is an Indemnified Tax, such amount payable shall be increased as necessary to ensure that, after all required deductions for Indemnified Taxes are made (including deductions applicable to any increases to any amount under this Section 11.1), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the relevant Credit Party shall make such deductions, (iii) the relevant Credit Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, the relevant Credit Party shall deliver to Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to Agent.

(c) In addition, the Borrower agrees to pay, and authorize Agent to pay in their name, any stamp, documentary, excise or property Tax, charges or similar levies imposed by any applicable Requirement of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, "**Other Taxes**"). The Swing Lender may, without any need for notice, demand or consent from the Borrower, by making funds available to Agent in the amount equal to any such payment, make a Swing Loan to the Borrower in such amount, the proceeds of which shall be used by Agent in whole to make such payment. Within 30 days after the date of any payment of Other Taxes by any Credit Party, the Borrower shall furnish to Agent, the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to Agent.

(d) The Credit Parties hereby acknowledge and agree that neither Capital One nor any Affiliate of Capital One has provided any Tax advice to any Tax Affiliate in connection with the transactions contemplated hereby.

(e) The Borrower shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to Agent), each Secured Party for all Indemnified Taxes (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 11.1) paid or payable by such Secured Party and any Liabilities arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. A certificate of the Secured Party (or of Agent on behalf of such Secured Party) claiming any compensation under this clause (e), setting forth the amounts to be paid thereunder and delivered to the Borrower with copy to Agent, shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, Agent and such Secured Party may use any reasonable averaging and attribution methods.

(f) Any Lender claiming any additional amounts payable pursuant to this Section 11.1 shall use its reasonable efforts (consistent with its internal policies and Requirements of 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.

(g) (i) Each Non-U.S. Lender Party shall (w) on or prior to the date such Non-U.S. Lender Party becomes a "Non-U.S. Lender Party" hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower or Agent (or, in the case of a participant or SPV, the relevant Lender), provide Agent and the Borrower (or, in the case of a participant or SPV, the relevant Lender) with executed copies of any of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding Tax because the income is effectively connected with a U.S. trade or business), W-8BEN or W-8BEN-E (claiming exemption from, or a reduction of, U.S. withholding Tax) and/or W-8IMY (together with appropriate forms, certifications, withholding statements and supporting statements) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E (claiming exemption from U.S. withholding Tax) or any successor form, plus a certificate in form and substance acceptable to Agent and the Borrower that such Non-U.S. Lender Party is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding Tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless the Borrower and Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding Tax or are subject to such Tax at a rate reduced by an applicable Tax treaty, the Credit Parties and Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(ii) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a "U.S. Lender Party" hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (g) and (D) from time to time if requested by the Borrower or Agent (or, in the case of a participant or SPV, the relevant Lender), provide Agent and the Borrower (or, in the case of a participant or SPV, the relevant Lender) with executed copies of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding Tax) or any successor form.

(iii) Each Lender having sold a participation in any of its Obligations or identified an SPV as such to Agent shall collect from such participant or SPV the documents described in this clause (g) and promptly provide them to Agent.

(iv) If a payment made to a Non-U.S. Lender Party would be subject to United States federal withholding Tax imposed by FATCA if such Non-U.S. Lender Party fails to comply with the applicable reporting requirements of FATCA, such Non-U.S. Lender Party shall deliver to Agent and the Borrower any documentation under any Requirement of Law or reasonably requested by Agent or the Borrower sufficient for Agent or Borrower to comply with their obligations under FATCA and to determine that such Non-U.S. Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) If any Secured Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified pursuant to this Section 11.1 (including by the payment of additional amounts pursuant to Section 11.1(b)), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 11.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Secured Party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such Credit Party, upon the request of such Secured Party, shall repay to such Secured Party the amount paid over pursuant to this Section 11.1(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Secured Party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 11.1(h), in no event shall the Secured Party be required to pay any amount to a Credit Party pursuant to this Section 11.1(h) the payment of which would place the Secured Party in a less favorable net after-Tax position than the Secured Party 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 Section 11.1(h) shall not be construed to require any Secured Party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Credit Party or any other Person.

11.2 Illegality. If after the date hereof any Lender shall determine that the introduction of any Requirement of Law, or any change in any Requirement of Law or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make SOFR Loans, then, on notice thereof by such Lender to the Borrower through Agent, the obligation of that Lender to make SOFR Loans shall be suspended until such Lender shall have notified Agent and the Borrower that the circumstances giving rise to such determination no longer exists.

(a) Subject to clause (c) below, if any Lender shall determine that it is unlawful to maintain any SOFR Loan, the Borrower shall prepay in full all SOFR Loans of such Lender then outstanding, together with interest accrued thereon, either on the last day of the Interest Period thereof if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, together with any amounts required to be paid in connection therewith pursuant to Section 11.4.

(b) If the obligation of any Lender to make or maintain SOFR Loans has been terminated, the Borrower may elect, by giving notice to such Lender through Agent that all Loans which would otherwise be made by any such Lender as SOFR Loans shall be instead Base Rate Loans.

(c) Before giving any notice to Agent pursuant to this Section 11.2, the affected Lender shall designate a different Lending Office with respect to its SOFR Loans if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of the Lender, be illegal or otherwise disadvantageous to the Lender.

### 11.3 Increased Costs and Reduction of Return

(a) If any Lender or L/C Issuer shall determine that, due to either (i) the introduction of, or any change in, or in the interpretation of, any Requirement of Law or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), in the case of either clause (i) or (ii) subsequent to the date hereof,

(x) there shall be any increase in the cost to such Lender or L/C Issuer of agreeing to make or making, funding or maintaining any SOFR Loans or of issuing or maintaining any Letter of Credit or (y) the Lender or L/C Issuer shall be subject to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, then the Borrower shall be liable for, and shall from time to time, within thirty (30) days of demand therefor by such Lender or L/C Issuer (with a copy of such demand to Agent), pay to Agent for the account of such Lender or L/C Issuer, additional amounts as are sufficient to compensate such Lender or L/C Issuer for such increased costs or such Taxes; provided, that the Borrower shall not be required to compensate any Lender or L/C Issuer pursuant to this Section 11.3(a) for any increased costs incurred more than 180 days prior to the date that such Lender or L/C Issuer notifies the Borrower, in writing, of the increased costs and of such Lender's or L/C Issuer's intention to claim compensation thereof; provided, further, that if the circumstance giving rise to such increased costs is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If any Lender or L/C Issuer shall have determined that:

(i) the introduction of any Capital Adequacy Regulation;

(ii) any change in any Capital Adequacy Regulation;

(iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof; or

(iv) compliance by such Lender or L/C Issuer (or its Lending Office) or any entity controlling the Lender or L/C Issuer, with any Capital Adequacy Regulation;

affects the amount of capital required or expected to be maintained by such Lender or L/C Issuer or any entity controlling such Lender or L/C Issuer and (taking into consideration such Lender's or such entities' policies with respect to capital adequacy and such Lender's or L/C Issuer's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment(s), loans, credits or obligations under this Agreement, then, within thirty (30) days of demand of such Lender or L/C Issuer (with a copy to Agent), the Borrower shall pay to such Lender or L/C Issuer, from time to time as specified by such Lender or L/C Issuer, additional amounts sufficient to compensate such Lender or L/C Issuer (or the entity controlling the Lender or L/C Issuer) for such increase; provided, that the Borrower shall not be required to compensate any Lender or L/C Issuer pursuant to this Section 11.3(b) for any amounts incurred more than 180 days prior to the date that such Lender or L/C Issuer notifies the Borrower, in writing, of the amounts and of such Lender's or L/C Issuer's intention to claim compensation thereof; provided, further, that if the event giving rise to such increase is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(c) 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, shall, in each case, be deemed to be a change in

a Requirement of Law under Section 11.3(a) above and/or a change in Capital Adequacy Regulation under Section 11.3(b) above, as applicable, regardless of the date enacted, adopted or issued.

**11.4 Funding Losses.** The Borrower agrees to reimburse each Lender and to hold each Lender harmless from any loss (but not loss of profits) or expense which such Lender may sustain or incur as a consequence of:

- (a) the failure of the Borrower to make any payment or mandatory prepayment of principal of any SOFR Loan (including payments made after any acceleration thereof);
- (b) the failure of the Borrower to borrow, continue or convert a Loan after the Borrower has given (or is deemed to have given) a Notice of Borrowing or a Notice of Conversion/Continuation;
- (c) the failure of the Borrower to make any prepayment after the Borrower has given a notice in accordance with Section 2.7;
- (d) the prepayment (including pursuant to Section 2.8) of a SOFR Loan on a day other than the Interest Payment Date therefor; or
- (e) the conversion pursuant to Section 2.6 of any SOFR Loan to a Base Rate Loan on a day other than the Interest Payment Date therefor;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its SOFR Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained; provided that, with respect to the expenses described in clauses (d) and (e) above, such Lender shall have notified Agent of any such expense within two (2) Business Days of the date on which such expense was incurred. Solely for purposes of calculating amounts payable by the Borrower to the Lenders under this Section 11.4 and under Section 11.3(a). A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

**11.5 Inability to Determine Rates.** If Agent shall have determined in good faith that for any reason adequate and reasonable means do not exist for ascertaining Term SOFR with respect to a proposed SOFR Loan or that Term SOFR with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to the Lenders of funding or maintaining such Loan, Agent will forthwith give notice of such determination to the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain SOFR Loans hereunder shall be suspended until Agent revokes such notice in writing. Upon receipt of such notice, the Borrower may revoke any Notice of Borrowing or Notice of Conversion/Continuation then submitted by it. If the Borrower does not revoke such notice, the Lenders shall make, convert or continue the Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Loans shall be made, converted or continued as Base Rate Loans.

**11.6 Effect of Benchmark Transition Event.**

- (a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a

Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 11.6(a) will occur prior to the applicable Benchmark Transition Start Date.

( b ) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

( c ) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 11.6(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 11.6, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 11.6.

( d ) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

( e ) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) the Borrower may revoke any request for a SOFR Loan or, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing or conversion to

Base Rate Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

11.7 Reserved.

11.8 Certificates of Lenders. Any Lender claiming reimbursement or compensation pursuant to this Article XI shall deliver to the Borrower (with a copy to Agent) a certificate setting forth in reasonable detail the amount payable to such Lender hereunder and such certificate shall be conclusive and binding on the Borrower in the absence of manifest error.

**[Signature Pages Follow.]**

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:**

**RIMINI STREET, INC.**

By: /s/ Seth A. Ravin  
Name: Seth A. Ravin  
Title: President, Chief Executive Officer and  
Chairman of the Board

**GUARANTORS:**

**RSI INTERNATIONAL HOLDINGS, INC.**

By: /s/ Seth A. Ravin  
Name: Seth A. Ravin  
Title: President

**RSI INTERNATIONAL HOLDINGS, LLC**

By: RSI International Holdings, Inc., its sole member  
and manager

By: /s/ Seth A. Ravin  
Name: Seth A. Ravin  
Title: President

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.

**CAPITAL ONE, NATIONAL ASSOCIATION,**  
as Agent, Swing Lender and as a Lender

By: /s/ Nirmal Bivek  
Name: Nirmal Bivek  
Title: Its Duly Authorized Signatory

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Signature Page of Amended and Restated Credit Agreement

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.

**U.S. Bank National Association,**  
as a Lender

By: /s/ Christian Sumulong  
Name: Christian Sumulong  
Title: Vice President

Signature Page of Amended and Restated Credit Agreement

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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.

**THE TORONTO-DOMINION BANK, NEW YORK BRANCH**  
as a Lender

By: /s/ Olukayode Adetola  
Name: Olukayode Adetola  
Title: Authorized Signatory

Signature Page of Amended and Restated Credit Agreement

AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT

Dated as of April 30, 2024

among

RIMINI STREET, INC.,

and

Each Other Grantor  
From Time to Time Party Hereto

and

CAPITAL ONE, NATIONAL ASSOCIATION,  
as Agent

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AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT, dated as of April 30, 2024, by Rimini Street, Inc. (the “Borrower”) and each of the other entities listed on the signature pages hereof or that becomes a party hereto pursuant to Section 8.6 (together with the Borrower, the “Grantors” and each, a “Grantor”), in favor of Capital One, National Association (“Capital One”), as administrative agent (in such capacity, together with its successors and permitted assigns, “Agent”) for the Lenders, the L/C Issuers and each other Secured Party (each as defined in the Credit Agreement referred to below).

W I T N E S S E T H:

WHEREAS, the Borrower and the other Grantors are party to that certain Guaranty and Security Agreement, dated as of July 2, 2021, by the Grantors in favor of the Agent (as amended, restated, supplemented, or otherwise modified from time to time prior to the Restatement Date, the “**Original Guaranty and Security Agreement**”);

WHEREAS, pursuant to the Amended and Restated Credit Agreement dated as of April 30, 2024 (as the same may be amended, restated, supplemented and/or modified from time to time, the “Credit Agreement”) by and among the Borrower and the other Credit Parties party thereto, the Lenders, the L/C Issuers from time to time party thereto and Capital One, as Agent, the Lenders and the L/C Issuers have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, each Grantor has agreed to (i) amend and restate the Original Guaranty and Security Agreement and (ii) guaranty the Obligations (as defined in the Credit Agreement);

WHEREAS, each Grantor will derive substantial direct and indirect benefits from the making of the extensions of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders and the L/C Issuers to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to Agent;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders, the L/C Issuers and Agent to enter into the Credit Agreement and to induce the Lenders and the L/C Issuers to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby agrees with Agent as follows:

ARTICLE I DEFINED TERMS

Section 1.1 Definitions. (a) Capitalized terms used herein without definition are used as defined in the Credit Agreement.

(b) The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “account”, “account debtor”, “as-extracted collateral”, “certificated security”, “chattel paper”, “commercial tort claim”, “commodity contract”, “deposit account”, “electronic chattel paper”, “equipment”, “farm products”, “fixture”, “general intangible”, “goods”, “health-care-insurance receivable”, “instruments”, “inventory”, “investment property”, “letter-of-credit right”, “proceeds”, “record”, “securities account”, “security”, “supporting obligation” and “tangible chattel paper”.

(c) The following terms shall have the following meanings:

“Agreement” means this Amended and Restated Guaranty and Security Agreement.

“Applicable IP Office” means the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency within or outside the United States.

“Cash Collateral Account” means a deposit account or securities account subject, in each instance, to a Control Agreement, other than accounts established to cash collateralize L/C Reimbursement Obligations.

“Collateral” has the meaning specified in Section 3.1.

“Controlled Securities Account” means each securities account (including all financial assets held therein and all certificates and instruments, if any, representing or evidencing such financial assets) that is the subject of an effective Control Agreement.

“Excluded Equity” means any voting stock in excess of 65% of the outstanding voting stock of any Foreign Subsidiary, which, pursuant to the terms of the Credit Agreement, is not required to guaranty the Obligations. For the purposes of this definition, “voting stock” means, with respect to any issuer, the issued and outstanding shares of each class of Stock of such issuer entitled to vote (within the meaning of Treasury Regulations § 1.956-2(c)(2)).

“Excluded Property” means, collectively, (i) Excluded Equity, (ii) any fee-owned Real Estate with a fair market value of less than \$5,000,000 (as determined by the Borrower in good faith) and all leasehold interests in real property, (iii) pledges and security interests prohibited by applicable law, rule or regulation (to the extent such law, rule or regulation is effective under applicable anti-assignment provisions of the UCC), other than proceeds and receivables thereof, (iv) any lease, license or other agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money arrangement or create a right of termination in favor of any other party thereto (other than Borrower or any other Guarantor) after giving effect to the applicable anti-assignment provisions of the UCC, the assignment of which is expressly deemed effective under the UCC notwithstanding such prohibition, and other than proceeds and receivables thereof, (v) any “intent to use” Trademark applications for which a statement of use has not been filed (but only until such statement is filed), (vi) interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of third parties, (vii) capital stock of Immature Subsidiaries and not-for-profit subsidiaries and (viii) margin stock; provided, however, “Excluded Property” shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

“Fraudulent Transfer Laws” has the meaning set forth in Section 2.2.

“Guaranteed Obligations” has the meaning set forth in Section 2.1.

“Guarantor” means each Grantor, including each Grantor with respect to the obligations of each other Grantor.

“Guaranty” means the guaranty of the Guaranteed Obligations made by the Guarantors as set forth in this Agreement.

"Internet Domain Name" means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to Internet domain names.

"Material Intellectual Property" means Intellectual Property that is owned by or licensed to a Grantor and material to the conduct of any Grantor's business.

"Pledged Certificated Stock" means all certificated securities and any other Stock of any Person evidenced by a certificate, instrument or other similar document (as defined in the UCC), in each case owned by any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Stock listed on Schedule 4. Pledged Certificated Stock excludes any Excluded Property and any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 5.10 hereof.

"Pledged Collateral" means, collectively, the Pledged Stock and the Pledged Debt Instruments.

"Pledged Debt Instruments" means all right, title and interest of any Grantor in instruments evidencing any Indebtedness owed to such Grantor or other obligations owed to such Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Indebtedness described on Schedule 4, issued by the obligors named therein. Pledged Debt Instruments excludes any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 5.10 hereof.

"Pledged Investment Property" means any investment property of any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, other than any Pledged Stock or Pledged Debt Instruments. Pledged Investment Property excludes any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 5.10 hereof.

"Pledged Stock" means all Pledged Certificated Stock and all Pledged Uncertificated Stock.

"Pledged Uncertificated Stock" means any Stock of any Person that is not Pledged Certificated Stock, including all right, title and interest of any Grantor as a limited or general partner in any partnership not constituting Pledged Certificated Stock or as a member of any limited liability company, all right, title and interest of any Grantor in, to and under any Organization Document of any partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including in each case those interests set forth on Schedule 4, to the extent such interests are not certificated. Pledged Uncertificated Stock excludes any Excluded Property and any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 5.10 hereof.

"Secured Obligations" has the meaning set forth in Section 3.2.

"Software" means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that, in the event that, by reason of mandatory provisions of any

applicable Requirement of Law, any of the attachment, perfection or priority of Agent's or any other Secured Party's security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of New York, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

"Vehicles" means all vehicles covered by a certificate of title law of any state.

Section 1.2 Certain Other Terms.

(a) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. References herein to an Annex, Schedule, Article, Section or clause refer to the appropriate Annex or Schedule to, or Article, Section or clause in this Agreement. Where the context requires, provisions relating to any Collateral when used in relation to a Grantor shall refer to such Grantor's Collateral or any relevant part thereof.

(b) Other Interpretive Provisions.

(i) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto.

(ii) The Agreement. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) Certain Common Terms. The term "including" is not limiting and means "including without limitation."

(iv) Performance; Time. Whenever any performance obligation hereunder (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including." If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(v) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(vi) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

## ARTICLE II GUARANTY

Section 2.1 Guaranty. To induce the Lenders to make the Loans, the L/C Issuers to Issue Letters of Credit, and each other Secured Party to make credit available to or for the benefit of one or more Grantors, each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance with any Loan Document, of all the Obligations of the Borrower whether existing on the date hereof or hereinafter incurred or created (the "Guaranteed Obligations"). This Guaranty by each Guarantor hereunder constitutes a guaranty of payment and not of collection.

Section 2.2 Limitation of Guaranty. Any term or provision of this Guaranty or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Guaranty or any other Loan Document, as it relates to such Guarantor, subject to avoidance under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, "Fraudulent Transfer Laws"). Any analysis of the provisions of this Guaranty for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.3 and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Guaranty.

Section 2.3 Contribution. To the extent that any Guarantor shall be required hereunder to pay any portion of any Guaranteed Obligation exceeding the greater of (a) the amount of the value actually received by such Guarantor and its Subsidiaries from the Loans and other Obligations and (b) the amount such Guarantor would otherwise have paid if such Guarantor had paid the aggregate amount of the Guaranteed Obligations (excluding the amount thereof repaid by the Borrower that received the benefit of the funds advanced that constituted Guaranteed Obligations) in the same proportion as such Guarantor's net worth on the date enforcement is sought hereunder bears to the aggregate net worth of all the Guarantors on such date, then such Guarantor shall be reimbursed by such other Guarantors for the amount of such excess, pro rata, based on the respective net worth of such other Guarantors on such date.

Section 2.4 Authorization; Other Agreements. The Secured Parties are hereby authorized, without notice to or demand upon any Guarantor and without discharging or otherwise affecting the obligations of any Guarantor hereunder and without incurring any liability hereunder, from time to time, to do each of the following:

(a) (i) subject to compliance, if applicable, with Section 10.1 of the Credit Agreement, modify, amend, supplement or otherwise change, (ii) accelerate or otherwise change the time of payment or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Loan Document;

(b) apply to the Guaranteed Obligations any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Loan Documents;

(c) refund at any time any payment received by any Secured Party in respect of any Guaranteed Obligation;

(d) (i) sell, exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release any Collateral for any Guaranteed Obligation or any other guaranty therefor in any manner, (ii) receive, take and hold additional Collateral to secure any Guaranteed Obligation, (iii) add, release or substitute any one or more other Guarantors, makers or endorsers of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with the Borrower or any other Guarantor, maker or endorser of any Guaranteed Obligation or any part thereof; and

(e) settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations.

**Section 2.5 Guaranty Absolute and Unconditional.** Each Guarantor hereby waives and agrees not to assert any defense, whether arising in connection with or in respect of any of the following or otherwise, and hereby agrees that its obligations under this Guaranty are irrevocable, absolute and unconditional and shall not be discharged as a result of or otherwise affected by any of the following (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Guaranty, in each case except as otherwise agreed in writing by Agent):

(a) the invalidity or unenforceability of any obligation of the Borrower or any other Guarantor under any Loan Document or any other agreement or instrument relating thereto (including any amendment, consent or waiver thereto), or any security for, or other guaranty of, any Guaranteed Obligation or any part thereof, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part thereof;

(b) the absence of (i) any attempt to collect any Guaranteed Obligation or any part thereof from the Borrower or any other Guarantor or other action to enforce the same or (ii) any action to enforce any Loan Document or any Lien thereunder;

(c) the failure by any Person to take any steps to perfect and maintain any Lien on, or to preserve any rights with respect to, any Collateral;

(d) any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against the Borrower, any other Guarantor or any of the Borrower's other Subsidiaries or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or any interest thereon) in or as a result of any such proceeding;

(e) any foreclosure, whether or not through judicial sale, and any other sale or other disposition of any Collateral or any election following the occurrence of an Event of Default by any Secured Party to proceed separately against any Collateral in accordance with such Secured Party's rights under any applicable Requirement of Law; or

(f) any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of the Borrower, any other Guarantor or any other Subsidiary of the Borrower, in each case other than the payment in full of the Guaranteed Obligations.

**Section 2.6 Waivers.** Each Guarantor hereby unconditionally and irrevocably waives and agrees not to assert any claim, defense, setoff or counterclaim based on diligence, promptness, presentment, requirements for any demand or notice hereunder including any of the following: (a) any demand for payment or performance and protest and notice of protest; (b) any notice of acceptance; (c)

any presentment, demand, protest or further notice or other requirements of any kind with respect to any Guaranteed Obligation (including any accrued but unpaid interest thereon) becoming immediately due and payable; and (d) any other notice in respect of any Guaranteed Obligation or any part thereof, and any defense arising by reason of any disability or other defense of the Borrower or any other Guarantor. Each Guarantor further unconditionally and irrevocably agrees, until such time as all Secured Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated (or, in the case of contingent reimbursement obligations with respect to Secured Rate Contracts or Secured Management Agreements, cash collateralized), not to (x) enforce or otherwise exercise any right of subrogation or any right of reimbursement or contribution or similar right against the Borrower or any other Guarantor by reason of any Loan Document or any payment made thereunder or (y) assert any claim, defense, setoff or counterclaim it may have against any other Credit Party or set off any of its obligations to such other Credit Party against obligations of such Credit Party to such Guarantor. No obligation of any Guarantor hereunder shall be discharged other than by complete performance. Each Guarantor further waives any right such Guarantor may have under any applicable Requirement of Law to require any Secured Party to seek recourse first against the Borrower or any other Person, or to realize upon any Collateral for any of the Obligations, as a condition precedent to enforcing such Guarantor's liability and obligations under this Guaranty.

**Section 2.7 Reliance.** Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower, each other Guarantor and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof, and of all other circumstances bearing upon the risk of nonpayment of any Guaranteed Obligation or any part thereof that diligent inquiry would reveal, and each Guarantor hereby agrees that no Secured Party shall have any duty to advise any Guarantor of information known to it regarding such condition or any such circumstances. In the event any Secured Party, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, such Secured Party shall be under no obligation to (a) undertake any investigation not a part of its regular business routine, (b) disclose any information that such Secured Party, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) make any future disclosures of such information or any other information to any Guarantor.

### ARTICLE III GRANT OF SECURITY INTEREST

**Section 3.1 Collateral.** For the purposes of this Agreement, all of the following property now owned or at any time hereafter acquired by a Grantor or in which a Grantor now has or at any time in the future may acquire any right, title or interests is collectively referred to as the "Collateral":

- (a) all accounts, chattel paper, deposit accounts, documents (as defined in the UCC), equipment, general intangibles, instruments, inventory, investment property, letter of credit rights and any supporting obligations related to any of the foregoing;
- (b) the commercial tort claims described on Schedule 1 and on any supplement thereto received by Agent pursuant to Section 5.9;
- (c) all books and records pertaining to the other property described in this Section 3.1;
- (d) all property of such Grantor held by any Secured Party, including all property of every description, in the custody of or in transit to such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including but not limited to cash;

(e) all other goods (including but not limited to fixtures) and personal property of such Grantor, whether tangible or intangible and wherever located; and

(f) to the extent not otherwise included, all proceeds of the foregoing.

Notwithstanding the foregoing, Collateral does not include any Excluded Property.

Section 3.2 Grant of Security Interest in Collateral. Each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations (the "Secured Obligations"), hereby mortgages, pledges and hypothecates to Agent, for the benefit of the Secured Parties, and grants to Agent, for the benefit of the Secured Parties a Lien on and security interest in, all of its right, title and interest in, to and under the Collateral of such Grantor; provided, however, notwithstanding the foregoing, no Lien or security interest is hereby granted on any Excluded Property; provided, further, that if and when any property shall cease to be Excluded Property, a Lien on and security interest in such property shall be deemed granted therein.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

To induce the Lenders, the L/C Issuers and Agent to enter into the Loan Documents, each Grantor hereby represents and warrants each of the following to Agent, the Lenders, the L/C Issuers and the other Secured Parties:

Section 4.1 Title; No Other Liens. Except for the Lien granted to Agent pursuant to this Agreement and other Permitted Liens (except for those Permitted Liens not permitted to exist on any Collateral) under any Loan Document (including Section 4.2) as of the Restatement Date, such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. Such Grantor (a) is the record and beneficial owner of the Collateral pledged by it hereunder constituting instruments or certificates and (b) has rights in or the power to transfer each other item of Collateral in which a Lien is granted by it hereunder, free and clear of any other Lien.

Section 4.2 Perfection and Priority. The security interest granted pursuant to this Agreement constitutes a valid and continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (a) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 2 (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (b) with respect to any deposit account, the execution of Control Agreements, (c) in the case of all Copyrights, Trademarks and Patents for which UCC filings are insufficient, all appropriate filings having been made with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, (d) in the case of letter-of-credit rights (except for letter-of-credit rights (x) that are not supporting obligations of Collateral and (y) with a value of less than \$500,000), the execution of a Contractual Obligation granting control to Agent over such letter-of-credit rights, (e) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper and (f) in the case of Vehicles, the actions required under Section 5.1(e). Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens having priority over Agent's Lien by operation of law or permitted pursuant to subsections 6.1(e), (g), (h), (i), (m), (n), (p), (u), (v) or (w) of the Credit Agreement upon (i) in the case of all Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property, the delivery thereof to Agent of such Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property consisting of

instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (ii) in the case of all Pledged Investment Property not in certificated form, the execution of Control Agreements with respect to such investment property and (iii) in the case of all other instruments and tangible chattel paper that are not Pledged Certificated Stock, Pledged Debt Instruments or Pledged Investment Property, the delivery thereof to Agent of such instruments and tangible chattel paper. Except as set forth in this Section 4.2, all actions by each Grantor necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken or will, on the Restatement Date, be taken.

Section 4.3 [Reserved]

Section 4.4 [Reserved]

Section 4.5 Locations of Inventory, Equipment and Books and Records. As of the Restatement Date, such Grantor's inventory and equipment (other than inventory or equipment in transit, items out for repair and equipment in possession of employees in each case, in the ordinary course of business) and books and records concerning the Collateral are kept at the locations listed on Schedule 3.

Section 4.6 Pledged Collateral. (a) The Pledged Stock pledged by such Grantor hereunder (i) is listed on Schedule 4 and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on Schedule 4, as such Schedule 4 may be updated from time to time by a supplement delivered to Agent, (ii) has been duly authorized, validly issued and is fully paid and non-assessable (other than Pledged Stock in limited liability companies and partnerships) and (iii) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms.

(b) As of the Restatement Date, all Pledged Collateral (other than Pledged Uncertificated Stock) and all Pledged Investment Property consisting of instruments (other than checks received in the ordinary course of business) and certificates has been delivered to Agent in accordance with Section 5.3(a).

(c) Upon the occurrence and during the continuance of an Event of Default, Agent shall be entitled to exercise all of the rights of the Grantor granting the security interest in any Pledged Stock, and a transferee or assignee of such Pledged Stock shall become a holder of such Pledged Stock to the same extent as such Grantor and be entitled to participate in the management of the issuer of such Pledged Stock and, upon the transfer of the entire interest of such Grantor, such Grantor shall, by operation of law, cease to be a holder of such Pledged Stock.

Section 4.7 Instruments and Tangible Chattel Paper Formerly Accounts. No amount payable to such Grantor under or in connection with any account is evidenced by any instrument (other than checks in the ordinary course of business) or tangible chattel paper that has not been delivered to Agent, properly endorsed for transfer, to the extent delivery is required by Section 5.6(a).

Section 4.8 Intellectual Property.

(a) Schedule 5 sets forth a true and complete list of the following Intellectual Property such Grantor owns, licenses or otherwise has the right to use: (i) Intellectual Property that is registered or subject to applications for registration, (ii) Internet Domain Names and (iii) Material Intellectual Property and material Software, separately identifying that owned and licensed to such Grantor and including for each of the foregoing items (1) the owner, (2) the title, (3) the jurisdiction in which such item has been registered or otherwise arises or in which an application for registration has

been filed, (4) as applicable, the registration or application number and registration or application date and (5) any IP Licenses or other rights (including franchises) granted by the Grantor with respect thereto.

(b) All Material Intellectual Property owned by such Grantor is valid, in full force and effect, subsisting, unexpired and enforceable, and no Material Intellectual Property has been abandoned. No breach or default of any material IP License shall be caused by any of the following, and none of the following shall limit or impair the ownership, use, validity or enforceability of, or any rights of such Grantor in, any Material Intellectual Property: (i) the consummation of the transactions contemplated by any Loan Document or (ii) any holding, decision, judgment or order rendered by any Governmental Authority. There are no pending, or threatened (in writing) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes challenging the ownership, use, validity, enforceability of, or such Grantor's rights in, any Material Intellectual Property of such Grantor. To the Knowledge of the Borrower, no Person has been or is infringing, misappropriating, diluting, violating or otherwise impairing any material Intellectual Property of such Grantor. No Grantor is in material breach or material default of any material IP License.

Section 4.9 Commercial Tort Claims. The only commercial tort claims any Grantor existing as of the Restatement Date which the amount claimed is, or in which the amount recoverable (if the plaintiff prevails) would reasonably be expected in the good faith judgment of such Grantor to be in excess of \$1,000,000 individually or \$5,000,000 in the aggregate are those listed on Schedule 1, which sets forth such information separately for each Grantor.

Section 4.10 Specific Collateral. None of the Collateral is or is proceeds or products of farm products, as-extracted collateral, health-care-insurance receivables or timber to be cut.

Section 4.11 Enforcement. As of the Restatement Date, no Permit, notice to or filing with any Governmental Authority or any other Person or any consent from any Person shall be required for the exercise by Agent of its rights (including voting rights) provided for in this Agreement or the enforcement of remedies in respect of the Collateral pursuant to this Agreement, including the transfer of any Collateral, except as may be required in connection with the disposition of any portion of the Pledged Collateral by laws affecting the offering and sale of securities generally or any approvals that may be required to be obtained from any bailees or landlords to collect the Collateral.

## ARTICLE V COVENANTS

Each Grantor agrees with Agent to the following, as long as any Obligation or Commitment remains outstanding (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted):

Section 5.1 Maintenance of Perfected Security Interest: Further Documentation and Consents (a) Generally. Such Grantor shall (i) not use or permit any Collateral to be used unlawfully or in violation of any provision of any Loan Document, any Requirement of Law or any policy of insurance covering the Collateral and (ii) not enter into any Contractual Obligation or undertaking restricting the right or ability of such Grantor or Agent to sell, assign, convey or transfer any Collateral if such restriction would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such

security interest and such priority against the claims and demands of all Persons, other than holders of Permitted Liens.

(c) Such Grantor shall furnish to Agent from time to time statements and schedules further identifying and describing the Collateral and such other documents in connection with the Collateral as Agent may reasonably request, all in reasonable detail and in form and substance reasonably satisfactory to Agent.

(d) At any time and from time to time, upon the written request of Agent, such Grantor shall, for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, (i) promptly and duly execute and deliver, and have recorded, such further documents, including an authorization to file (or, as applicable, the filing) of any financing statement or amendment under the UCC (or other filings under similar Requirements of Law) in effect in any applicable jurisdiction with respect to the security interest created hereby and (ii) take such further action as Agent may reasonably request, including (A) using its best efforts to secure all approvals necessary for the assignment to or for the benefit of Agent of any Contractual Obligation, including any IP License, held by such Grantor in each case that is part of the Collateral and to enforce the security interests granted hereunder and (B) executing and delivering any Control Agreements with respect to deposit accounts and securities accounts (other than Excluded Accounts); provided, that no Grantor shall be required to complete any filings or take any other action with respect to the perfection of any security interests created hereby in any jurisdiction outside the U.S.

(e) [Reserved].

(f) To ensure that a Lien and security interest is granted on any of the Excluded Property set forth in clause (iv) of the definition of "Excluded Property", such Grantor shall use its best efforts to obtain any required consents from any Person other than the Borrower and its Affiliates with respect to any permit or license or any Contractual Obligation with such Person entered into by such Grantor from and after the Restatement Date that requires such consent as a condition to the creation by such Grantor of a Lien on any right, title or interest in such permit, license or Contractual Obligation or any Stock.

Section 5.2 Changes in Locations, Name, Etc. Except upon 30 days' prior written notice to Agent and delivery to Agent (or such shorter period as Agent may agree in its reasonable discretion) of (a) all documents reasonably requested by Agent to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to Schedule 3 showing any additional locations at which inventory or equipment shall be kept, such Grantor shall not, from and after the Restatement Date, do any of the following:

(i) permit any inventory or equipment to be kept at a location other than those listed on Schedule 3, except for immaterial inventory and equipment and inventory or equipment in transit, items out for repair and equipment in the possession of employees (including laptops and cell phones) and equipment with a fair market value not to exceed \$100,000 in the aggregate of all such locations, in each case, in the ordinary course of business; or

(ii) change its legal name or organizational identification number, if any, or corporation, limited liability company, partnership or other organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading.

Section 5.3 Pledged Collateral (a) Delivery of Pledged Collateral. From and after the

Restatement Date, such Grantor shall (i) deliver to Agent, in suitable form for transfer and in form and substance satisfactory to Agent, (A) all Pledged Certificated Stock, (B) all Pledged Debt Instruments and (C) all certificates and instruments evidencing Pledged Investment Property and (ii) maintain all other Pledged Investment Property in a Controlled Securities Account.

(b) Event of Default. During the continuance of an Event of Default, Agent shall have the right, at any time in its discretion and without notice to the Grantor, to (i) transfer to or to register in its name or in the name of its nominees any Pledged Collateral or any Pledged Investment Property and (ii) exchange any certificate or instrument representing or evidencing any Pledged Collateral or any Pledged Investment Property for certificates or instruments of smaller or larger denominations.

(c) Cash Distributions with respect to Pledged Collateral. Except as provided in Article VI and subject to the limitations set forth in the Credit Agreement, such Grantor shall be entitled to receive all cash distributions paid in respect of the Pledged Collateral.

(d) Voting Rights. Except as provided in Article VI, such Grantor shall be entitled to exercise all voting, consent and corporate, partnership, limited liability company and similar rights with respect to the Pledged Collateral; provided, however, that no vote shall be cast, consent given or right exercised or other action taken by such Grantor that would impair the Collateral in any material respect or result in any violation of any provision of any Loan Document.

#### Section 5.4 Accounts.

(a) From and after the Restatement Date, such Grantor shall not, other than in the ordinary course of business or otherwise permitted under the Credit Agreement, (i) grant any extension of the time of payment of any account, (ii) compromise or settle any account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any account, (iv) allow any credit or discount on any account or (v) amend, supplement or modify any account in any manner that could reasonably be expected to materially and adversely affect the value thereof.

(b) So long as an Event of Default is continuing, Agent shall have the right to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and such Grantor shall furnish all such assistance and information as Agent may reasonably require in connection therewith. At any time and from time to time during the continuance of any Event of Default, upon Agent's reasonable request, such Grantor shall cause independent public accountants or others satisfactory to Agent to furnish to Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the accounts.

Section 5.5 Commodity Contracts. From and after the Restatement Date, such Grantor shall not have any commodity contract unless subject to a Control Agreement.

Section 5.6 Delivery of Instruments and Tangible Chattel Paper and Control of Investment Property, Letter-of-Credit Rights and Electronic Chattel Paper. (a) If any amount in excess of \$500,000 payable under or in connection with any Collateral owned by such Grantor shall be or become evidenced by an instrument or tangible chattel paper other than such instrument delivered in accordance with Section 5.3(a) and in the possession of Agent, such Grantor shall mark all such instruments (other than the checks received in the ordinary course of business) and tangible chattel paper with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the security interest of Capital One, National Association, as Agent" and, at the request of Agent, shall promptly deliver such instrument or tangible chattel paper to Agent, duly indorsed in a manner satisfactory to Agent.

(b) Such Grantor shall not grant "control" (within the meaning of such term under Article 9-106 of the UCC) over any investment property to any Person other than Agent.

(c) If such Grantor is or becomes the beneficiary of a letter of credit that is (i) not a supporting obligation of any Collateral and (ii) in excess of \$500,000, such Grantor shall promptly (and in any event within 4 Business Days after becoming a beneficiary) notify Agent thereof and enter into a Contractual Obligation with Agent, the issuer of such letter of credit or any nominated person with respect to the letter-of-credit rights under such letter of credit. Such Contractual Obligation shall assign such letter-of-credit rights to Agent and such assignment shall be sufficient to grant control for the purposes of Section 9-107 of the UCC (or any similar section under any equivalent UCC). Such Contractual Obligation shall also direct all payments thereunder to a Cash Collateral Account. The provisions of the Contractual Obligation shall be in form and substance reasonably satisfactory to Agent.

(d) If any amount in excess of \$500,000 payable under or in connection with any Collateral owned by such Grantor shall be or become evidenced by electronic chattel paper from and after the Restatement Date, such Grantor shall take all steps necessary to grant Agent control of all such electronic chattel paper for the purposes of Section 9-105 of the UCC (or any similar section under any equivalent UCC) and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

#### Section 5.7 Intellectual Property.

(a) Within 30 days after any change to Schedule 5 for such Grantor, such Grantor shall provide Agent notification thereof and the short-form intellectual property agreements and assignments as described in this Section 5.7 and any other documents that Agent reasonably requests with respect thereto.

(b) Such Grantor shall (and shall cause all its licensees to) (i) (1) continue to use each Trademark included in the Material Intellectual Property in order to maintain such Trademark in full force and effect with respect to each class of goods for which such Trademark is currently used, free from any claim of abandonment non-use, except where such abandonment for non-use is deemed prudent in the good faith business judgment of such Grantor, (2) maintain at least the same standards of quality of products and services offered under such Trademark as are currently maintained, (3) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (4) not adopt or use any other Trademark that is confusingly similar or a colorable imitation of such Trademark unless Agent shall obtain a perfected security interest in such other Trademark pursuant to this Agreement and (ii) not knowingly do any act or omit to do any act whereby (w) such Trademark (or any goodwill associated therewith) may become destroyed, invalidated, impaired or harmed in any way except where it is deemed prudent in the good faith business judgment of such Grantor, (x) any Patent included in the Material Intellectual Property may reasonably be expected to become forfeited, misused, unenforceable, abandoned or dedicated to the public except where it is deemed prudent in the good faith business judgment of such Grantor, (y) any portion of the Copyrights included in the Material Intellectual Property may become invalidated, otherwise impaired or fall into the public domain except where it is deemed prudent in the good faith business judgment of such Grantor or (z) any Trade Secret that is Material Intellectual Property may become publicly available or otherwise unprotectable.

(c) Such Grantor shall notify Agent promptly (and in any event within 4 Business Days) if it knows, or has reason to know, that any application or registration relating to any Material Intellectual Property included in the Collateral may become forfeited, misused, unenforceable, abandoned or dedicated to the public, or of any materially adverse determination or development regarding the

validity or enforceability or such Grantor's ownership of, interest in, right to use, register, own or maintain any Material Intellectual Property (including the institution of, or any such determination or development in, any proceeding relating to the foregoing in any Applicable IP Office). Such Grantor shall take all actions that are necessary in its business judgment or reasonably requested by Agent to maintain and pursue each application (and to obtain the relevant registration or recordation) and to maintain each registration and recordation included in the Material Intellectual Property, except where such Grantor in its good faith business judgment deems it prudent to abandon.

(d) Such Grantor shall not knowingly do any act or omit to do any act to infringe, misappropriate, dilute, violate or otherwise impair the Intellectual Property of any other Person. In the event that any Material Intellectual Property of such Grantor is or has been infringed, misappropriated, violated, diluted or otherwise impaired by a third party, such Grantor shall take such action as it reasonably deems appropriate under the circumstances in response thereto, including promptly bringing suit and recovering all damages therefor.

(e) Such Grantor shall execute and deliver to Agent in form and substance reasonably acceptable to Agent and suitable for (i) filing in the Applicable IP Office the short-form intellectual property security agreements in the form attached hereto as Annex 3 for all Copyrights, Trademarks, Patents and IP Licenses of such Grantor and (ii) upon reasonable request of Agent, recording with the appropriate Internet domain name registrar, a duly executed form of collateral assignment for all Internet Domain Names of such Grantor (together with appropriate supporting documentation as may be reasonably requested by Agent).

**Section 5.8 Notices.** Such Grantor shall promptly notify Agent in writing of its acquisition of any interest hereafter in property that is of a type where a security interest or lien must be or may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation.

**Section 5.9 Notice of Commercial Tort Claims.** Such Grantor agrees that, if it shall acquire any interest in any commercial tort claim in excess of \$1,000,000 (as reasonably determined by a Responsible Officer of Borrower in good faith) whether from another Person or because such commercial tort claim shall have come into existence, (i) such Grantor shall, promptly upon such acquisition, deliver to Agent, in each case in form and substance reasonably satisfactory to Agent, a notice of the existence and nature of such commercial tort claim and a supplement to Schedule 1 containing a specific description of such commercial tort claim, (ii) Section 3.1 shall apply to such commercial tort claim and (iii) such Grantor shall execute and deliver to Agent, in each case in form and substance reasonably satisfactory to Agent, any document, and take all other action, deemed by Agent to be reasonably necessary or appropriate for Agent to obtain, for the benefit of the Secured Parties, a perfected security interest having at least the priority set forth in Section 4.2 in all such commercial tort claims. Any supplement to Schedule 1 delivered pursuant to this Section 5.9 shall, after the receipt thereof by Agent, become part of Schedule 1 for all purposes hereunder other than in respect of representations and warranties made prior to the date of such receipt.

**Section 5.10 Controlled Securities Account.** From and after the Restatement Date, each Grantor shall deposit all of its Cash Equivalents in securities accounts that are Controlled Securities Accounts except zero-balance, payroll, withholding and trust accounts and petty cash accounts containing amounts not to exceed \$2,500,000.

## ARTICLE VI REMEDIAL PROVISIONS

### Section 6.1 Code and Other Remedies.

(a) **UCC Remedies.** During the continuance of an Event of Default, Agent may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to any Secured Obligation, all rights and remedies of a secured party under the UCC or any other applicable law.

(b) **Disposition of Collateral.** Without limiting the generality of the foregoing, Agent may, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses (other than a defense of payment in full in cash of the Guaranteed Obligations), advertisements and notices are hereby waived), during the continuance of any Event of Default (personally or through its agents or attorneys), (i) enter upon the premises where any Collateral is located, without any obligation to pay rent (except to the extent set forth in any applicable collateral access agreement), through self-help (to the extent permitted by law), without judicial process, without first obtaining a final judgment or giving any Grantor or any other Person notice or opportunity for a hearing on Agent's claim or action, (ii) collect, receive, appropriate and realize upon any Collateral and (iii) sell, assign, convey, transfer, grant option or options to purchase and deliver any Collateral (enter into Contractual Obligations to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Agent shall have the right, upon any such public sale or sales and, to the extent permitted by the UCC and other applicable Requirements of Law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of any Grantor, which right or equity is hereby waived and released.

(c) **Management of the Collateral.** Each Grantor further agrees, that, during the continuance of any Event of Default, (i) at Agent's request, it shall assemble the Collateral and make it available to Agent at places that Agent shall reasonably select, whether at such Grantor's premises or elsewhere, (ii) without limiting the foregoing, Agent also has the right to require that each Grantor store and keep any Collateral pending further action by Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until Agent is able to sell, assign, convey or transfer any Collateral, Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by Agent and (iv) Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of Agent's remedies (for the benefit of the Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment. Agent shall not have any obligation to any Grantor to maintain or preserve the rights of any Grantor as against third parties with respect to any Collateral while such Collateral is in the possession of Agent.

(d) **Application of Proceeds.** Agent shall apply the cash proceeds of any action taken by it pursuant to this Section 6.1, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of Agent and any other Secured Party hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, as set forth in the Credit Agreement, and only after such application and after the payment by Agent of any other amount required by any Requirement of Law, need Agent account for the surplus, if any, to any Grantor.

(e) **Direct Obligation.** Neither Agent nor any other Secured Party shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Grantor, any other

Credit Party or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of Agent and any other Secured Party under any Loan Document shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any Requirement of Law. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against Agent or any other Secured Party, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses (other than a defense of payment in full in cash of the Guaranteed Obligations) it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(f) Commercially Reasonable. To the extent that applicable Requirements of Law impose duties on Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for Agent to do any of the following:

(i) fail to incur significant costs, expenses or other liabilities reasonably deemed as such by Agent to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain Permits, or other consents, for access to any Collateral to sell or for the collection or sale of any Collateral, or, if not required by other Requirements of Law, fail to obtain Permits or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature, or to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature, or, to the extent deemed appropriate by Agent, obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any Collateral, or utilize Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

(vi) dispose of assets in wholesale rather than retail markets;

(vii) disclaim disposition warranties, such as title, possession or quiet enjoyment; or

(viii) purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of any Collateral or to provide to Agent a guaranteed return from the collection or disposition of any Collateral.

Each Grantor acknowledges that the purpose of this Section 6.1 is to provide a non-exhaustive list of

actions or omissions that are commercially reasonable when exercising remedies against any Collateral and that other actions or omissions by any Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 6.1. Without limitation upon the foregoing, nothing contained in this Section 6.1 shall be construed to grant any rights to any Grantor or to impose any duties on Agent that would not have been granted or imposed by this Agreement or by applicable Requirements of Law in the absence of this Section 6.1.

(g) IP Licenses. For the purpose of enabling Agent to exercise rights and remedies under this Section 6.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral) at such time as Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to Agent, for the benefit of the Secured Parties, (i) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), including in such license the right to sublicense, use and practice any Intellectual Property now owned or hereafter acquired by such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all real Property owned, operated, leased, subleased or otherwise occupied by such Grantor.

## Section 6.2 Accounts and Payments in Respect of General Intangibles

(a) In addition to, and not in substitution for, any similar requirement in the Credit Agreement, if required by written notice from the Agent at any time during the continuance of an Event of Default, any payment of accounts or payment in respect of general intangibles, when collected by any Grantor, shall be promptly (and in any event within 2 Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to Agent, in a Cash Collateral Account, subject to withdrawal by Agent as provided in Section 6.4. Until so turned over, such payment shall be held by such Grantor in trust for Agent, segregated from other funds of such Grantor. Each such deposit of proceeds of accounts and payments in respect of general intangibles shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) At any time during the continuance of an Event of Default:

(i) each Grantor shall, upon Agent's request, deliver to Agent all original (or, to the extent not available, a true, correct and complete copy thereof) and other documents evidencing, and relating to, the Contractual Obligations and transactions that gave rise to any account or any payment in respect of general intangibles, including all original orders (or, to the extent not available, a copy thereof), invoices and shipping receipts and notify account debtors that the accounts or general intangibles have been collaterally assigned to Agent and that payments in respect thereof shall be made directly to Agent;

(ii) Agent may, without notice, at any time during the continuance of an Event of Default, limit or terminate the authority of a Grantor to collect its accounts or amounts due under general intangibles or any thereof and, in its own name or in the name of others, communicate with account debtors to verify with them to Agent's reasonable satisfaction the existence, amount and terms of any account or amounts due under any general intangible. In addition, Agent may at any time enforce such Grantor's rights against such account debtors and obligors of general intangibles; and

(iii) each Grantor shall take all actions, deliver all documents and provide all information necessary or reasonably requested by Agent to ensure any Internet Domain Name is

registered.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each account and each payment in respect of general intangibles to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any agreement giving rise to an account or a payment in respect of a general intangible by reason of or arising out of any Loan Document or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an account or a payment in respect of a general intangible, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 6.3 Pledged Collateral.

(a) Voting Rights. During the continuance of an Event of Default, upon notice by Agent to the relevant Grantor or Grantors, Agent or its nominee may exercise (A) any voting, consent, corporate and other right pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise and (B) any right of conversion, exchange and subscription and any other right, privilege or option pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any Pledged Collateral upon the merger, amalgamation, consolidation, reorganization, recapitalization or other fundamental change in the corporate or equivalent structure of any issuer of Pledged Stock, the right to deposit and deliver any Pledged Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as Agent may determine), all without liability except to account for property actually received by it; provided, however, that Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) Proxies. In order to permit Agent, to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions that it may be entitled to receive hereunder, (i) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to Agent all such proxies, dividend payment orders and other instruments as Agent may from time to time reasonably request and (ii) without limiting the effect of clause (i) above, such Grantor hereby grants to Agent an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Collateral on the record books of the issuer thereof) by any other person (including the issuer of such Pledged Collateral or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall only terminate upon the payment in full of the Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

(c) Authorization of Issuers. From and after the Restatement Date, each Grantor hereby expressly and irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Collateral pledged hereunder by such Grantor to (i) comply with any

instruction received by it from Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement and each Grantor agrees that such issuer shall be fully protected from Liabilities to such Grantor in so complying and (ii) unless otherwise expressly permitted hereby or the Credit Agreement, pay any dividend or make any other payment with respect to the Pledged Collateral directly to Agent.

Section 6.4 Proceeds to be Turned over to and Held by Agent. Unless otherwise expressly provided in the Credit Agreement or this Agreement, each Grantor acknowledges and agrees that from and after the Restatement Date that at any time during the continuance of an Event of Default, all proceeds of any Collateral received by any Grantor hereunder in cash or Cash Equivalents shall be held by such Grantor in trust for Agent and the other Secured Parties, segregated from other funds of such Grantor, and shall, promptly upon receipt by any Grantor, be turned over to Agent in the exact form received (with any necessary endorsement). All such proceeds of Collateral and any other proceeds of any Collateral received by Agent in cash or Cash Equivalents shall be held by Agent in a Cash Collateral Account. All proceeds being held by Agent in a Cash Collateral Account (or by such Grantor in trust for Agent) shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in the Credit Agreement.

Section 6.5 Sale of Pledged Collateral.

(a) Each Grantor recognizes that Agent may be unable to effect a public sale of any Pledged Collateral by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Agent shall be under no obligation to delay a sale of any Pledged Collateral for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

(b) Each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of any portion of the Pledged Collateral pursuant to Section 6.1 and this Section 6.5 valid and binding and in compliance with all applicable Requirements of Law. Each Grantor further agrees that a breach of any covenant contained herein will cause irreparable injury to Agent and other Secured Parties, that Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained herein shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Credit Agreement or that all Secured Obligations have been paid in full in cash. Each Grantor waives any and all rights of contribution or subrogation upon the sale or disposition of all or any portion of the Pledged Collateral by Agent.

Section 6.6 Deficiency.

(a) Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of any Collateral are insufficient to pay the Secured Obligations and the fees and disbursements of any attorney employed by Agent or any other Secured Party to collect such deficiency pursuant to the terms of the Credit Agreement.

## ARTICLE VII AGENT

Section 7.1 Agent's Appointment as Attorney-in-Fact. (a) From and after the Restatement Date, each Grantor irrevocably constitutes and appoints Agent and any Related Person thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of the Loan Documents during the continuance of an Event of Default, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of the Loan Documents, and, without limiting the generality of the foregoing, each Grantor hereby gives Agent and its Related Persons the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any of the following when an Event of Default shall be continuing:

- (i) in the name of such Grantor, in its own name or otherwise, take possession of and indorse and collect any check, draft, note, acceptance or other instrument for the payment of moneys due under any account or general intangible or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Agent for the purpose of collecting any such moneys due under any account or general intangible or with respect to any other Collateral whenever payable;
- (ii) in the case of any Intellectual Property owned by or licensed to such Grantor, execute, deliver and have recorded any document that Agent may request to evidence, effect, publicize or record Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;
- (iii) pay or discharge taxes and Liens levied or placed on or threatened against any Collateral, effect any repair or pay any insurance called for by the terms of the Credit Agreement (including all or any part of the premiums therefor and the costs thereof);
- (iv) execute, in connection with any sale provided for in Section 6.1 or Section 6.5, any document to effect or otherwise necessary or appropriate in relation to evidence the sale of any Collateral; or
- (v) (A) direct any party liable for any payment under any Collateral to make payment of any moneys due or to become due thereunder directly to Agent or as Agent shall direct, (B) ask or demand for, and collect and receive payment of and receipt for, any moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (C) sign and indorse any invoice, freight or express bill, bill of lading, storage or warehouse receipt, draft against debtors, assignment, verification, notice and other document in connection with any Collateral, (D) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral, (E) defend any actions, suits, proceedings, audits, claims, demands, orders or disputes brought against such Grantor with respect to any Collateral, (F) settle, compromise or adjust any such actions, suits, proceedings, audits, claims, demands, orders or disputes and, in connection therewith, give such discharges or releases as Agent may deem appropriate, (G) assign any Intellectual Property owned by such Grantor or any IP Licenses of such Grantor throughout the world on such terms and conditions and in such manner as Agent shall in its sole discretion determine, including the execution and filing of any document necessary to effectuate or record such assignment and (H) generally, sell, assign, convey, transfer

or grant a Lien on, make any Contractual Obligation with respect to and otherwise deal with, any Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes and do, at Agent's option, at any time or from time to time, all acts and things that Agent deems necessary to protect, preserve or realize upon any Collateral and the Secured Parties' security interests therein and to effect the intent of the Loan Documents, all as fully and effectively as such Grantor might do.

(vi) If any Grantor fails to perform or comply with any Contractual Obligation contained herein, Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such Contractual Obligation.

(b) The expenses of Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate set forth in Section 2.3 of the Credit Agreement, from the date of payment by Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to Agent on demand.

(c) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this Section 7.1. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

Section 7.2 Authorization to File Financing Statements. From and after the Restatement Date, each Grantor authorizes Agent and its Related Persons, at any time and from time to time, to file or record financing statements, amendments thereto, and other filing or recording documents or instruments with respect to any Collateral in such form and in such offices as Agent reasonably determines appropriate to perfect, or continue or maintain perfection of, the security interests of Agent under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby as "all assets of the debtor" or words of similar import. A copy of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. Such Grantor also hereby ratifies its authorization for Agent to have filed any initial financing statement or amendment thereto under the UCC (or other similar laws) in effect in any jurisdiction if filed prior to the date hereof. Each Grantor hereby (i) waives any right under the UCC or any other Requirement of Law to receive notice and/or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements and (ii) releases and excuses each Secured Party from any obligation under the UCC or any other Requirement of Law to provide notice or a copy of any such filed or recorded documents.

### Section 7.3 Authority of Agent

Each Grantor acknowledges that the rights and responsibilities of Agent under this Agreement with respect to any action taken by Agent or the exercise or non-exercise by Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between Agent and any Grantor, Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation or entitlement to make any inquiry respecting such authority.

Section 7.4 Duty; Obligations and Liabilities. (a) Duty of Agent. Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to

deal with it in the same manner as Agent deals with similar property for its own account. The powers conferred on Agent hereunder are solely to protect Agent's interest in the Collateral and shall not impose any duty upon Agent to exercise any such powers. Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Related Persons shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. In addition, Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by Agent in good faith.

(b) **Obligations and Liabilities with respect to Collateral.** No Secured Party and no Related Person thereof shall be liable for failure to demand, collect or realize upon any 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 any other Person or to take any other action whatsoever with regard to any Collateral. The powers conferred on Agent hereunder shall not impose any duty upon any other Secured Party to exercise any such powers. 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 respective 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 as finally determined in a non-appealable judgment by a court of competent jurisdiction.

#### ARTICLE VIII MISCELLANEOUS

**Section 8.1 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 hereunder 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 8.2 Release of Collateral.** (a) At the time provided in subsection 9.10(b)(iii) of the Credit Agreement, the Collateral shall be automatically released from the Lien created hereby and this Agreement and all obligations (other than those expressly stated to survive such termination) of Agent and each Grantor hereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. Each Grantor (or its designee) is hereby authorized to file UCC amendments, other release documents and, if necessary, appropriate filings with any applicable IP Office, and other documents at such time evidencing the termination of the Liens so released. At the request of any Grantor following any such termination, Agent shall promptly deliver to such Grantor any Collateral of such Grantor held by Agent hereunder and execute and deliver to such Grantor such documents (including termination statements and intellectual property filing terminations) as such Grantor shall reasonably request to evidence such termination.

(b) If Agent shall be directed or permitted pursuant to subsection 9.10(b) of the

Credit Agreement to release any Lien or any Collateral, such Collateral shall be released from the Lien created hereby to the extent provided under, and subject to the terms and conditions set forth in, such subsection. In connection therewith, Agent, at the request of any Grantor, shall execute and deliver to such Grantor such documents (including termination statements and intellectual property filing terminations) as such Grantor shall reasonably request to evidence such release.

(c) At the time provided in subsection 9.10(b) of the Credit Agreement and at the request of the Borrower, a Grantor shall be released from its obligations hereunder in the event that all the Stock of such Grantor shall be sold to any Person that is not an Affiliate the Borrower or the Subsidiaries of the Borrower in a transaction permitted by the Loan Documents.

**Section 8.3 Independent Obligations.** The obligations of each Grantor hereunder are independent of and separate from the Secured Obligations and the Guaranteed Obligations. If any Secured Obligation or Guaranteed Obligation is not paid when due, subject to any grace or cure period, or upon any Event of Default and during the continuance thereof, Agent may, at its sole election, proceed directly and at once, without notice, against any Grantor and any Collateral to collect and recover the full amount of any Secured Obligation or Guaranteed Obligation then due, without first proceeding against any other Grantor, any other Credit Party or any other Collateral and without first joining any other Grantor or any other Credit Party in any proceeding.

**Section 8.4 No Waiver by Course of Conduct.** No Secured Party shall by any act (except by a written instrument pursuant to Section 8.5 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that such Secured Party would otherwise have on any future occasion.

**Section 8.5 Amendments in Writing.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement; provided, however, that annexes to this Agreement may be supplemented (but no existing provisions may be modified and no Collateral may be released) through Pledge Amendments and Joinder Agreements or through other documents reasonably acceptable to Agent, in substantially the form of Annex 1 and Annex 2, respectively, in each case duly executed by Agent and each Grantor directly affected thereby.

**Section 8.6 Additional Grantors; Additional Pledged Collateral.** (a) **Joinder Agreements.** If, at the option of the Borrower or as required pursuant to Section 5.13 of the Credit Agreement, the Borrower shall cause any Subsidiary that is not a Grantor to become a Grantor hereunder, such Subsidiary shall execute and deliver to Agent a Joinder Agreement substantially in the form of Annex 2 and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the Restatement Date.

(b) **Pledge Amendments.** To the extent any Pledged Collateral has not been delivered as of the Restatement Date, such Grantor shall deliver a pledge amendment duly executed by the Grantor in substantially the form of Annex 1 (each, a "Pledge Amendment"). Such Grantor authorizes Agent to attach each Pledge Amendment to this Agreement.

**Section 8.7 Notices.** All notices, requests and demands to or upon Agent or any Grantor

hereunder shall be effected in the manner provided for in Section 10.02 of the Credit Agreement; provided, however, that any such notice, request or demand to or upon any Grantor shall be addressed to the Borrower's notice address set forth in such Schedule 10.02 of the Credit Agreement.

**Section 8.8 Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of each Secured Party and their successors and assigns; provided, however, that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of Agent.

**Section 8.9 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. 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 by Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature 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.

**Section 8.10 Severability.** Any provision of this Agreement being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Agreement or any part of such provision in any other jurisdiction.

**Section 8.11 Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

**Section 8.12 Waiver of Jury Trial.** THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

EACH GRANTOR AGREES TO BE BOUND BY THE PROVISIONS OF SUBSECTIONS 10.18(b) AND (c) OF THE CREDIT AGREEMENT.

**Section 8.13 Continued Effectiveness; No Novation.** Each Grantor party to any "Loan Document" (as defined in the Original Credit Agreement) entered into prior to execution of this Agreement in connection with the Original Credit Agreement (each, a "Reaffirmation Document," and, collectively, the "Reaffirmed Documents") (a) ratifies and reaffirms its obligations under each Reaffirmed Document, except as otherwise amended or amended and restated on the Restatement Date, and (b) acknowledges and agrees that (i) all Liens granted to the Agent to secure the Obligations (under and as defined in the Original Credit Agreement) remain in full force and effect, except as otherwise amended or amended and restated on the Restatement Date, (ii) the validity, perfection and priority of such Liens will not be impaired or interrupted in any manner by the amendment and restatement of the Original Credit

Agreement and the Original Guaranty and Security Agreement by the Credit Agreement and this Agreement, as applicable, and (iii) this Agreement is intended to amend, restate, renew, extend, consolidate and modify the Original Guaranty and Security Agreement in its entirety and shall not constitute a novation of the obligations of any Grantor under the Original Credit Agreement, the Original Guaranty and Security Agreement, including the Obligations (as defined in the Original Credit Agreement), the Guaranteed Obligations (as defined in the Original Guaranty and Security Agreement) and the Secured Obligations (as defined in the Original Guaranty and Security Agreement)

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Amended and Restated Guaranty and Security Agreement to be duly executed and delivered as of the date first above written.

RIMINI STREET, INC.  
as Grantor

By: /s/ Seth A. Ravin  
Name: Seth A. Ravin  
Title: President, Chief Executive Officer and Chairman of the Board

RSI INTERNATIONAL HOLDINGS, INC.  
as Grantor

By: /s/ Seth A. Ravin  
Name: Seth A. Ravin  
Title: President

RSI INTERNATIONAL HOLDINGS, LLC  
as Grantor

By: RSI International Holdings, Inc., its sole member  
and manager

By: /s/ Seth A. Ravin  
Name: Seth A. Ravin  
Title: President

ACCEPTED AND AGREED  
as of the date first above written:

CAPITAL ONE, NATIONAL ASSOCIATION  
as Agent

By: /s/ Nirmal Bivek  
Name: Nirmal Bivek  
Title: Authorized Signatory

[SIGNATURE PAGE TO AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT]

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ANNEX 1  
TO  
AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT<sup>1</sup>

FORM OF PLEDGE AMENDMENT

This Pledge Amendment, dated as of \_\_\_\_\_, 20\_\_\_\_, is delivered pursuant to Section 8.6 of the Amended and Restated Guaranty and Security Agreement, dated as of [\_\_\_\_], 2024, by Rimini Street Inc. (the "Borrower"), the undersigned Grantor and the other Affiliates of the Borrower from time to time party thereto as Grantors in favor of Capital One, National Association, as Agent for the Secured Parties referred to therein (the "Guaranty and Security Agreement"). Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

The undersigned hereby agrees that this Pledge Amendment may be attached to the Guaranty and Security Agreement and that the Pledged Collateral listed on Annex 1-A to this Pledge Amendment shall be and become part of the Collateral referred to in the Guaranty and Security Agreement and shall secure all Obligations of the undersigned.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Sections 4.1, 4.2, 4.4 and 4.9 of the Guaranty and Security Agreement is true and correct and as of the date hereof as if made on and as of such date.

[GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

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To be used for pledge of Additional Pledged Collateral by existing Grantor.

PLEDGED STOCK

ISSUER	CLASS	CERTIFICATE NO(S).	PAR VALUE	NO. OF SHARES, UNITS OR INTERESTS
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PLEDGED DEBT INSTRUMENTS

ISSUER	DESCRIPTION OF DEBT	CERTIFICATE NO(S).	FINAL MATURITY	PRINCIPAL AMOUNT
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ACKNOWLEDGED AND AGREED  
as of the date first above written:

CAPITAL ONE, NATIONAL ASSOCIATION  
as Agent

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, THE UNDERSIGNED HAS CAUSED THIS JOINDER AGREEMENT TO BE DULY EXECUTED AND DELIVERED AS OF THE DATE FIRST ABOVE WRITTEN.

[ADDITIONAL GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

ACKNOWLEDGED AND AGREED  
as of the date first above written:

[EACH GRANTOR PLEDGING  
ADDITIONAL COLLATERAL]

By: \_\_\_\_\_  
Name:  
Title:

CAPITAL ONE, NATIONAL ASSOCIATION  
as Agent

By: \_\_\_\_\_  
Name:  
Title:

ANNEX 2  
TO  
AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of \_\_\_\_\_, 20\_\_\_\_, is delivered pursuant to Section 8.6 of the Amended and Restated Guaranty and Security Agreement, dated as of [\_\_\_\_], 2024, by Rimini Street Inc. and the other Persons from time to time party thereto as Grantors in favor of Capital One, National Association, as Agent for the Secured Parties referred to therein (as such agreement may be amended, restated, supplemented and/or otherwise modified from time to time, the "Guaranty and Security Agreement"). Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

By executing and delivering this Joinder Agreement, the undersigned, as provided in Section 8.6 of the Guaranty and Security Agreement, hereby becomes a party to the Guaranty and Security Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein and, without limiting the generality of the foregoing, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, hereby mortgages, pledges and hypothecates to Agent, for the benefit of the Secured Parties, and grants to Agent, for the benefit of the Secured Parties, a lien on and security interest in, all of its right, title and interest in, to and under the Collateral of the undersigned and expressly assumes all obligations and liabilities of a Grantor thereunder. The undersigned hereby agrees to be bound as a Grantor for the purposes of the Guaranty and Security Agreement.

The information set forth in Annex 1-A is hereby added to the information set forth in Schedules 1 through 5 to the Guaranty and Security Agreement and Schedules 4.18, 4.19 and 4.20 of the Credit Agreement. By acknowledging and agreeing to this Joinder Agreement, the undersigned hereby agree that this Joinder Agreement may be attached to the Guaranty and Security Agreement and that the Collateral listed on Annex 1-A to this Joinder Agreement shall be and become part of the Collateral referred to in the Guaranty and Security Agreement and shall secure all Secured Obligations of the undersigned.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Article IV of the Guaranty and Security Agreement applicable to it is true and correct on and as the date hereof as if made on and as of such date.

ANNEX 3  
TO  
AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT<sup>1</sup>

THIS [COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT, dated as of \_\_\_\_\_, 20\_\_\_\_, is made by each of the entities listed on the signature pages hereof (each a "Grantor" and, collectively, the "Grantors"), in favor of Capital One, National Association ("Capital One"), as administrative agent (in such capacity, together with its successors and permitted assigns, the "Agent") for the Secured Parties (as defined in the Credit Agreement referred to below) and the other Secured Parties.

W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, dated as of [\_\_\_\_], 2024 (as the same may be amended, restated, supplemented and/or modified from time to time, the "Credit Agreement"), by and among the Borrower, the other Credit Parties, the Lenders and the L/C Issuers from time to time party thereto and Capital One, as Agent for the Lenders and the L/C Issuers, the Lenders and the L/C Issuers have severally agreed to make extensions of credit to the Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, each Grantor has agreed, pursuant to an Amended and Restated Guaranty and Security Agreement of even date herewith in favor of Agent (and such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"), to guarantee the Obligations (as defined in the Credit Agreement) of the Borrower; and

WHEREAS, all of the Grantors are party to the Guaranty and Security Agreement pursuant to which the Grantors are required to execute and deliver this [Copyright] [Patent] [Trademark] Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders, the L/C Issuers and Agent to enter into the Credit Agreement and to induce the Lenders and the L/C Issuers to make their respective extensions of credit to the Borrower thereunder, each Grantor hereby agrees with Agent as follows:

Section 1. Defined Terms. Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

Section 2. Grant of Security Interest in [Copyright] [Trademark] [Patent] Collateral. Each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of such Grantor, hereby mortgages, pledges and hypothecates to Agent for the benefit of the Secured Parties, and grants to Agent for the benefit of the Secured Parties a Lien on and security interest in, all of its right, title and interest in, to and under the following Collateral of such Grantor (the "[Copyright] [Patent] [Trademark] Collateral"):

- (a) [all of its Copyrights and all IP Licenses providing for the grant by or to such Grantor of any right under any Copyright, including, without limitation, those referred to on Schedule 1 hereto;
- (b) all renewals, reversions and extensions of the foregoing; and

<sup>1</sup> Separate agreements should be executed relating to each Grantor's respective Copyrights, Patents, and Trademarks.

(c) all income, royalties, proceeds and Liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Patents and all IP Licenses providing for the grant by or to such Grantor of any right under any Patent, including, without limitation, those referred to on Schedule 1 hereto;

(b) all reissues, reexaminations, continuations, continuations-in-part, divisionals, renewals and extensions of the foregoing; and

(c) all income, royalties, proceeds and Liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Trademarks and all IP Licenses providing for the grant by or to such Grantor of any right under any Trademark, including, without limitation, those referred to on Schedule 1 hereto, but excluding any "intent to use" Trademark applications for which a statement of use has not been filed (but only excluding such applications until such statement is filed);

(b) all renewals and extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

(d) all income, royalties, proceeds and Liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

Section 3.4 Guaranty and Security Agreement. The security interest granted pursuant to this [Copyright] [Patent] [Trademark] Security Agreement is granted in conjunction with the security interest granted to Agent pursuant to the Guaranty and Security Agreement and each Grantor hereby acknowledges and agrees that the rights and remedies of Agent with respect to the security interest in the [Copyright] [Patent] [Trademark] Collateral made and granted hereby are more fully set forth in the Guaranty and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

Section 4. Grantor Remains Liable. Each Grantor hereby agrees that, anything herein to the contrary notwithstanding, such Grantor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with their [Copyrights] [Patents] [Trademarks] and IP Licenses subject to a security interest hereunder.

Section 5. Counterparts. This [Copyright] [Patent] [Trademark] Security Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which

when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart.

Section 6. Governing Law. This [Copyright] [Patent] [Trademark] Security Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each Grantor has caused this [Copyright] [Patent] [Trademark] Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[GRANTOR]  
as Grantor

By: \_\_\_\_\_

Name:  
Title:

ACCEPTED AND AGREED  
as of the date first above written:

CAPITAL ONE, NATIONAL ASSOCIATION  
as Agent

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO [COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT]

SCHEDULE I

TO

[COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT

[Copyright] [Patent] [Trademark] Registrations

1. REGISTERED [COPYRIGHTS] [PATENTS] [TRADEMARKS]

[Include Registration Number and Date]

2. [COPYRIGHT] [PATENT] [TRADEMARK] APPLICATIONS

[Include Application Number and Date]

3. IP LICENSES

[Include complete legal description of agreement (name of agreement, parties and date)]

**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Seth A. Ravin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Rimini Street, 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: May 2, 2024

/s/ Seth A. Ravin

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Seth A. Ravin

Title: Chief Executive Officer and President  
(Principal Executive Officer)

**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Michael L. Perica, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Rimini Street, 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: May 2, 2024

/s/ Michael L. Perica

Michael L. Perica

Title: Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Seth A. Ravin, Chief Executive Officer and President of Rimini Street, Inc. (the "Company"), certify, that, to the best of my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the quarterly period ended March 31, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 2, 2024

By: /s/ Seth A. Ravin

Seth A. Ravin

Title: Chief Executive Officer and President  
(Principal Executive Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO  
18 U.S.C. 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, Michael L. Perica, Executive Vice President and Chief Financial Officer of Rimini Street, Inc. (the "Company"), certify, that, to the best of my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the quarterly period ended March 31, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 2, 2024

By: \_\_\_\_\_ /s/ Michael L. Perica  
Michael L. Perica  
Title: Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.