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# DELTA REPORT

## 10-Q

BLKB - BLACKBAUD INC

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	9576
CHANGES	324
DELETIONS	833
ADDITIONS	8419

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended **September 30, 2023** **March 31, 2024**

or

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

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

Commission file number: **000-50600**



**Blackbaud, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**11-2617163**

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

**65 Fairchild Street**

**Charleston, South Carolina 29492**

(Address of principal executive offices, including zip code)

**(843) 216-6200**

(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on which Registered</u>
<b>Common Stock, \$0.001 Par Value</b>	<b>BLKB</b>	<b>Nasdaq Global Select Market</b>
<b>Preferred Stock Purchase Rights</b>	<b>N/A</b>	<b>Nasdaq Global Select Market</b>

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 (Section 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 registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

The number of shares of the registrant's Common Stock outstanding as of **October 30, 2023** **April 29, 2024** was **53,852,615** **51,626,076**.

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Blackbaud, Inc.



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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, including the documents incorporated herein by reference, contains forward-looking statements that anticipate results based on our estimates, assumptions and plans that are subject to uncertainty. These "forward-looking statements" are made subject to the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements consist of, among other things, trend analyses, statements regarding future events, future financial performance, our anticipated growth, the effect of general economic and market conditions, our business strategy and our plan to build and grow our business, our operating results, our ability to successfully integrate acquired businesses and technologies, the effect of foreign currency exchange rate and interest rate fluctuations on our financial results, the impact of expensing stock-based compensation, the sufficiency of our capital resources, our ability to meet our ongoing debt and obligations as they become due, cybersecurity and data protection risks and related liabilities, and current or potential legal proceedings involving us, all of which are based on current expectations, estimates, and forecasts, and the beliefs and assumptions of our management. Words such as "believes," "seeks," "expects," "may," "might," "should," "intends," "could," "would," "likely," "will," "targets," "plans," "anticipates," "aims," "projects," "estimates" or any variations of such words and similar

Important factors that could cause actual results to differ materially from our expectations expressed in forward-looking statements include, but are not limited to, those summarized under “Part II, Item 1A. Risk factors” and elsewhere in this report, in our Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023** and in our other filings made with the United States Securities & Exchange Commission (“SEC”). Forward-looking statements represent our management’s beliefs and assumptions only as of the date of this Quarterly Report on Form 10-Q. We undertake no obligation to update or revise any forward-looking statements, or to update the reasons actual results could differ materially from those anticipated in any forward-looking statement, whether as a result of new information, future events or otherwise.

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## PART I. FINANCIAL INFORMATION

Property and equipment, net	Property and equipment, net	100,575	107,426
Operating lease right-of-use assets	Operating lease right-of-use assets	38,374	45,899
Software and content development costs, net	Software and content development costs, net	155,937	141,023
Goodwill	Goodwill	1,051,163	1,050,272
Intangible assets, net	Intangible assets, net	594,169	635,136
Other assets	Other assets	83,654	94,304
<b>Total assets</b>	<b>Total assets</b>	<b>\$2,603,278</b>	<b>\$2,992,703</b>
<b>Liabilities and stockholders' equity</b>	<b>Liabilities and stockholders' equity</b>		
Current liabilities:	Current liabilities:		

Current liabilities:

Current liabilities:

Trade accounts payable

Trade accounts payable

Trade accounts payable	Trade accounts payable	\$ 39,357	\$ 42,559
Accrued expenses and other current liabilities	Accrued expenses and other current liabilities	101,379	86,002
Due to customers	Due to customers	361,837	700,860
Debt, current portion	Debt, current portion	19,217	18,802
Deferred revenue, current portion	Deferred revenue, current portion	415,810	382,419
<b>Total current liabilities</b>	<b>Total current liabilities</b>	<b>937,600</b>	<b>1,230,642</b>
Debt, net of current portion	Debt, net of current portion	723,376	840,241
Deferred tax liability	Deferred tax liability	94,322	125,759
Deferred revenue, net of current portion	Deferred revenue, net of current portion	3,022	2,817
Operating lease liabilities, net of current portion	Operating lease liabilities, net of current portion	41,811	44,918
Other liabilities	Other liabilities	2,976	4,294
<b>Total liabilities</b>	<b>Total liabilities</b>	<b>1,803,107</b>	<b>2,248,671</b>

Commitments and contingencies (see Note 8)

Commitments and contingencies (see Note 9)

Commitments and contingencies (see Note 9)

<b>Stockholders' equity:</b>	<b>Stockholders' equity:</b>		
Preferred stock; 20,000,000 shares authorized, none outstanding	Preferred stock; 20,000,000 shares authorized, none outstanding	—	—
Common stock, \$0.001 par value; 180,000,000 shares authorized, 69,187,767 and 67,814,044 shares issued at September 30, 2023 and December 31, 2022, respectively	Common stock, \$0.001 par value; 180,000,000 shares authorized, 69,187,767 and 67,814,044 shares issued at September 30, 2023 and December 31, 2022, respectively	69	68

Preferred stock; 20,000,000 shares authorized, none outstanding

Preferred stock; 20,000,000 shares authorized, none outstanding

Common stock, \$0.001 par value; 180,000,000 shares authorized, 70,861,507 and 69,188,304 shares issued at March 31, 2024 and December 31, 2023, respectively; 51,624,243 and 53,625,440 shares outstanding at March 31, 2024 and December 31, 2023, respectively			
Additional paid-in capital	Additional paid-in capital	1,170,919	1,075,264
Treasury stock, at cost; 15,337,077 and 14,745,230 shares at September 30, 2023 and December 31, 2022, respectively		(572,428)	(537,287)
Accumulated other comprehensive income		8,141	8,938
Treasury stock, at cost; 19,237,264 and 15,562,864 shares at March 31, 2024 and December 31, 2023, respectively			
Accumulated other comprehensive income (loss)			
Retained earnings	Retained earnings	193,470	197,049
<b>Total stockholders' equity</b>	<b>Total stockholders' equity</b>	800,171	744,032
<b>Total liabilities and stockholders' equity</b>	<b>Total liabilities and stockholders' equity</b>	\$2,603,278	\$2,992,703

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

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

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

Blackbaud, Inc.		
Condensed Consolidated Statements of Comprehensive Income (Loss)		
(Unaudited)		
	Three months ended September 30,	Nine months ended September 30,

Blackbaud, Inc. Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited)									
Blackbaud, Inc. Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited)									
	Three months ended March 31,								Three months ended March 31,
(dollars in thousands, except per share amounts)	(dollars in thousands, except per share amounts)	2023	2022	2023	2022	(dollars in thousands, except per share amounts)		2024	2023
Revenue	Revenue								
Recurring									
Recurring									
Recurring	Recurring	\$ 269,001	\$ 249,387	\$ 784,139	\$ 746,560				
One-time services and other	One-time services and other	8,625	11,910	26,282	36,788				
Total revenue	Total revenue	277,626	261,297	810,421	783,348				
Cost of revenue	Cost of revenue								
Cost of recurring									
Cost of recurring									
Cost of recurring	Cost of recurring	114,132	111,488	342,558	338,149				
Cost of one-time services and other	Cost of one- time services and other	7,634	9,449	23,795	31,757				
Total cost of revenue	Total cost of revenue	121,766	120,937	366,353	369,906				
Gross profit	Gross profit	155,860	140,360	444,068	413,442				
Operating expenses	Operating expenses								
Sales, marketing and customer success	Sales, marketing and customer success	52,462	56,414	160,038	164,367				
Sales, marketing and customer success									
Sales, marketing and customer success									
Research and development	Research and development	37,965	40,451	114,702	118,736				
General and administrative	General and administrative	42,596	49,860	154,582	141,013				
Amortization	Amortization	793	647	2,355	2,263				
Total operating expenses	Total operating expenses	133,816	147,372	431,677	426,379				
Total operating expenses									
Total operating expenses									

Income (loss) from operations	Income (loss) from operations				
		22,044	(7,012)	12,391	(12,937)
Interest expense	Interest expense	(9,620)	(9,337)	(31,449)	(25,912)
Other income, net	Other income, net	5,662	4,454	10,447	8,708
Income (loss) before provision (benefit) for income taxes		18,086	(11,895)	(8,611)	(30,141)
Income tax provision (benefit)		9,069	(1,576)	(5,032)	(5,993)
Income (loss) before benefit for income taxes					
Income tax benefit					
Net income (loss)	Net income (loss)	\$ 9,017	\$ (10,319)	\$ (3,579)	\$ (24,148)
Earnings (loss) per share	Earnings (loss) per share				
Basic					
Basic					
Basic	Basic	\$ 0.17	\$ (0.20)	\$ (0.07)	\$ (0.47)
Diluted	Diluted	\$ 0.17	\$ (0.20)	\$ (0.07)	\$ (0.47)
Common shares and equivalents outstanding	Common shares and equivalents outstanding				
Basic weighted average shares	Basic weighted average shares	52,704,974	51,692,152	52,495,556	51,519,340
Basic weighted average shares					
Basic weighted average shares					
Diluted weighted average shares	Diluted weighted average shares	54,089,897	51,692,152	52,495,556	51,519,340
Other comprehensive loss					
Other comprehensive income (loss)					
Foreign currency translation adjustment					
Foreign currency translation adjustment					
Foreign currency translation adjustment	Foreign currency translation adjustment	\$ (4,794)	\$ (11,536)	\$ 419	\$ (24,066)
Unrealized gain (loss) on derivative instruments, net of tax	Unrealized gain (loss) on derivative instruments, net of tax	4,093	6,797	(1,216)	20,260
Total other comprehensive loss		(701)	(4,739)	(797)	(3,806)



Total other comprehensive income (loss)					
Comprehensive income (loss)	Comprehensive income (loss)	\$	8,316	\$	(15,058)
		\$	(4,376)	\$	(27,954)

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

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Blackbaud, Inc. Condensed Consolidated Statements of Cash Flows (Unaudited)						
(dollars in thousands)	(dollars in thousands)	Nine months ended September 30,		Three months ended March 31,		
		2023	2022	(dollars in thousands)		
				2024	2023	
Cash flows from operating activities	Cash flows from operating activities					
Net loss		\$ (3,579)	\$ (24,148)			
Adjustments to reconcile net loss to net cash provided by operating activities:						
Net income (loss)						
Net income (loss)						
Net income (loss)						
Adjustments to reconcile net income (loss) to net cash provided by operating activities:						
Depreciation and amortization						
Depreciation and amortization						
Depreciation and amortization	Depreciation and amortization	81,627	76,606			
Provision for credit losses and sales returns	Provision for credit losses and sales returns	4,815	4,374			
Stock-based compensation expense	Stock-based compensation expense	95,668	83,659			
Deferred taxes	Deferred taxes	(31,163)	(21,672)			

Amortization of deferred financing costs and discount	Amortization of deferred financing costs and discount	1,388	1,827
Loss on disposition of business			
Other non-cash adjustments	Other non-cash adjustments	5,106	5,677
Changes in operating assets and liabilities, net of acquisition and disposal of businesses:	Changes in operating assets and liabilities, net of acquisition and disposal of businesses:		
Accounts receivable			
Accounts receivable			
Accounts receivable	Accounts receivable	(4,757)	9,998
Prepaid expenses and other assets	Prepaid expenses and other assets	14,488	22,246
Trade accounts payable	Trade accounts payable	(3,362)	14,435
Accrued expenses and other liabilities	Accrued expenses and other liabilities	9,073	(7,028)
Deferred revenue	Deferred revenue	33,679	23,832
Net cash provided by operating activities	Net cash provided by operating activities	202,983	189,806
Cash flows from investing activities			
Purchase of property and equipment	Purchase of property and equipment	(4,243)	(10,512)
Purchase of property and equipment			
Purchase of property and equipment			
Capitalized software and content development costs	Capitalized software and content development costs	(44,664)	(42,757)
Purchase of net assets of acquired companies, net of cash and restricted cash acquired		(13)	(20,945)
Cash received in sale of business		—	6,426
Other investing activities		(250)	—
Net cash used in disposition of business			

Net cash used in disposition of business			
Net cash used in disposition of business			
<b>Net cash used in investing activities</b>			
<b>Net cash used in investing activities</b>			
Net cash used in investing activities	Net cash used in investing activities	(49,170)	(67,788)
<b>Cash flows from financing activities</b>			
<b>Cash flows from financing activities</b>			
Proceeds from issuance of debt	Proceeds from issuance of debt	175,800	126,900
Proceeds from issuance of debt			
Proceeds from issuance of debt			
Payments on debt	Payments on debt	(293,957)	(229,442)
Stock issuance costs		—	(1,205)
Employee taxes paid for withheld shares upon equity award settlement			
Employee taxes paid for withheld shares upon equity award settlement			
Employee taxes paid for withheld shares upon equity award settlement	Employee taxes paid for withheld shares upon equity award settlement	(35,568)	(36,057)
Change in due to customers	Change in due to customers	(339,735)	(243,109)
Change in due to customers			
Change in due to customers			
Change in customer funds receivable	Change in customer funds receivable	(3,286)	(1,291)
Purchase of treasury stock			
Net cash used in financing activities	Net cash used in financing activities	(496,746)	(384,204)
Effect of exchange rate on cash, cash equivalents and restricted cash	Effect of exchange rate on cash, cash equivalents and restricted cash	(311)	(14,235)
Net decrease in cash, cash equivalents and restricted cash	Net decrease in cash, cash equivalents and restricted cash	(343,244)	(276,421)
Cash, cash equivalents and restricted cash, beginning of period	Cash, cash equivalents and restricted cash, beginning of period	733,931	651,762
Cash, cash equivalents and restricted cash, end of period	Cash, cash equivalents and restricted cash, end of period	\$390,687	\$375,341

The following table provides a reconciliation of cash and cash equivalents and restricted cash reported within the condensed consolidated balance sheets that sum to the total of the same such amounts shown above in the condensed consolidated statements of cash flows:

(dollars in thousands)	(dollars in thousands)	September 30, 2023	December 31, 2022	(dollars in thousands)	March 31, 2024	December 31, 2023
Cash and cash equivalents	Cash and cash equivalents	\$ 31,091	\$ 31,691			
Restricted cash	Restricted cash	359,596	702,240			
Total cash, cash equivalents and restricted cash in the statement of cash flows	Total cash, cash equivalents and restricted cash in the statement of cash flows	\$ 390,687	\$ 733,931			

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Blackbaud, Inc.  
Condensed Consolidated Statements of Stockholders' Equity  
(Unaudited)

(dollars in thousands)	(dollars in thousands)	Common stock		Additional paid-in capital	Treasury stock	Accumulated other comprehensive loss (income)	Retained earnings	Total stockholders' equity	(dollars in thousands)	Common stock	Treasury stock	Additional paid-in capital	Accumulated other comprehensive income (loss)	Retained earnings	Total stockholders' equity
		Shares	Amount												
Balance at December 31, 2022		67,814,044	\$ 68	\$ 1,075,264	\$(537,287)	\$ 8,938	\$ 197,049	\$ 744,032							
Net loss		—	—	—	—	—	(14,701)	(14,701)							
Balance at December 31, 2023															
Balance at December 31, 2023															
Balance at December 31, 2023															
Net income															
Purchase of treasury shares under stock repurchase program															
Vesting of restricted stock units	Vesting of restricted stock units	954,147	—	—	—	—	—	—							

Employee taxes paid for 533,597 withheld shares upon equity award settlement	—	—	—	(30,990)	—	—	(30,990)
Stock-based compensation	—	—	29,925	—	—	—	29,925
Restricted stock grants	427,941	1	—	—	—	—	1
Restricted stock cancellations	(41,269)	—	—	—	—	—	—
Other comprehensive loss	—	—	—	—	(8,534)	—	(8,534)
<b>Balance at March 31, 2023</b>	<b>69,154,863</b>	<b>\$ 69</b>	<b>\$1,105,189</b>	<b>\$(568,277)</b>	<b>\$ 404</b>	<b>\$182,348</b>	<b>\$ 719,733</b>
Net income	—	—	—	—	—	2,105	2,105
Vesting of restricted stock units	23,550	—	—	—	—	—	—
Employee taxes paid for 32,540 withheld shares upon equity award settlement	—	—	—	(2,270)	—	—	(2,270)
<b>Shares withheld to satisfy tax withholdings</b>							
Stock-based compensation	Stock-based compensation	—	—	33,364	—	—	33,364
Restricted stock grants	Restricted stock grants	6,031	—	—	—	—	—
Restricted stock cancellations	Restricted stock cancellations	(20,200)	—	—	—	—	—
Other comprehensive income	Other comprehensive income	—	—	—	8,438	—	8,438
<b>Balance at June 30, 2023</b>	<b>69,164,244</b>	<b>\$ 69</b>	<b>\$1,138,553</b>	<b>\$(570,547)</b>	<b>\$ 8,842</b>	<b>\$184,453</b>	<b>\$ 761,370</b>
Net income	—	—	—	—	—	9,017	9,017
Retirements of common stock <sup>(1)</sup>	(143)	—	(13)	—	—	—	(13)
<b>Balance at March 31, 2024</b>							
Vesting of restricted stock units	26,662	—	—	—	—	—	—
Employee taxes paid for 25,710 withheld shares upon equity award settlement	—	—	—	(1,881)	—	—	(1,881)
Stock-based compensation	—	—	32,379	—	—	—	32,379
Restricted stock grants	27,913	—	—	—	—	—	—
Restricted stock cancellations	(30,909)	—	—	—	—	—	—
Other comprehensive loss	—	—	—	—	(701)	—	(701)
<b>Balance at September 30, 2023</b>	<b>69,187,767</b>	<b>\$ 69</b>	<b>\$1,170,919</b>	<b>\$(572,428)</b>	<b>\$ 8,141</b>	<b>\$193,470</b>	<b>\$ 800,171</b>

(dollars in thousands)	Common stock		Treasury stock		Additional paid-in capital	Accumulated other comprehensive income	Retained earnings	Total stockholders' equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2022</b>	67,814,044	\$ 68	(14,745,230)	\$(537,287)	\$ 1,075,264	\$ 8,938	\$ 197,049	\$ 744,032
Net loss	—	—	—	—	—	—	(14,701)	(14,701)
Vesting of restricted stock units	954,147	—	—	—	—	—	—	—
Shares withheld to satisfy tax withholdings	—	—	(533,597)	(30,990)	—	—	—	(30,990)
Stock-based compensation	—	—	—	—	29,925	—	—	29,925
Restricted stock grants	427,941	1	—	—	—	—	—	1
Restricted stock cancellations	(41,269)	—	—	—	—	—	—	—
Other comprehensive loss	—	—	—	—	—	(8,534)	—	(8,534)
<b>Balance at March 31, 2023</b>	<b>69,154,863</b>	<b>\$ 69</b>	<b>(15,278,827)</b>	<b>\$(568,277)</b>	<b>\$ 1,105,189</b>	<b>\$ 404</b>	<b>\$ 182,348</b>	<b>\$ 719,733</b>

**Blackbaud, Inc.**  
**Condensed Consolidated Statements of Stockholders' Equity (continued)**  
**(Unaudited)**

(dollars in thousands)	Common stock		Additional paid-in capital	Treasury stock	Accumulated other comprehensive income	Retained earnings	Total stockholders' equity
	Shares	Amount					
<b>Balance at December 31, 2021</b>	66,165,666	\$ 66	\$ 968,927	\$ (500,911)	\$ 6,522	\$ 242,456	\$ 717,060
Net loss	—	—	—	—	—	(10,407)	(10,407)
Stock issuance costs related to purchase of EVERFI	—	—	(983)	—	—	—	(983)
Retirements of common stock <sup>(1)</sup>	(33,075)	—	(2,581)	—	—	—	(2,581)
Vesting of restricted stock units	976,312	—	—	—	—	—	—
Employee taxes paid for 533,139 withheld shares upon equity award settlement	—	—	—	(34,674)	—	—	(34,674)
Stock-based compensation	—	—	27,860	—	—	—	27,860
Restricted stock grants	580,209	2	—	—	—	—	2
Restricted stock cancellations	(30,940)	—	—	—	—	—	—
Other comprehensive income	—	—	—	—	8,773	—	8,773
<b>Balance at March 31, 2022</b>	67,658,172	\$ 68	\$ 993,223	\$ (535,585)	\$ 15,295	\$ 232,049	\$ 705,050
Net loss	—	—	—	—	—	(3,422)	(3,422)
Stock issuance costs related to purchase of EVERFI	—	—	(223)	—	—	—	(223)
Retirements of common stock <sup>(1)</sup>	(395)	—	(19)	—	—	—	(19)
Vesting of restricted stock units	23,549	—	—	—	—	—	—
Employee taxes paid for 15,540 withheld shares upon equity award settlement	—	—	—	(926)	—	—	(926)
Stock-based compensation	—	—	27,854	—	—	—	27,854
Restricted stock grants	136,598	—	—	—	—	—	—
Restricted stock cancellations	(62,550)	—	—	—	—	—	—
Other comprehensive loss	—	—	—	—	(7,840)	—	(7,840)
<b>Balance at June 30, 2022</b>	67,755,374	\$ 68	\$ 1,020,835	\$ (536,511)	\$ 7,455	\$ 228,627	\$ 720,474
Net loss	—	—	—	—	—	(10,319)	(10,319)
Stock issuance costs related to purchase of EVERFI	—	—	(87)	—	—	—	(87)
Retirements of common stock <sup>(1)</sup>	(65)	—	(5)	—	—	—	(5)
Vesting of restricted stock units	12,655	—	—	—	—	—	—
Employee taxes paid for 8,260 withheld shares upon equity award settlement	—	—	—	(457)	—	—	(457)
Stock-based compensation	—	—	27,945	—	—	—	27,945
Restricted stock grants	107,906	—	—	—	—	—	—
Restricted stock cancellations	(44,956)	—	—	—	—	—	—
Other comprehensive loss	—	—	—	—	(4,739)	—	(4,739)
<b>Balance at September 30, 2022</b>	67,830,914	\$ 68	\$ 1,048,688	\$ (536,968)	\$ 2,716	\$ 218,308	\$ 732,812

<sup>(1)</sup> Represents shares retired after determining certain EVERFI's selling shareholders would be paid in cash, rather than shares of our common stock. For more information regarding our acquisition of EVERFI on December 31, 2021, please see Note 3 of the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on February 22, 2023.

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

Blackbaud, Inc.  
Notes to Condensed Consolidated Financial Statements  
(Unaudited)

## 1. Organization

We are the leading software provider exclusively dedicated to powering social impact. Serving the nonprofit and education sectors, companies committed to social responsibility and individual change makers, our essential software is built to accelerate impact in fundraising, nonprofit financial management, digital giving, grantmaking, corporate social responsibility and education management. A remote-first company, we have operations in the United States, Australia, Canada, Costa Rica and the United Kingdom, supporting users in 100+ countries.

## 2. Basis of Presentation

### Unaudited condensed consolidated interim financial statements

The accompanying condensed consolidated interim financial statements have been prepared pursuant to the rules and regulations of the United States Securities and Exchange Commission ("SEC") for interim financial reporting. These condensed consolidated statements are unaudited and, in the opinion of management, include all adjustments (consisting of normal recurring adjustments and accruals) necessary to state fairly the consolidated balance sheets, consolidated statements of comprehensive income, consolidated statements of cash flows and consolidated statements of stockholders' equity, for the periods presented in accordance with accounting principles generally accepted in the United States ("U.S.") ("GAAP"). The condensed consolidated balance sheet at December 31, 2022 December 31, 2023 has been derived from the audited consolidated financial statements at that date. Operating results and cash flows for the nine three months ended September 30, 2023 March 31, 2024 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2023 December 31, 2024, or any other future period. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with GAAP have been omitted in accordance with the rules and regulations for interim reporting of the SEC. These unaudited, condensed consolidated interim financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, and other forms filed with the SEC from time to time.

### Basis of consolidation

The unaudited, condensed consolidated financial statements include the accounts of Blackbaud, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

### Reportable segment

We report our operating results and financial information in one operating and reportable segment. Our chief operating decision maker uses consolidated financial information to make operating decisions, assess financial performance and allocate resources. Our chief operating decision maker is our chief executive officer.

### Use of estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, we reconsider and evaluate our estimates and assumptions, including those that impact revenue recognition, long-lived and intangible assets, income taxes, business combinations, stock-based compensation, capitalization of software and content development costs, our allowances for credit losses and sales returns, costs of obtaining contracts, valuation of derivative instruments, loss contingencies and insurance recoveries, among others. Changes in the facts or circumstances underlying these estimates could result in material changes and actual results could materially differ from these estimates.

Blackbaud, Inc.  
Notes to Condensed Consolidated Financial Statements  
(Unaudited)

Recently adopted accounting pronouncements

In September 2022, the Financial Accounting Standards Board issued Accounting Standards Update 2022-04, *Liabilities-Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations* ("ASU 2022-04"). This update requires entities that use supplier finance programs in connection with the purchase of goods and services to disclose key terms of the programs and information about obligations outstanding at the end of the reporting period, including a rollforward of those obligations. The guidance does not affect the recognition, measurement, or financial statement presentation of supplier finance programs. We adopted ASU 2022-04 on January 1, 2023 and the adoption did not have a material impact on our condensed consolidated financial statements.

Recently issued accounting pronouncements

There are no recently issued accounting pronouncements that we expect to have a material impact on our consolidated financial statements when adopted in the future.

Summary of significant accounting policies

There have been no material changes to our significant accounting policies described in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, filed with the SEC on February 24, 2023 February 21, 2024.

3. Business Combinations and Dispositions

2024 Disposition

On March 2, 2024, we completed a transaction to divest our U.K.-based creative services business EVERFI Limited, formerly a wholly-owned subsidiary of EVERFI Inc, which is a wholly-owned subsidiary of Blackbaud, Inc. EVERFI Limited's total revenue during 2023 was \$8.4 million. We incurred an insignificant amount of legal costs associated with the disposition of this business. As a result of the disposition, we recorded a \$1.6 million loss, which was recorded in general and administrative expense in the unaudited, condensed consolidated statement of comprehensive income for the three months ended March 31, 2024.

4. Earnings (Loss) Per Share

We compute basic earnings (loss) per share by dividing net income (loss) available to common stockholders by the weighted average number of common shares outstanding during the period. Diluted earnings (loss) per share is computed by dividing net income (loss) available to common stockholders by the weighted average number of common shares and dilutive potential common shares outstanding during the period. Diluted earnings (loss) per share reflects the assumed exercise, settlement and vesting of all dilutive securities using the "treasury stock method" except when the effect is anti-dilutive. Potentially dilutive securities consist of shares issuable upon the exercise of stock options, settlement of stock appreciation rights and vesting of restricted stock awards and units. Diluted loss per share for the nine three months ended September 30, 2023 and the three and nine months ended September 30, 2022 March 31, 2023 was the same as basic loss per share as there were was a net losses each of those periods loss in the period and inclusion of potentially dilutive securities was anti-dilutive.

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

(dollars in thousands, except per share amounts)	(dollars in thousands, except per share amounts)	Three months ended September 30,		Nine months ended September 30,		Three months ended March 31,	
		2023	2022	2023	2022	2024	2023
Numerator:	Numerator:						
Net income (loss)	Net income (loss)	\$ 9,017	\$ (10,319)	\$ (3,579)	\$ (24,148)		
Net income (loss)							
Net income (loss)							
Denominator:	Denominator:						
Weighted average common shares	Weighted average common shares	52,704,974	51,692,152	52,495,556	51,519,340		
Weighted average common shares							
Weighted average common shares							
Add effect of dilutive securities:	Add effect of dilutive securities:						
Stock-based awards		1,384,923	—	—	—		



Restricted stock and units						
Restricted stock and units						
Restricted stock and units						
Weighted average common shares assuming dilution	Weighted average common shares assuming dilution	54,089,897	51,692,152	52,495,556	51,519,340	
Earnings (loss) per share	Earnings (loss) per share					
Basic						
Basic						
Basic	Basic	\$ 0.17	\$ (0.20)	\$ (0.07)	\$ (0.47)	
Diluted	Diluted	\$ 0.17	\$ (0.20)	\$ (0.07)	\$ (0.47)	
Anti-dilutive shares excluded from calculations of diluted earnings (loss) per share	Anti-dilutive shares excluded from calculations of diluted earnings (loss) per share	21,660	936,214	474,150	1,195,709	
Anti-dilutive shares excluded from calculations of diluted earnings (loss) per share						
Anti-dilutive shares excluded from calculations of diluted earnings (loss) per share						

Blackbaud, Inc.

Notes to Condensed Consolidated Financial Statements

(Unaudited)

4.5.

Fair Value Measurements

- We use a three-tier fair value hierarchy to measure fair value. This hierarchy prioritizes the inputs into three broad levels as follows:
- Level 1 - Quoted prices for identical assets or liabilities in active markets;
  - Level 2 - Quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and

- ## Recurring fair value measurements

		Fair value measurement using			
	Fair value measurement using				
		Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
(dollars in thousands)	(dollars in thousands)	(Level 1)	(Level 2)	(Level 3)	Total
Fair value as of September 30, 2023					
(dollars in thousands)					
(dollars in thousands)					
Quoted Prices in Active Markets for Identical Assets and Liabilities (Level 1)					
Significant Other Observable Inputs (Level 2)					
Significant Unobservable Inputs (Level 3)					
Total					
Fair value as of March 31, 2024					
Financial assets:	Financial assets:				
Financial assets:					
Financial assets:					
Interest rate swaps					
Interest rate swaps					
Interest rate swaps	Interest rate swaps	\$ —	\$ 30,359	\$ —	\$30,359
Foreign currency forward contracts	Foreign currency forward contracts	—	433	—	433
Total financial assets	Total financial assets	\$ —	\$ 30,792	\$ —	\$30,792
Fair value as of September 30, 2023					
Fair value as of March 31, 2024					
Fair value as of March 31, 2024					
Fair value as of March 31, 2024					
Financial liabilities:					
Financial liabilities:					
Financial liabilities:	Financial liabilities:				
Foreign currency forward contracts					
Foreign currency forward contracts					

Foreign currency forward contracts						
Contingent consideration obligations	Contingent consideration obligations	\$	—	\$	—	\$ 1,379 \$ 1,379
Total financial liabilities	Total financial liabilities	\$	—	\$	—	\$ 1,379 \$ 1,379
Fair value as of December 31, 2022						
Fair value as of December 31, 2023						
Fair value as of December 31, 2023						
Fair value as of December 31, 2023						
Financial assets:	Financial assets:					
Financial assets:						
Interest rate swaps						
Interest rate swaps						
Interest rate swaps	Interest rate swaps	\$	—	\$ 31,870	\$	— \$31,870
Foreign currency forward contracts	Foreign currency forward contracts		—	247		— 247
Total financial assets	Total financial assets	\$	—	\$ 32,117	\$	— \$32,117
Fair value as of December 31, 2022						
Fair value as of December 31, 2023						
Fair value as of December 31, 2023						
Fair value as of December 31, 2023						
Financial liabilities:	Financial liabilities:					
Financial liabilities:						
Interest rate swaps						
Interest rate swaps						
Interest rate swaps						
Foreign currency forward contracts	Foreign currency forward contracts	\$	—	\$ 323	\$	— \$ 323
Contingent consideration obligations	Contingent consideration obligations		—	—		2,710 2,710
Total financial liabilities	Total financial liabilities	\$	—	\$ 323	\$	2,710 \$ 3,033



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

Our derivative instruments within the scope of Accounting Standards Codification ("ASC") 815, *Derivatives and Hedging*, are required to be recorded at fair value. Our derivative instruments that are recorded at fair value include interest rate swaps and foreign currency forward contracts. See Note 7.8 to these unaudited, condensed consolidated financial statements for additional information about our derivative instruments.

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

The fair value of our interest rate swaps and foreign currency forward contracts are based on model-driven valuations using Secured Overnight Financing Rate ("SOFR") rates and foreign currency forward rates, respectively, which are observable at commonly quoted intervals. Accordingly, our interest rate swaps and foreign currency forward contracts are classified within Level 2 of the fair value hierarchy. Our financial contracts that were indexed to LIBOR were modified to reference SOFR during the three months ended September 30, 2022. These modifications did not have a significant financial impact.

Contingent consideration obligations arise from business acquisitions. The fair values are based on discounted cash flow analyses reflecting a probability-weighted assessment approach derived from the likelihood of possible achievement of specified performance measures or events and captures the contractual nature of the contingencies, commercial risk, and the time value of money. As the fair value measurements for our contingent consideration obligations contain significant unobservable inputs, they are classified within Level 3 of the fair value hierarchy.

We believe the carrying amounts of our cash and cash equivalents, restricted cash, accounts receivable, trade accounts payable, accrued expenses and other current liabilities and due to customers approximate their fair values at September 30, 2023, March 31, 2024 and December 31, 2022, December 31, 2023, due to the immediate or short-term maturity of these instruments.

We believe the carrying amount of our debt approximates its fair value at September 30, 2023, March 31, 2024 and December 31, 2022, December 31, 2023, as the debt bears interest rates that approximate market value. As SOFR rates are observable at commonly quoted intervals, our debt under the 2020 Credit Facility (as defined below) is classified within Level 2 of the fair value hierarchy. Our The fair value of our fixed rate debt is also classified within Level 2 of does not exceed the fair value hierarchy, carrying amount.

We did not transfer any assets or liabilities among the levels within the fair value hierarchy during the nine three months ended September 30, 2023, March 31, 2024.

#### Non-recurring fair value measurements

Assets and liabilities that are measured at fair value on a non-recurring basis include long-lived assets, intangible assets, goodwill and operating lease right-of-use ("ROU") assets. These assets are recognized at fair value during the period in which an acquisition is completed or at lease commencement, from updated estimates and assumptions during the measurement period, or when they are considered to be impaired. These non-recurring fair value measurements, primarily for long-lived assets, intangible assets acquired and operating lease ROU assets, are based on Level 3 unobservable inputs. In the event of an impairment, we determine the fair value of these assets other than goodwill using a discounted cash flow approach, which contains significant unobservable inputs and, therefore, is considered a Level 3 fair value measurement. The unobservable inputs in the analysis generally include future cash flow projections and a discount rate. For goodwill impairment testing, we estimate fair value using market-based methods including the use of market capitalization and consideration of a control premium.

In July 2023, we entered into a sublease for a portion of our Washington, DC office location, which we previously closed in February 2023 to align with our remote-first workforce strategy. We considered our entry into the sublease an impairment indicator. As a result, during the three and nine months ended September 30, 2023, we recorded noncash impairment charges of \$5.6 million against certain operating lease ROU assets and \$1.1 million against certain property and equipment assets. We present these impairment charges in general and administrative expense on our unaudited condensed consolidated statements of comprehensive income (loss) and as other non-cash adjustments within operating activities on our unaudited condensed consolidated statements of cash flows.

There were no other significant non-recurring fair value adjustments to our long-lived assets, intangible assets, goodwill and operating lease ROU assets during the nine three months ended September 30, 2023, March 31, 2024.

6. Consolidated Financial Statement Details

Restricted cash

(dollars in thousands)	March 31, 2024	December 31, 2023
Restricted cash due to customers	\$ 355,307	\$ 695,489
Real estate escrow balances and other	1,186	1,517
Total restricted cash	\$ 356,493	\$ 697,006

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Blackbaud, Inc.  
Notes to Condensed Consolidated Financial Statements  
(Unaudited)

5. Consolidated Financial Statement Details

Restricted cash

(dollars in thousands)	September 30, 2023	December 31, 2022
Restricted cash due to customers	\$ 358,280	\$ 700,611
Real estate escrow balances and other	1,316	1,629
Total restricted cash	\$ 359,596	\$ 702,240

Prepaid expenses and other assets

(dollars in thousands)	(dollars in thousands)	September 30, 2023	December 31, 2022	(dollars in thousands)	March 31, 2024	December 31, 2023
Costs of obtaining contracts <sup>(1)(2)</sup>	Costs of obtaining contracts <sup>(1)(2)</sup>	\$ 64,182	\$ 74,272			
Prepaid software maintenance and subscriptions <sup>(3)</sup>						
Derivative instruments	Derivative instruments	30,792	32,117			
Prepaid software maintenance and subscriptions <sup>(3)</sup>		29,927	34,766			
Implementation costs for cloud computing arrangements, net <sup>(4)(5)</sup>	Implementation costs for cloud computing arrangements, net <sup>(4)(5)</sup>	9,835	10,189			
Prepaid insurance	Prepaid insurance	6,140	4,902			

Unbilled accounts receivable	Unbilled accounts receivable	5,701	5,775
Taxes, prepaid and receivable	Taxes, prepaid and receivable	4,102	1,855
Deferred tax assets	Deferred tax assets	1,123	1,153
Other assets	Other assets	14,259	10,929
Total prepaid expenses and other assets	Total prepaid expenses and other assets	166,061	175,958
Less: Long-term portion	Less: Long-term portion	83,654	94,304
Prepaid expenses and other current assets	Prepaid expenses and other current assets	\$ 82,407	\$81,654

- (1) Amortization expense from costs of obtaining contracts was \$7.9 million \$4.8 million and \$24.3 million \$8.3 million for the three and nine months ended September 30, 2023, respectively, March 31, 2024 and \$8.4 million and \$25.4 million for the three and nine months ended September 30, 2022, 2023, respectively.
- (2) The current portion of costs of obtaining contracts as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 was \$26.0 million \$18.8 million and \$29.1 million \$25.3 million, respectively.
- (3) The current portion of prepaid software maintenance and subscriptions as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 was \$27.2 million \$31.6 million and \$31.7 million \$32.4 million, respectively.
- (4) These costs primarily relate to the multi-year implementations of our new global enterprise resource planning and customer relationship management systems.
- (5) Amortization expense from capitalized cloud computing implementation costs was insignificant for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively, and \$1.8 million and \$1.6 million for the nine months ended September 30, 2023 and 2022, 2023, respectively. Accumulated amortization for these costs was \$7.0 million \$8.4 million and \$5.2 million \$7.7 million as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

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

**Accrued expenses and other liabilities**

(dollars in thousands)	(dollars in thousands)	September 30, 2023	December 31, 2022	(dollars in thousands)	March 31, 2024	December 31, 2023
Taxes payable						
Accrued legal costs <sup>(1)</sup>	Accrued legal costs <sup>(1)</sup>	\$ 53,236	\$28,448			
Taxes payable		13,538	16,667			
Customer credit balances	Customer credit balances	9,293	8,257			

Operating lease liabilities, current portion	Operating lease liabilities, current portion	6,790	7,723
Accrued commissions and salaries			
Accrued health care costs	Accrued health care costs	3,023	2,467
Accrued commissions and salaries		2,461	6,944
Accrued vacation costs			
Accrued transaction-based costs related to payments services			
Contingent consideration liability			
Derivative instruments			
Accrued vacation costs		1,971	2,156
Contingent consideration liability		1,379	2,710
Accrued transaction-based costs related to payments services		1,013	5,059
Other liabilities			
Other liabilities			
Other liabilities	Other liabilities	11,651	9,865
Total accrued expenses and other liabilities	Total accrued expenses and other liabilities	104,355	90,296
Less: Long-term portion	Less: Long-term portion	2,976	4,294
Accrued expenses and other current liabilities	Accrued expenses and other current liabilities	\$101,379	\$86,002

(1) All accrued legal costs are classified as current. See Note 9 to these unaudited, condensed consolidated financial statements for additional information about our loss contingency accruals and other legal expenses.

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

Other income, net		Three months ended September 30,		Nine months ended September 30,				
		Three months ended September 30,		Three months ended March 31,				
		Three months ended March 31,		Three months ended March 31,				
		Three months ended March 31,		Three months ended March 31,				
(dollars in thousands)	(dollars in thousands)	2023	2022	2023	2022	(dollars in thousands)	2024	2023
Interest income	Interest income	\$ 3,012	\$ 671	\$ 6,556	\$ 908			
Currency revaluation gains		1,674	2,991	894	5,843			
Currency revaluation gains (losses)								
Other income, net	Other income, net	976	792	2,997	1,957			
Other income, net	Other income, net	\$ 5,662	\$ 4,454	\$ 10,447	\$ 8,708			

## 6.7. Debt

The following table summarizes our debt balances and the related weighted average effective interest rates, which includes the effect of interest rate swap agreements.

	Debt balance at		Weighted average effective interest rate at	
	September 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
(dollars in thousands)				
Credit facility:				
Revolving credit loans	\$ 72,900	\$ 177,800	7.67 %	5.18 %
Term loans	611,563	623,750	3.78 %	4.26 %
Real estate loans	57,120	58,189	5.22 %	5.22 %
Other debt	2,800	2,247	8.42 %	7.38 %
Total debt	744,383	861,986	4.29 %	4.52 %
Less: Unamortized discount and debt issuance costs	1,790	2,943		
Less: Debt, current portion	19,217	18,802	7.20 %	6.45 %
Debt, net of current portion	\$ 723,376	\$ 840,241	4.21 %	4.48 %



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

(dollars in thousands)	Debt balance at		Weighted average effective interest rate at	
	March 31, 2024	December 31, 2023	March 31, 2024	December 31, 2023
Credit facility:				
Revolving credit loans	\$ 379,000	\$ 114,100	7.10 %	7.52 %
Term loans	603,438	607,500	3.48 %	3.51 %
Real estate loans	56,364	56,745	5.22 %	5.22 %
Other debt	2,231	2,800	8.50 %	8.42 %
Total debt	1,041,033	781,145	4.90 %	4.24 %
Less: Unamortized discount and debt issuance costs	1,211	1,481		
Less: Debt, current portion	19,302	19,259	6.99 %	7.02 %
Debt, net of current portion	\$ 1,020,520	\$ 760,405	4.86 %	4.17 %

**2020 credit facility**

In October 2020, we entered into a five-year \$900.0 million senior credit facility (the "2020 Credit Facility"). At **September 30, 2023** **March 31, 2024**, we were in compliance with our debt covenants under the 2020 Credit Facility.

**Real estate loans**

In August 2020, we completed the purchase of our global headquarters facility. As part of the purchase price, we assumed the seller's obligations under two senior secured notes with a then-aggregate outstanding principal amount of \$61.1 million (collectively, the "Real Estate Loans"). At **September 30, 2023** **March 31, 2024**, we were in compliance with our debt covenants under the Real Estate Loans.

**Other debt**

From time to time, we enter into third-party financing agreements for purchases of software and related services for our internal use. Generally, the agreements are non-interest-bearing notes requiring annual payments. Interest associated with the notes is imputed at the rate we would incur for amounts borrowed under our then-existing credit facility at the inception of the notes.

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

The following table summarizes our currently effective supplier financing agreements as of **September 30, 2023** **March 31, 2024**:

(dollars in thousands)	Term in Months	Number of Annual Payments	First Annual Payment Due	Original Loan Value
<b>Effective dates of agreements (1):</b>				
December 2022	39	3	January 2023 \$	1,710
January 2023	36	3	April 2023 \$	2,491

(1) Represent noncash investing and financing transactions during the periods indicated as we purchased software and services by assuming directly related liabilities.

The changes in supplier financing obligations during the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, consisted of the following:

(dollars in thousands)		Total
Balance at December 31, 2022	\$	2,247
Additions		2,491
Settlements		(1,938)
Balance at September 30, 2023December 31, 2023	\$	2,800
Additions		—
Settlements		(569)
Balance at March 31, 2024	\$	2,231

7.8. Derivative Instruments

We generally use derivative instruments to manage our interest rate and foreign currency exchange risk. We currently have derivatives classified as cash flow hedges and net investment hedges. We do not enter into any derivatives for trading or speculative purposes.

All of our derivative instruments are governed by International Swap Dealers Association, Inc. master agreements with our counterparties. As of September 30, 2023March 31, 2024 and December 31, 2022December 31, 2023, we have presented the fair value of our derivative instruments at the gross amounts in the condensed consolidated balance sheets as the gross fair values of our derivative instruments equaled their net fair values.

Cash flow hedges

We have entered into interest rate swap agreements, which effectively convert portions of our variable rate debt under the 2020 Credit Facility to a fixed rate for the term of the swap agreements. We designated each of the interest rate swaps as cash flow hedges at the inception of the contracts. As of September 30, 2023March 31, 2024 and December 31, 2022December 31, 2023, the aggregate notional values of the interest rate swaps were \$935.0 million and \$435.0 million\$935.0 million, respectively. All of the contracts have maturities on or before October 2028.

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Blackbaud, Inc.  
Notes to Condensed Consolidated Financial Statements  
(Unaudited)

We have entered into foreign currency forward contracts to hedge revenues denominated in the Canadian Dollar ("CAD") against changes in the exchange rate with the United States Dollar ("USD"). We designated each of these foreign currency forward contracts as cash flow hedges at the inception of the contracts. As of September 30, 2023March 31, 2024 and December 31, 2022December 31, 2023, the aggregate notional values of the foreign currency forward contracts designated as cash flow hedges that we held to buy USD in exchange for Canadian Dollars were \$28.5 million\$30.6 million CAD and \$22.6 million\$29.9 million CAD, respectively. All of the contracts have maturities of 12 months or less.

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Blackbaud, Inc.  
Notes to Condensed Consolidated Financial Statements  
(Unaudited)

Net investment hedges

We have entered into foreign currency forward contracts to hedge a portion of the foreign currency exposure that arises on translation of our investments denominated in British Pounds ("GBP") into USD. We designated each of these foreign currency forward contracts as net investment hedges at the inception of the contracts. As of September 30, 2023March 31, 2024 and December 31, 2022December 31, 2023, the aggregate notional values of the foreign currency forward contracts designated as net investment hedges to reduce the volatility of the U.S. dollar value of a portion of our GBP-denominated investments was £12.5 million£16.6 million and £11.2 million£13.2 million, respectively.

The fair values of our derivative instruments were as follows as of:

			Asset derivatives			Liability derivatives												
		Asset derivatives												Asset derivatives			Liability derivatives	
(dollars in thousands)	(dollars in thousands)	Balance sheet location	September 30, 2023	December 31, 2022	Balance sheet location	September 30, 2023	December 31, 2022	(dollars in thousands)	Balance sheet location	March 31, 2024	December 31, 2023	Balance sheet location	March 31, 2024	December 31, 2023				
Derivative instruments designated as hedging instruments:	Derivative instruments designated as hedging instruments:																	
Interest rate swaps, current portion																		
Interest rate swaps, current portion																		
Interest rate swaps, current portion																		
Foreign currency forward contracts, current portion	Foreign currency forward contracts, current portion	Prepaid expenses and other current assets	\$ 433	\$ 247	Accrued expenses and other current liabilities	\$ —	\$ 323											
Interest rate swaps, long-term	Interest rate swaps, long-term	Other assets	30,359	31,870	Other liabilities	—	—											
Total derivative instruments designated as hedging instruments	Total derivative instruments designated as hedging instruments		\$ 30,792	\$ 32,117		\$ —	\$ 323											

The effects of derivative instruments in cash flow and net investment hedging relationships were as follows:

		Gain recognized in accumulated other comprehensive income as of	Location of gain reclassified from accumulated other comprehensive income into income (loss)			Gain recognized in accumulated other comprehensive income as of	Location of gain reclassified from accumulated other comprehensive income into income (loss)			Gain recognized in accumulated other comprehensive income as of	Location of gain reclassified from accumulated other comprehensive income into income (loss)			Gain recognized in accumulated other comprehensive income as of	Location of gain reclassified from accumulated other comprehensive income into income (loss)
		Gain (loss) recognized in accumulated other comprehensive income (loss) as of	Gain reclassified from accumulated other comprehensive income into income (loss)			Gain (loss) recognized in accumulated other comprehensive income (loss) as of	Gain reclassified from accumulated other comprehensive income into income (loss)			Gain (loss) recognized in accumulated other comprehensive income (loss) as of	Gain reclassified from accumulated other comprehensive income into income (loss)			Gain (loss) recognized in accumulated other comprehensive income (loss) as of	Gain reclassified from accumulated other comprehensive income into income (loss)
		September 30, 2023	Three months ended September 30, 2023			September 30, 2023	Three months ended September 30, 2023			September 30, 2023	Three months ended September 30, 2023			September 30, 2023	Three months ended September 30, 2023
(dollars in thousands)	(dollars in thousands)			(dollars in thousands)				(dollars in thousands)				(dollars in thousands)			
Cash Flow Hedges	Cash Flow Hedges														

Interest rate swaps									
Interest rate swaps									
Interest rate swaps	Interest rate swaps	\$	30,359	Interest expense	\$	5,374	\$	14,956	
Foreign currency forward contracts	Foreign currency forward contracts	\$	182	Revenue	\$	82	\$	316	
Net Investment Hedges	Net Investment Hedges								
Foreign currency forward contracts	Foreign currency forward contracts	\$	251		\$	—	\$	—	
Foreign currency forward contracts									
Foreign currency forward contracts									
	September 30, 2022			Three months ended September 30, 2022			Nine months ended September 30, 2022		
	March 31, 2023								
	March 31, 2023								
	March 31, 2023								Three months ended March 31, 2023
Cash Flow Hedges									
Cash Flow Hedges									
Interest rate swaps									
Interest rate swaps									
Interest rate swaps	Interest rate swaps	\$	33,120	Interest expense	\$	1,935	\$	1,900	
Foreign currency forward contracts	Foreign currency forward contracts	\$	879	Revenue	\$	22	\$	22	
Net Investment Hedges	Net Investment Hedges								
Foreign currency forward contracts	Foreign currency forward contracts	\$	585		\$	—	\$	—	
Foreign currency forward contracts									
Foreign currency forward contracts									

Blackbaud, Inc.  
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Our policy requires that derivatives used for hedging purposes be designated and effective as a hedge of the identified risk exposure at the inception of the contract. Accumulated other comprehensive income (loss) includes unrealized gains or losses from the change in fair value measurement of our derivative instruments each reporting period and the related income tax expense or benefit. Excluding net investment hedges, changes in the fair value measurements of the derivative instruments and the related income tax expense or benefit are reflected as adjustments to accumulated other comprehensive income (loss) until the actual hedged expense is incurred or until the hedge is terminated at which point the unrealized gain (loss) and related tax effects are reclassified from accumulated other comprehensive income (loss) to current earnings. For net investment hedges, changes in the fair value measurements of the derivative instruments and the related income tax expense or benefit are reflected as adjustments to translation adjustment, a component of accumulated other comprehensive income (loss), and recognized in earnings only when the hedged GBP investment is liquidated. The estimated accumulated other comprehensive income as of September 30, 2023 March 31, 2024 that is expected to be reclassified into earnings within the next twelve months is \$21.6 million \$14.7 million. There were no ineffective portions of our interest rate swap or foreign currency forward derivatives during the nine three months ended September 30, 2023 March 31, 2024 and 2022, 2023. See Note 10 11 to these unaudited, condensed consolidated financial statements for a summary of the changes in accumulated other comprehensive income (loss) by component. We classify cash flows related to derivative instruments as operating activities in the condensed consolidated statements of cash flows.

8.9. Commitments and Contingencies

Leases

We have operating leases for corporate offices, subleased offices and certain equipment and furniture. As of September 30, 2023 March 31, 2024, we did not have any operating leases that had not yet commenced.

The following table summarizes the components of our lease expense:

		Three months ended September 30,		Nine months ended September 30,			
		Three months ended March 31,		Three months ended March 31,			
		Three months ended March 31,		Three months ended March 31,			
		Three months ended March 31,		Three months ended March 31,			
(dollars in thousands)	(dollars in thousands)	2023	2022	2023	2022	(dollars in thousands)	
Operating lease cost <sup>(1)</sup>	Operating lease cost	\$2,216	\$2,301	\$6,905	\$7,273		
Variable lease cost	Variable lease cost	357	400	1,184	1,250		
Sublease income	Sublease income	(833)	(791)	(2,498)	(1,988)		
Net lease cost	Net lease cost	\$1,740	\$1,910	\$5,591	\$6,535		

(1) Includes short-term lease costs, which were immaterial.

Other commitments

The term loans under the 2020 Credit Facility require periodic principal payments. The balance of the term loans and any amounts drawn on the revolving credit loans are due upon maturity of the 2020 Credit Facility in October 2025. The Real Estate Loans also require periodic principal payments and the balance of the Real Estate Loans are due upon maturity in April 2038.

We have contractual obligations for third-party technology used in our solutions and for other services we purchase as part of our normal operations. In certain cases, these arrangements require a minimum annual purchase commitment by us. As of September 30, 2023 March 31, 2024, the remaining aggregate minimum purchase commitment under these arrangements was approximately \$273.3 million \$239.8 million through 2027 2029.

Solution and service indemnifications

In the ordinary course of business, we provide certain indemnifications of varying scope to customers against claims of intellectual property infringement made by third parties arising from the use of our solutions or services. We have not identified any losses that might be covered by these indemnifications.

Blackbaud, Inc.  
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Legal proceedings

We are subject to legal proceedings and claims that arise in the ordinary course of business, as well as certain other non-ordinary course proceedings, claims and investigations, as described below. We make a provision for a loss contingency when it is both probable that a material liability has been incurred and the amount of the loss can be reasonably estimated. If only a range of estimated losses can be determined, we accrue an amount within the range that, in our judgment, reflects the most likely outcome; if none of the estimates within that range is a better estimate than any other amount, we accrue the low end of the range. For proceedings in which an unfavorable outcome is reasonably possible but not probable and an estimate of the loss or range of losses arising from the proceeding can be made, we disclose such an estimate, if material. If such a loss or range of losses is not reasonably estimable, we disclose that fact. We review any such loss contingency provisions at least quarterly and adjust them to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel and other information and events pertaining to a particular case. We recognize insurance recoveries, if any, when they are probable of receipt. All associated costs due to third-party service providers and consultants, including legal fees, are expensed as incurred.

Legal proceedings are inherently unpredictable. However, we believe that we have valid defenses with respect to the legal matters pending or threatened against us and intend to defend ourselves vigorously against all claims asserted. It is possible that our consolidated financial position, results of operations or cash flows could be materially negatively affected in any particular period by an unfavorable resolution of one or more of such legal proceedings.

Security incident

As previously disclosed, we are subject to risks and uncertainties as a result of a ransomware attack against us in May 2020 in which a cybercriminal removed a copy of a subset of data from our self-hosted environment (the "Security Incident"). Based on the nature of the Security Incident, our research and third party (including law enforcement) investigation, we do not believe that any data went beyond the cybercriminal, has been misused, or has been disseminated or otherwise made available publicly. Our investigation into the Security Incident remains ongoing.


As a result of the Security Incident, we are currently subject to certain legal proceedings, claims and investigations, as discussed below, and could be the subject of additional legal proceedings, claims, inquiries and investigations in the future that might result in adverse judgments, settlements, fines, penalties or other resolution. To limit our exposure to losses related to claims against us, including data breaches such as the Security Incident, we maintain \$50 million of insurance above a \$250 thousand deductible payable by us. As noted below, this coverage reduced our financial exposure related to the Security Incident in prior years.

We recorded expenses and offsetting insurance recoveries related to the Security Incident as follows:

		Three months ended September 30,		Nine months ended September 30,				
		Three months ended March 31,		Three months ended March 31,				
		Three months ended March 31,		Three months ended March 31,				
(dollars in thousands)	(dollars in thousands)	2023	2022	2023	2022	(dollars in thousands)	2024	2023
Gross expense	Gross expense	\$4,086	\$13,658	\$48,646	\$31,098			

Offsetting insurance recoveries	Offsetting insurance recoveries	—	—	—	(1,891)
Net expense	Net expense	\$4,086	\$13,658	\$48,646	\$29,207

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Blackbaud, Inc.  
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The following summarizes our cumulative expenses, insurance recoveries recognized and insurance recoveries paid as of:

(dollars in thousands)	(dollars in thousands)	September 30, 2023	December 31, 2022	(dollars in thousands)	March 31, 2024	December 31, 2023
Cumulative gross expense	Cumulative gross expense	\$156,651	\$108,005			
Cumulative offsetting insurance recoveries recognized	Cumulative offsetting insurance recoveries recognized	(50,000)	(50,000)			
Cumulative net expense	Cumulative net expense	\$106,651	\$ 58,005			
Cumulative offsetting insurance recoveries paid	Cumulative offsetting insurance recoveries paid	\$ (50,000)	\$ (50,000)			
Cumulative offsetting insurance recoveries paid						
Cumulative offsetting insurance recoveries paid						

Recorded expenses have consisted primarily of payments to third-party service providers and consultants, including legal fees, settlement of the previously disclosed SEC investigation (as discussed and multi-state Attorneys General investigations (discussed below), settlements of customer claims and accruals for certain loss contingencies (including for the multi-state Attorneys General investigation discussed below), contingencies. Not included in the expenses discussed above were costs associated with enhancements to our cybersecurity program. We present expenses and insurance recoveries related to the Security Incident in general and administrative expense on our unaudited, condensed consolidated statements of comprehensive income (loss) and as operating activities on our unaudited, condensed consolidated statements of cash flows. Total costs related to the Security Incident exceeded the limit of our insurance coverage during the first quarter of 2022. We expect to continue to experience significant expenses related to our response to the Security Incident, resolution of legal proceedings, claims and investigations, including those discussed below, and our efforts to further enhance our cybersecurity measures. For the three and nine months ended September 30, 2023 March 31, 2024, we incurred net pre-tax expenses of \$4.1 million and \$48.6 million, respectively, \$10.3 million related to the Security Incident, which included \$4.1 million and \$18.6 million, respectively, \$3.3 million for ongoing legal fees and additional accruals for loss contingencies of \$0.00 million and \$30.0 million, respectively, \$7.0 million. During the nine three months ended September 30, 2023 March 31, 2024, we had net cash outlays of \$23.1 million \$2.0 million related to the Security Incident which included for ongoing legal fees and the \$3.0 million civil penalty paid related to the SEC settlement (as discussed below), fees. In line with our policy, legal fees are expensed as incurred. For full year 2023, 2024, we currently expect net pre-tax expense expenses of approximately \$20.0 million \$5.0 million to \$30.0 million \$10.0 million and net cash outlays of approximately \$25.0 million \$8.0 million to \$35.0 million \$13.0 million for ongoing legal fees related to the Security Incident. Not included in these ranges are our previous settlements or current accruals for loss contingencies related to the matters discussed below. As discussed below and in Note 12 to these unaudited, condensed consolidated financial statements, we expect to pay \$49.5 million during the fourth quarter of 2023 related to a settlement reached with each of 49 state Attorneys General and the District of Columbia in connection with their investigation of the Security Incident.

As of September 30, 2023 March 31, 2024, we have recorded approximately \$50.0 million \$8.5 million in aggregate liabilities for loss contingencies based primarily on recent negotiations with certain customers and governmental agencies related to the Security Incident that we believed we could reasonably estimate in accordance with our loss contingency procedures described above and as more fully described in Note 12 to these unaudited, condensed consolidated financial statements. above. Our liabilities for loss contingencies are recorded in accrued expenses and other current liabilities on our unaudited, condensed consolidated balance sheets. It is reasonably possible that our estimated actual losses may change in the near term for those matters and be materially in excess of the amounts accrued, but we are unable at this time to reasonably estimate the possible additional loss.

There are other Security Incident-related matters, including customer claims, customer constituent class actions and governmental investigations, for which we have not recorded a liability for a loss contingency as of September 30, 2023 March 31, 2024 because we are unable at this time to reasonably estimate the possible loss or range of loss. Each of these matters could, separately or in the aggregate, result in an adverse judgment, settlement, fine, penalty or other resolution, the amount, scope and timing of which we are currently unable to predict, but could have a material adverse impact on our results of operations, cash flows or financial condition.

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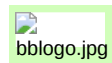


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**Customer claims.** To date, we have received approximately 260 specific requests from customers for reimbursement of expenses incurred by them related to the Security Incident, approximately 214 (or 82%) of which have been fully resolved and closed. closed and approximately 39 (or 15%) are inactive and are considered by us to have been abandoned by the customers. We have also received approximately 400 reservations of the right to seek expense recovery in the future from customers or their attorneys in the U.S., U.K. and Canada related to the Security Incident. Incident, none of which resulted in claims submitted to us and are considered by us to have been abandoned by the customers. We have also received notices of proposed claims on behalf of a number of U.K. data subjects, which we are reviewing. In addition, insurance companies representing various customers' interests through subrogation claims have contacted us, and certain insurance companies have filed subrogation claims in court. Customer court, of which 3 cases remain active and insurer subrogation claims generally seek reimbursement of their costs and expenses associated with notifying their own customers of the Security Incident and taking steps unresolved.

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Blackbaud, Inc.

Notes to assure that personal information has not been compromised as a result of the Security Incident. Our review of customer and subrogation claims includes analyzing individual customer contracts into which we have entered, the specific claims made and applicable law. Condensed Consolidated Financial Statements  
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**Customer constituent class actions.** Presently, we are a defendant in putative consumer class action cases in U.S. federal courts (most of which have been consolidated under multi district litigation to a single federal court) and in Canadian courts alleging harm from the Security Incident. The plaintiffs in these cases, who purport to represent various classes of individual constituents of our customers, generally claim to have been harmed by alleged actions and/or omissions by us in connection with the Security Incident and assert a variety of common law and statutory claims seeking monetary damages, injunctive relief, costs and attorneys' fees and other related relief.

Lawsuits that are putative class actions require a plaintiff to satisfy a number of procedural requirements before proceeding to trial. These requirements include, among others, demonstration to a court that the law proscribes in some manner our activities, the making of factual allegations sufficient to suggest that our activities exceeded the limits of the law and a determination by the court—known as class certification—that the law permits a group of individuals to pursue the case together as a class. If these procedural requirements are not met, the lawsuit cannot proceed as a class action and the plaintiff may lose the financial incentive to proceed with the case. We are currently engaged in court proceedings to determine whether this will proceed as a class action. Frequently, a court's determination as to these procedural requirements is subject to appeal to a higher court. As a result of these uncertainties, we may be unable to determine the probability of loss until, or after, a court has finally determined that a plaintiff has satisfied the applicable class action procedural requirements.

Furthermore, for putative class actions, it is often not possible to reasonably estimate the possible loss or a range of loss amounts, even where we have determined that a loss is reasonably possible. Generally, class actions involve a large number of people and raise complex legal and factual issues that result in uncertainty as to their outcome and, ultimately, making it difficult for us to estimate the amount of damages that a plaintiff might successfully prove. This analysis is further complicated by the fact that the plaintiffs lack contractual privity with us.

**Governmental investigations.** We have received a Civil Investigative Demand from the office of the California Attorney General relating to the Security Incident and are in discussions with the Attorney General about potential resolution of issues arising from this investigation. Although we are hopeful that we can resolve this matter on acceptable terms, there is no assurance that we will be able to do so on terms acceptable to us and the state of California.



We also are subject to the following pending governmental actions:

- an investigation by the U.S. Federal Trade Commission; Commission (the "FTC"), as further described below; and
- an investigation by the U.S. Department of Health and Human Services.

We also responded to inquiries from the Office of the Australian Information Commissioner in September 2020 and the Office of the Privacy Commissioner of Canada in October 2020.

As previously disclosed, on February 1, 2024, the FTC announced its approval of an Agreement Containing Consent Order (the "Proposed Order") evidencing its settlement with the Company in connection with the Security Incident. Pursuant to its rules, the FTC placed the Proposed Order and related draft complaint on the public record for a period of 30 days for the receipt of public comments after which the FTC will consider any comments received from interested persons prior to determining whether and in what form to finalize the Proposed Order. The 30-day comment period expired on March 14, 2024. As part of the FTC's proposed order, the Company has not been fined and is not otherwise required to make any payment. Furthermore, the Company has agreed to the FTC's proposed order without admitting or denying any of the FTC's allegations, except as expressly stated otherwise in the Proposed Order. If finalized, the settlement described in the Proposed Order will fully resolve the FTC investigation. Although we believe the Proposed Order will be finalized in substantially its current form, there can be no assurances as to whether that will occur or its timing. For more information, see the form of Proposed Order that was furnished as Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the SEC on February 2, 2024 and in Note 11 to our audited consolidated financial statements contained in our Annual Report on Form 10-K filed with the SEC on February 21, 2024.

As previously disclosed, on October 5, 2023, the Company reached a settlement we entered into separate, substantially similar Administrative Orders with each of 49 state Attorneys General and the District of Columbia in connection with relating to the Security Incident. This settlement Incident which fully resolves resolved the previously disclosed multi-state Civil Investigative Demand and the separate Civil Investigative Demand from the Office of the Indiana Attorney General relating to the Security Incident, which is further described in the substantially similar Assurances of Voluntary Compliance or Assurances of Discontinuance with each of 49 state Attorneys General and the District of Columbia (collectively, the "Administrative Orders"). See Note 12 to these unaudited, condensed consolidated financial statements for additional information. Incident.

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As previously disclosed, on March 9, 2023, the Company we reached a settlement with the SEC in connection with the Security Incident. This settlement Incident that fully resolves resolved the previously disclosed SEC investigation of the Security Incident and is further described in an SEC cease-and-desist order (the "SEC Order"). Under the terms of the SEC Order, the Company has agreed to cease-and-desist from committing or causing any violations or any future violations of Sections 17(a)(2) and (3) of the Securities Act of 1933, as amended (the "Securities Act"), and Section 13(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rules 12b-20, 13a-13 and 13a-15(a) thereunder. No other violations of the securities laws are alleged in the SEC Order. As part of the SEC Order, the Company also agreed to pay, and has paid, a civil penalty in the amount of \$3.0 million. The Company consented to the entry of the SEC Order without admitting or denying the findings of the SEC Order, other than with respect to the SEC's jurisdiction over the Company and the subject matter of the SEC Order. The SEC Order describing the settlement was furnished as Exhibit 99.1 and the SEC's press release announcing this resolution is furnished as Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the SEC on March 9, 2023. Incident.

On September 28, 2021, the Information Commissioner's Office in the United Kingdom under the U.K. Data Protection Act 2018 (the "ICO") notified us that it has closed its investigation of the Security Incident. Based on its investigation and having considered our actions before, during and after the Security Incident, the ICO issued our European subsidiary a reprimand in accordance with Article 58(2)(b) of the U.K. General Data Protection Regulation ("U.K. GDPR") due to our non-compliance, in the ICO's view, with the requirements set out in Article 32 of the U.K. GDPR regarding the processing of personal data. The ICO did not impose a penalty related to the Security Incident, nor did it impose any requirements for further action by us.

On September 24, 2021, we received notice from the Spanish Data Protection Authority that it has concluded its investigation of the Security Incident, pursuant to which our European subsidiary paid a penalty of €60,000 in relation to the alleged late notification of two Spanish data controllers regarding the Security Incident.

On January 15, 2021, we were notified by the Data Protection Commission of Ireland that it has concluded its investigation of the Security Incident without taking any action against us. Incident.

For more information about these completed government investigations and related actions, see Note 11 to our audited consolidated financial statements contained in our Annual Report on Form 10-K filed with the SEC on February 21, 2024.

We continue to cooperate with all ongoing investigations, which include various requests for documents, policies, narratives and communications, as well as requests to interview or depose various Company-related personnel. As noted above, each of these separate governmental investigations could result in adverse judgments, settlements, fines, penalties or other resolution, the amount, scope and timing of which we are currently unable to predict, but could have a material adverse impact on our results of operations, cash flows or financial condition.

9.10. Income Taxes

Our income tax provision (benefit) benefit and effective income tax rates, including the effects of period-specific events, were:

(dollars in thousands)	(dollars in thousands)	Three months ended September 30,		Nine months ended September 30,		Three months ended March 31,	
		2023	2022	2023	2022	2024	2023
Income tax provision (benefit)		\$9,069	\$(1,576)	\$(5,032)	\$(5,993)		
Income tax benefit							
Effective income tax rate	Effective income tax rate	50.1 %	13.2 %	58.4 %	19.9 %	(38.4) %	21.0 %

The increases change in our effective income tax rate for the three and nine months ended September 30, 2023, March 31, 2024 when compared to the same periods period in 2022 were 2023 was primarily attributable to unfavorable impact favorable impacts of non-deductible Security Incident accruals. See Note 8 benefits attributable to these unaudited, condensed consolidated stock-based compensation and research and development tax credits.

11. Stockholders' Equity

Stock repurchase program

Under our stock repurchase program, we are authorized to repurchase shares from time to time in accordance with applicable laws both on the open market, including under trading plans established pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, and in privately negotiated transactions. The timing and amount of repurchases depends on several factors, including market and business conditions, the trading price of our common stock and the nature of other investment opportunities. The repurchase program does not have an expiration date and may be limited, suspended or discontinued at any time without prior notice. Under the 2024 Credit Agreement (as defined below), we have restrictions on our ability to repurchase shares of our common stock, which are summarized on page 40 in this report.

We account for purchases of treasury stock under the cost method. On January 17, 2024, our Board of Directors reauthorized, expanded and replenished our stock repurchase program by expanding the total capacity under the program from \$250.0 million to \$500.0 million available for repurchases.

In March 2024, we entered into an issuer forward repurchase transaction with a large financial statements for additional information about institution to repurchase an aggregate \$200 million of shares of our loss contingency accruals related common stock (the "ASR Transaction"). Pursuant to the Security Incident, terms of the ASR Transaction, we provided the financial institution with a prepayment of \$200 million and received an initial delivery of 2.1 million shares of our common stock, representing approximately 70% of the total shares then-expected to be repurchased under the ASR

10. Stockholders' Equity

Transaction. The final number of shares of common stock delivered to us under the ASR Transaction will be based on the average of the daily volume-weighted average prices of the common stock during the term of the ASR Transaction, less a discount and subject to customary adjustments upon events affecting the common stock (e.g., dilutive or concentrative events, mergers and acquisitions, and market disruptions). At settlement, the financial institution may be required to deliver additional shares of our common stock to us or, under certain circumstances, we may be required to deliver a cash payment or shares of our common stock to the financial institution, with the method of settlement at our election. The final settlement of the ASR Transaction is scheduled to occur by the fourth quarter of 2024, unless settled earlier at the election of the financial institution.

The difference of \$52.2 million between the prepayment of \$200 million and the value of the shares repurchased on the ASR Transaction date represents an unsettled prepaid forward contract indexed to our common stock and met all of the applicable criteria for equity classification; therefore, it was not accounted for as a derivative instrument as of March 31, 2024. Because of our ability to settle in shares, the \$52.2 million prepaid forward contract was classified as a reduction to additional paid-in capital within our unaudited,

condensed consolidated statement of stockholders' equity. We funded the ASR Transaction prepayment with borrowings pursuant to a revolving credit loan under the 2020 Credit Facility.

During the three months ended March 31, 2024, we repurchased an aggregate of 2,954,211 shares for \$262.6 million, including the initial delivery of shares repurchased pursuant to the ASR Transaction. The remaining amount available to purchase stock under the approved stock repurchase program was \$259.7 million as of March 31, 2024.

#### Changes in accumulated other comprehensive income (loss) by component

The changes in accumulated other comprehensive income (loss) by component, consisted of the following:

		Three months ended September 30,		Nine months ended September 30,				
		Three months ended March 31,		Three months ended March 31,				
		Three months ended March 31,		Three months ended March 31,				
		Three months ended March 31,						
(in thousands)	(in thousands)	2023	2022	2023	2022	(in thousands)	2024	2023
Accumulated other comprehensive income, beginning of period		\$ 8,842	\$ 7,455	\$ 8,938	\$ 6,522			
Accumulated other comprehensive (loss) income, beginning of period								
By component:	By component:							
Gains and losses on cash flow hedges:	Gains and losses on cash flow hedges:							
Gains and losses on cash flow hedges:								
Gains and losses on cash flow hedges:								
Accumulated other comprehensive income balance, beginning of period		Accumulated other comprehensive income balance, beginning of period	\$18,524	\$ 18,720	\$ 23,833	\$ 5,257		
Other comprehensive income before reclassifications, net of tax effects of \$(2,873), \$(2,926) \$(3,545) and \$(7,708)		8,124	8,241	10,066	21,678			
Amounts reclassified from accumulated other comprehensive income		(5,456)	(1,957)	(15,272)	(1,922)			
Accumulated other comprehensive income balance, beginning of period								
Accumulated other comprehensive income balance, beginning of period								
Other comprehensive income (loss) before reclassifications, net of tax effects of \$(2,966) and \$2,566								

Amounts reclassified from accumulated other comprehensive income (loss)					
Tax expense included in provision for income taxes	Tax expense included in provision for income taxes	1,425	513	3,990	504
Total amounts reclassified from accumulated other comprehensive income		(4,031)	(1,444)	(11,282)	(1,418)
Total amounts reclassified from accumulated other comprehensive income (loss)					
Net current-period other comprehensive income (loss)	Net current-period other comprehensive income (loss)	4,093	6,797	(1,216)	20,260
Accumulated other comprehensive income balance, end of period	Accumulated other comprehensive income balance, end of period	\$22,617	\$ 25,517	\$ 22,617	\$25,517
Foreign currency translation adjustment:	Foreign currency translation adjustment:				
Accumulated other comprehensive (loss) income balance, beginning of period		\$ (9,682)	\$(11,265)	\$(14,895)	\$ 1,265
Accumulated other comprehensive loss balance, beginning of period					
Accumulated other comprehensive loss balance, beginning of period					
Accumulated other comprehensive loss balance, beginning of period					
Translation adjustment	Translation adjustment	(4,794)	(11,536)	419	(24,066)
Accumulated other comprehensive loss balance, end of period	Accumulated other comprehensive loss balance, end of period	(14,476)	(22,801)	(14,476)	(22,801)
Accumulated other comprehensive income, end of period	Accumulated other comprehensive income, end of period	\$ 8,141	\$ 2,716	\$ 8,141	\$ 2,716

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## 11. 12. Revenue Recognition

### Transaction price allocated to the remaining performance obligations

As of September 30, 2023 March 31, 2024, approximately \$1.2 billion of revenue under contract is expected to be recognized from remaining performance obligations. We expect to recognize revenue on approximately 50% of these remaining performance obligations over the next 12 months, with the remainder recognized thereafter.

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We applied the practical expedient in ASC 606-10-50-14 and have excluded the value of unsatisfied performance obligations for (i) contracts with an original expected length of one year or less (one-time services); and (ii) contracts for which we recognize revenue at the amount to which we have the right to invoice for services performed (transactional revenue).

### Contract balances

Our contract assets as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 were insignificant. Our closing balances of deferred revenue were as follows:

(in thousands)	(in thousands)	September 30, 2023	December 31, 2022	(in thousands)	March 31, 2024	December 31, 2023
Total deferred revenue	Total deferred revenue	\$418,832	\$385,236			

The increase decrease in deferred revenue during the nine three months ended September 30, 2023 March 31, 2024 was primarily due to a seasonal increase decrease in customer contract billings/renewals, which includes impact from our recent pricing initiatives, renewals. Historically, due to the timing of customer budget cycles, we have an increase in customer contract renewals at or near the beginning of our third quarter. Generally, our lowest balance of deferred revenue during the year is at the end of our first quarter. The amount of revenue recognized during the nine three months ended September 30, 2023 March 31, 2024 that was included in the deferred revenue balance at the beginning of the period was approximately \$339 million \$173 million. The amount of revenue recognized during the nine three months ended September 30, 2023 March 31, 2024 from performance obligations satisfied in prior periods was insignificant.

### Disaggregation of revenue

We sell our cloud solutions and related services in three primary geographical markets: to customers in the United States, to customers in the United Kingdom and to customers located in other countries. The following table presents our revenue by geographic area based on the address of our customers:

(dollars in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
United States	\$ 237,877	\$ 220,177	\$ 688,290	\$ 657,699
United Kingdom	25,694	26,858	79,976	81,349
Other countries	14,055	14,262	42,155	44,300
Total revenue	\$ 277,626	\$ 261,297	\$ 810,421	\$ 783,348



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(dollars in thousands)	Three months ended March 31,	
	2024	2023
United States	\$ 238,109	\$ 221,669
United Kingdom	26,129	26,048
Other countries	15,012	14,036
Total revenue	\$ 279,250	\$ 261,753

The Social Sector and Corporate Sector market groups comprised our go-to-market organizations as of September 30, 2023 March 31, 2024. The following is a description of each market group as of that date:

- The Social Sector market group focuses on sales to customers and prospects in the social sector, such as nonprofits, foundations, education institutions, healthcare organizations and other not-for-profit entities globally, and includes JustGiving; and
- The Corporate Sector market group focuses on sales to customers and prospects in the corporate sector globally, and includes EVERFI and YourCause.



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The following table presents our revenue by market group:

		Three months ended September 30,		Nine months ended September 30,				
		Three months ended March 31,						
		Three months ended March 31,						
		Three months ended March 31,						
(dollars in thousands)	(dollars in thousands)	2023	2022	2023	2022	(dollars in thousands)	2024	2023
Social Sector	Social Sector	\$239,512	\$223,963	\$696,790	\$671,714			
Corporate Sector	Corporate Sector	38,114	37,334	113,631	111,634			
Total revenue	Total revenue	\$277,626	\$261,297	\$810,421	\$783,348			
Total revenue								
Total revenue								

The following table presents our recurring revenue by type:

		Three months ended September 30,		Nine months ended September 30,				
		Three months ended March 31,						
		Three months ended March 31,						
		Three months ended March 31,						
(dollars in thousands)	(dollars in thousands)	2023	2022	2023	2022	(dollars in thousands)	2024	2023
Contractual recurring	Contractual recurring	\$189,174	\$178,264	\$548,012	\$530,146			
Transactional recurring	Transactional recurring	79,827	71,123	236,127	216,414			
Total recurring revenue	Total recurring revenue	\$269,001	\$249,387	\$784,139	\$746,560			

12. 13. Subsequent Events

Amendment to the Stockholder Rights Agreement April 2024 credit agreement refinancing

On October 2, 2023, April 30, 2024, we entered into the Third Amendment to Credit Agreement (the "Amendment"), by and among us, the Stockholder Rights lenders party thereto and Bank of America N.A., as administrative agent (the "Agent"). The Amendment amends the Amended and Restated Credit Agreement, dated as of October 2, 2023 (the "Amendment"), which October 30, 2020 (as previously amended, the Stockholder Rights "Existing Credit Agreement" and the Existing Credit Agreement dated as of October 7, 2022 (the "Rights" amended by the Amendment, the "2024 Credit Agreement"), by and between among us, the Company lenders from time-to-time party thereto and Equiniti Trust Company, LLC (f/k/a American Stock Transfer & Trust Company, LLC) as rights agent. the Agent.

The Amendment extends amends the final expiration Existing Credit Agreement to, among other things, (a) refinance the existing \$1.1 billion credit facilities under the Existing Credit Agreement to provide for new credit facilities in the aggregate principal amount of \$1.5 billion consisting of (i) a \$700.0 million revolving credit facility with a \$50.0 million letter of credit subfacility, a \$50.0 million swingline subfacility and a \$150.0 million sublimit available for multicurrency borrowings (the "2024 Revolving Facility") and (ii) a \$800.0 million term loan facility (the "2024 Term Facility" and together with the 2024 Revolving Facility, the "2024 Credit Facilities"), (b) extend the maturity date to April 30, 2029, (c) modify the definition of Applicable Margin (as defined below) and (iv) modify certain negative and financial covenants to provide additional operational flexibility.

Under the 2024 Credit Facilities, dollar tranche revolving loans and term loans bear interest at a rate per annum equal to, at the option of the Rights Company: (a) a base rate equal to the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the prime rate announced by Bank of America, N.A., and (iii) Term SOFR plus 1.00% (the "Base Rate"), plus an applicable margin as specified in the 2024 Credit Agreement from October 2, 2023 (the "Applicable Margin"); (b) Term SOFR plus the Applicable Margin; or (c) the Daily SOFR Rate plus the Applicable Margin. The Applicable Margin shall be adjusted quarterly, varies based on our net leverage ratio and varies based on whether the loan is a Base Rate Loan (0.375% to October 2, 2024 1.500%), or a Term SOFR Loan/Daily SOFR Loan (1.375% to 2.500%). The Company expects 2024 Credit Agreement also provides for a commitment fee of between 0.250% and 0.500% of the unused commitment under the 2024 Revolving Facility depending on our net leverage ratio.


Under the 2024 Credit Facilities, designated currency tranche revolving loans bear interest at a rate per annum equal to, submit the Amendment to the Company's stockholders for ratification at the Company's 2024 annual meeting of stockholders. Additional information regarding the Amendment, including a copy option of the Amendment, is contained Company: (a) the Designated Currency Daily Rate (as defined in the Company's Current Report on Form 8-K filed with 2024 Credit Agreement) plus the SEC on October 2, 2023.

Security Incident Multi-state Attorneys General Settlement

On October 5, 2023, Applicable Margin; or (b) the Company entered into separate, substantially similar Administrative Orders with each of 49 state Attorneys General and the District of Columbia relating to the previously announced 2020 Security Incident in which a cyber criminal removed a copy of a subset of data from our self-housed environment. This settlement fully resolves the previously disclosed multi-state Civil Investigative Demand and the separate Civil Investigative Demand from the Office of the Indiana Attorney General relating to the Security Incident (the "Multi-state Investigation"), which is further described Designated Currency Term Rate (as defined in the substantially similar Administrative Orders filed 2024 Credit Agreement) plus the Applicable Margin. The Applicable Margin shall be adjusted quarterly and varies based on our net leverage ratio for both Designated Currency Daily Rate Loans and Designated Currency Term Rate Loans (1.375% to 2.500%).

We may prepay the 2024 Credit Agreement in each whole or in part at any time without premium or penalty, other than customary breakage costs with respect to certain types of the 49 states and the District of Columbia. loans.

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Under the terms of the Administrative Orders, 2024 Credit Agreement, we have agreed: (i) to comply with state consumer protection laws, data breach notification laws, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (ii) not to make misleading misrepresentations to our customers are entitled on one or the individuals whose data is stored by us concerning (a) the extent to which we protect the privacy, security, confidentiality, or integrity of certain data, (b) the likelihood that data impacted by a security incident may be subject to unauthorized access, disclosure, or other misuse, or (c) the data breach notification requirements; and (iii) to implement and improve certain cybersecurity programs and tools.

As part of the Administrative Orders, we also agreed to pay a total of \$49.5 million to the 49 states and District of Columbia. We expect to pay the full settlement amount to each state and the District of Columbia during the fourth quarter of 2023 from our existing liquidity. This amount was fully accrued as a contingent liability in our financial statements as of June 30, 2023.

We entered into the Administrative Orders without admitting fault or liability in connection with the matters more occasion, subject to the Multi-state Investigation. satisfaction of certain conditions, to request an increase in the commitments under the 2024 Revolving Facility and/or request additional incremental term loans in the aggregate principal amount of up to the sum of (i)(x) the greater of (A) \$360.0 million and (B) 100% of EBITDA (as defined in the 2024 Credit Agreement), plus (ii) at our option, up to an amount such that the net leverage ratio shall be no greater than 3.50 to 1.00.

The form 2024 Credit Agreement contains various representations, warranties and affirmative, negative and financial covenants customary for financings of Administrative Order was furnished this type. Financial covenants include a net leverage ratio and an interest coverage ratio.

The Amendment is filed as Exhibit 99.2 to the Company's Current 10.1 of this Quarterly Report on Form 8-K filed with the SEC on October 5, 2023.

As previously disclosed, the Office 10-Q. The descriptions of the Attorney General of Amendment and the State of California did 2024 Credit Agreement contained herein do not participate purport to be complete and are subject to, and qualified in their entirety by, the full and complete terms contained in the Multi-state Investigation Amendment, a copy of which is filed as Exhibit 10.1 and has issued a separate Civil Investigative Demand related to the Security Incident, which has not been resolved. Although we are hopeful that we can resolve this matter on acceptable terms, there is no assurance that we will be able to do so on terms acceptable to us and to the State of California. incorporated herein by reference.

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## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited, condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q. The following discussion and analysis presents financial information denominated in millions of dollars which can lead to differences from rounding when compared to similar information contained in the unaudited, condensed consolidated financial statements and related notes which are primarily denominated in thousands of dollars.

### Executive Summary

We are the leading software provider exclusively dedicated to powering social impact. Serving the nonprofit and education sectors, companies committed to social responsibility and individual change makers, our essential software is built to accelerate impact in fundraising, nonprofit financial management, digital giving, grantmaking, corporate social responsibility and education management. A remote-first company, we have operations in the United States, Australia, Canada, Costa Rica and the United Kingdom, supporting users in 100+ countries.

Our revenue is primarily generated from the following sources: (i) charging for the use of our software solutions in cloud and hosted environments; (ii) providing payment and transactional transaction services; and (iii) providing Impact-as-a-Service™ Impact-as-a-Service™ digital educational content; (iv) providing software maintenance and support services; and (v) providing professional services, including implementation, consulting, training, analytic and other services. content.

Update on Five Select Key Operational Initiatives



- Product Innovation and Delivery
- Bookings Growth and Acceleration
- Transactional Revenue Optimization and Expansion
- Modernized Approach to Pricing and Multi-Year Customer Contracts
- Keen Attention to Cost Management

1. Product Innovation and Delivery


Product is core To maintain our market leadership position, we are accelerating the pace of innovation and new feature delivery to our customers. Our focus has been on two areas, generative artificial intelligence (AI) and enhancements that continue to improve the connectivity of our suite of solutions. These enhancements are aimed at Blackbaud, improving fundraising outcomes while reducing the administrative burden of our end users. Some examples include:

- We have released a number of AI capabilities over the past few quarters, including new generative AI functionality for our JustGiving platform. During the first quarter of 2024, we released generative AI capabilities for Raiser's Edge NXT®, and we strive to bring increased value expect that Blackbaud Co-pilot will be available to our customers through their software subscriptions with improved and innovative capabilities. For example, we recently released a new, next generation donation form in Raiser's Raiser's Edge NXT customers soon. Using Blackbaud Co-pilot, users can ask ad hoc questions such as "How can I improve my average donation size?" and the tool will provide intelligent responses as well as recommended actions intended to drive that outcome.
- During the first quarter of 2024, our Online Giving and Prospect Insights capabilities were natively integrated into Raiser's Edge NXT. With these integrations, fundraising administrators can now drive a viral giving campaign, keep records of each donor interaction, identify new donation opportunities, and provide personalized messaging, all in one integrated experience.
- Last quarter, we announced our new optimized donation forms were coming to Raiser's Edge NXT. We now have a few hundred customers up and running with the goal of increasing the conversion rate and donations nearly a thousand more experimenting. We expect these forms to drive higher revenue for our customers raise, and for Blackbaud.

We match include these exciting new features in our products at no additional cost, to increase the new donation form with Prospect Insights, which utilizes artificial intelligence ("AI") to identify value our customers receive from their existing subscription. We are delivering more innovation, evolving our products and qualify candidates for major gifts. We recently began an early adopter program for the new donation form with a small sample of ensuring our customers across charity, education, and arts and cultural organizations. We expect to make this generally available in the first half of 2024.

As recently announced, we introduced Impact Edge™ to receive more value from our corporate sector customers. This newly developed solution aggregates EVERFI's educational impact data, with employee volunteering and giving data from YourCause. It provides a single view of a company's social impact program and replaces labor intensive, manually produced reports into a standardized structure. With Impact Edge, leaders who manage social impact initiatives are able to track and analyze performance of their programs in real time. We plan to put this new solution into an early adopter program late this year, with a full roll out in the second half of 2024. solutions.

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For years, we have been using AI-enabled capabilities in our analytics offerings. We are expanding our strategy into next-generation and generative AI technology that addresses specific challenges of our customers. We continued to build on our "Intelligence for Good" strategy that leverages the power of machine learning and Artificial Intelligence across our products. For example, we recently introduced the "Story Enhancer" in JustGiving®, our consumer giving platform. This Generative AI capability has resulted in more engagement among early adopters and is expected to have positive downstream impact on our transactional revenue.

2. Bookings Growth and Acceleration

We drove strong bookings performance in the first quarter, up significantly versus last year, led by our corporate sector (YourCause and EVERFI solutions) which more than doubled its bookings over the first quarter of 2022. We signed a number of notable large contracts during the second and third quarters. As previously disclosed, there can be volatility quarter-to-quarter on bookings.

3. Transactional Revenue Optimization and Expansion

Transactional revenue, which is about one-third of total revenue, has proven to be resilient so far in 2023 following the lower average donation sizes we experienced during the fourth quarter of 2022. Different rate increases on Blackbaud Merchant Services in the U.S. took effect in January and August 2023. Our Blackbaud Tuition Management and JustGiving platforms continue to perform well against plan. And as we look ahead, our teams are hard at work to drive innovation across our payments solutions that are a win-

win for both our customers and Blackbaud. We have already introduced our two fee cover models, and we are also looking at ways to optimize our payments solutions to drive a better donor experience.

4.Modernized Approach to Pricing and Multi-Year Contracts

Last in the summer of 2022, we put in place an updated renewal pricing policy primarily for our social sector customers that directly reflects the value we provide to them, is in-line with the broader market and reflects the inflationary pressures that all businesses are facing. In November 2022, we started notifying customers This program is designed to deliver sustained revenue growth beyond the initial three-year renewal cycle and will provide us with a March 2023 contract renewal that we would be making important contract changes. First, we are improved revenue visibility. As previously disclosed, this new approach has three main components:

- 1. offering 3-year contract renewal terms as our standard, replacing one-year renewal terms. This process was already being implemented outside which the vast majority of the pricing changes. Second, we customers are implementing a more significant rate increase on the 1-year renewal option versus adopting;
- 2. embedded annual price increases within the 3-year renewal option. And third, term, which we have not had previously and are beginning to take effect; and
- 3. a larger first year price increase to bring our pricing in-line with the 3-year renewal option includes annual rate increases. Our 3-year renewal options did not historically include annual rate increases, broader market.

These efforts are The first two components, as well on their way. We have already notified customers with March 2024 contract renewals as a portion of the new terms. Through October 2023, nearly 90% of our 2023 contracts eligible for third, will continue on beyond the initial renewal rate increases have already renewed. The close day-to-day management of renewals, the mix of 3-year and 1-year contracts, and the impact of pricing are progressing well, and cycle, creating what we expect more impact from the compounding effect of these rate increases over time as we layer in future year contract renewals and annual rate increases. For example, over 50% of our planned 2023 revenue will renew in a little over 3 years and approximately 35% of that renewable base is expected to renew this year. These contracts are renewing every day and create revenue growth that we expect to accelerate with each successive quarter this year. We expect that to further impact 2024 and 2025 as we begin to see the full-year impact of the rate increases. Approximately 30% of the renewable base is up for renewal in 2024 and more than 20% in 2025. The adoption of 3-year renewals as a standard, with more customers opting for this option than we originally expected, are expected to have an added benefit of higher retention which provides greater revenue assurance and predictability. Looking even further ahead, the cycle starts fresh in 2026 as the 2023 signed contracts will begin to renew. We expect that this believe will be a sustainable and meaningful source of revenue growth. Approximately one half of our 2024 total company revenue growth stream for us.

5. Keen Attention is expected to Cost Management

We closed four legacy data centers during 2022, be impacted by this modernized contract and pricing initiative, and by the end of 2024, we plan to close more this year. We renegotiated key vendor contracts including Microsoft Azure and AWS and made anticipate we will renew approximately two-thirds of that base into the difficult decision to further reduce our staff in new model. During the first quarter. Because and second quarters of 2024, we have organized expect a larger contribution to achieve much better scale efficiencies, we have significantly reduced our headcount since the third quarter of 2022. Our goal is to run the business at about this headcount level for the foreseeable future, such that our total revenue growth will better drive margin acceleration. to come from this initiative.

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Financial Summary

Total revenue (\$M)	Income (Loss) from operations (\$M)
YoY Growth (%)	YoY Growth (%)
	
 	

Total revenue increased by \$16.3 million and \$27.1 million \$17.5 million during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, driven largely by the following:

+ Growth in recurring revenue primarily related to:



increases an increase in contractual recurring revenue of \$10.9 million \$13.3 million related to the impact of our modernized contract initiative and \$17.9

million, respectively, related to pricing within the Social Sector as well as the performance of our cloud solutions and, to a lesser extent, the early impact of our pricing initiatives; solutions; partially offset by decreases in maintenance revenue as customers migrate to our cloud solutions; also offsetting the increases in contractual recurring revenue during the nine months ended September 30, 2023 was a decrease related to fluctuations in foreign currency exchange rates of \$0.7 million; and

revenue from EVERFI as discussed below

increases an increase in transactional recurring revenue of \$8.7 million and \$19.7 million, respectively, \$5.5 million primarily due to positive results related to pricing initiatives we implemented during at the beginning of 2023 and, to a lesser extent, increases in volume for our Blackbaud Tuition Management and JustGiving solutions; also offsetting the increases in transactional recurring revenue during the nine months ended September 30, 2023 was a decrease related to fluctuations in foreign currency exchange rates of \$0.9 million. solutions

**Decreases**

Decrease in one-time service and other revenue primarily related to:

■

decreases decrease in one-time consulting revenue due primarily due to less sales of creative services and revenue from implementation and customization services. Also contributing is an increase services, in utilization of third-party service delivery partners. For several

years, we have been strategically shifting away line with our multi-year strategic shift from a license-based and one-time services business model towards sales of retained to a cloud subscription business model. Our cloud subscription offerings generally require less implementation and managed customization services and also embedding services in our renewable cloud solution contracts. Retained and managed services contracts that we expect to have a term consistent with our cloud solution contracts, and embedded services are recorded as recurring revenue; and decreases in one-time analytics revenue as analytics are generally integrated in our cloud solutions.

For additional information on the impact of foreign currency fluctuations on our financial results, see Foreign Currency Exchange Rates below on page 47.

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## Blackbaud, Inc. (Unaudited)

We As previously disclosed and discussed above, we have a number of multi-year pricing initiatives underway, some to bring our pricing in line with the market while others are model changes that are expected to drive greater revenue for both us and our customers. As a result, we expect to see a continued acceleration in revenue growth during the fourth quarter of 2023 as we begin to see the full-year effect of some of these pricing initiatives.

We expect that the decline in our non-strategic one-time services and other revenue will continue to significantly decrease during 2023 slow in 2024 compared to 2022 driven by the previous two years.

Our Social Sector revenue (which represents approximately 88% of our continued migration total revenue) increased \$19.5 million, or 8.7%, during the three months ended March 31, 2024, when compared to the cloud same period in 2023, driven primarily by the increases in contractual recurring revenue and transactional recurring revenue discussed above.

Our Corporate Sector revenue (which represents approximately 12% of our core business, total revenue) decreased \$2.1 million, or 5.6%, during the three months ended March 31, 2024, when compared to the same period in 2023, driven primarily by EVERFI. EVERFI has faced macroeconomic challenges in the form of tightening corporate CSR budgets, especially in the financial services market where EVERFI has a significant position. While we expect our Corporate Sector revenue to decline for the full year 2024, we are working on plans to ensure it contributes to shareholder value.

Income from operations increased by \$29.1 million and \$25.3 million \$20.7 million during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022 2023, driven largely by the following:

+		Increases	Increase in total revenue, as described above
+			Decrease in Security Incident-related expenses of \$7.5 million. See "Security Incident update" below.
+	Net decreases		Decrease in the following employee severance costs of \$4.3 million primarily due to our targeted workforce reductions discussed below:
			Decreases in compensation costs other than stock-based compensation during the fourth quarter of \$11.5 million 2022 and \$29.3 million, respectively; and the first quarter of 2023
+			Decrease in commission expense of \$1.3 million during \$3.4 million due to fewer sales headcount and a prospective increase in the nine months ended September 30, 2023; partially offset by
			Increase in severance period of benefit over which we amortized costs of \$4.4 million during obtaining contracts with customers from 5 to 6 years beginning in the nine months ended September 30, 2023
			year ending December 31, 2024
+			Decrease in Security Incident-related expenses of \$9.6 million during the three months ended September 30, 2023. See "Security Incident update" below.
+			Decreases in third-party contractor costs of \$4.8 million and \$8.5 million, respectively, primarily due to a decrease in our use of third-party software developers
+			A \$2.3 million noncash impairment charge during the nine months ended September 30, 2022 against previously capitalized software development costs that reduced the carrying value of those assets to zero. The impairment charge resulted primarily from our decision to end customer support for certain solutions
+			Decreases in other corporate costs of \$1.4 million and \$3.0 million, respectively, \$2.2 million primarily related to the release of certain accrued tax liabilities due to favorable sales tax rulings partially offset by increases and a decrease in bad debt expense
+			Increase in stock-based compensation expense of \$3.6 million primarily due to overall Company performance against targets for certain performance-based equity awards
-	Decreases		Increase in advertising costs of \$2.0 million primarily due to timing differences compared to 2023
-			Decrease of \$2.0 million due to an increase in amortization of capitalized software and content development costs and a decrease in software and content development costs that were required to be capitalized under the internal-use software guidance
-			Increase in amortization of intangible assets from business combinations of \$1.7 million due to our acquisition of EVERFI
-			Increase in acquisition and disposition-related costs of \$1.6 million primarily related to the disposition of EVERFI Limited; see Note 3 of our unaudited, condensed consolidated financial statements in this report for more information
-			Increase in transaction-based costs of \$1.4 million related to the increase in the volume of transactions for which we process payments and, to a lesser extent, increases in vendor rates
-			Increase in hosting and data center costs of \$0.8 million and \$4.4 million, respectively, \$1.3 million as we continue to migrate our cloud infrastructure to leading public cloud service providers and make investments in security; currently, we expect our cloud infrastructure migration efforts and increased level of cybersecurity investments to continue for the foreseeable future

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## Blackbaud, Inc. (Unaudited)

- Net increase of \$1.3 million during the nine months ended September 30, 2023 primarily related to higher third-party software costs due to the number of licenses needed and also price increases for the software being used, partially offset by a decrease in rent and utilities
- Net decreases of \$1.1 million and \$2.8 million, respectively, due to an increase in amortization of capitalized software and content development costs, partially offset by an increase in software and content development costs that were required to be capitalized under the internal-use software guidance

We are continuing to make critical investments in the business in areas such as digital marketing, innovation, cybersecurity, and our continued shift of cloud infrastructure to leading public cloud service providers. Our profitability during the first three quarters quarter of 2023 2024 reflects some of these incremental investments.

We continuously seek opportunities to optimize our portfolio of solutions to focus time and resources on innovation that will have the greatest impact for our customers and the markets we serve, and drive the highest return on investment. To that end, we will continue to simplify and rationalize our portfolio through product sunsets and divestitures of non-core businesses and technologies.

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#### Gross dollar retention



Our recurring subscription contracts are typically for a term of three years at contract inception. We have been for several years successfully shifting our legacy customer base away from annual renewals and moving them onto multi-year renewal contracts.

A key factor to our overall success is the renewal and expansion of our existing subscription agreements with our customers. Management uses gross dollar retention in analyzing our success at delighting our customers with innovative and cloud solutions. Gross dollar retention is defined as contracted annual recurring revenue ("CARR") divided by beginning CARR with a measurement period of twelve months. For the twelve months ended September 30, 2023 March 31, 2024, our gross dollar retention was approximately 90% 89%. This gross dollar retention rate is relatively consistent with was slightly lower than our rate for the full year ended December 31, 2022 December 31, 2023, primarily due to EVERFI. Excluding EVERFI, our gross dollar retention during the twelve months ended March 31, 2024 was slightly higher than our rate for the full year ended December 31, 2023. We are continually investing in innovation, which we believe will increase gross dollar retention over the long-term. Although some customer attrition is normal, our new contract pricing and renewal model (as described above on page 26) does not appear to have had a significant impact on customer attrition to date.

#### Balance sheet and cash flow

At September 30, 2023 March 31, 2024, our cash and cash equivalents were \$31.1 million \$26.4 million. Under the 2020 Credit Facility, the carrying amount of our debt was \$683.2 million \$981.7 million and our net leverage ratio was 2.11 2.72 to 1.00.

During the nine three months ended September 30, 2023 March 31, 2024, we generated \$203.0 million \$64.6 million in cash from operations, had a net decrease increase in borrowings of \$118.2 million \$260.5 million, returned \$262.6 million to stockholders by way of share repurchases and had aggregate cash outlays of \$48.9 million \$13.3 million for purchases of property and equipment and capitalized software and content development costs.

We currently expect to resume stock repurchases during the fourth quarter of 2023 under our existing stock repurchase program that authorizes us to purchase up to \$250.0 million of our outstanding shares of common stock.

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Blackbaud, Inc.  
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#### Security Incident update

As discussed in Note 9 to our unaudited, condensed consolidated financial statements in this report, total costs related to the Security Incident exceeded the limit of our insurance coverage in the first quarter of 2022. Accordingly, the Security Incident has negatively impacted, and we expect it to continue for the foreseeable future to negatively impact, our GAAP profitability and GAAP cash flow (see discussion regarding non-GAAP free cash flow and non-GAAP adjusted free cash flow on page 42 37). For the three and nine months ended September 30, 2023 March 31, 2024, we incurred net pre-tax expenses of \$4.1 million and \$48.6 million, respectively, \$10.3 million related to the Security Incident, which included \$4.1 million and \$18.6 million, respectively, \$3.3 million for ongoing legal fees and additional accruals for loss contingencies of \$0.0 million and \$30.0 million, respectively, \$7.0 million. During the nine three months ended September 30, 2023 March 31, 2024, we had net cash outlays of \$23.1 million \$2.0 million related to the Security Incident which included for ongoing legal fees and the \$3.0 million civil penalty paid during the first quarter of 2023 related to the SEC settlement (as discussed in Note 8), fees. In line with our policy, legal fees are expensed as incurred. For full year 2023 2024, we currently expect net pre-tax expense expenses of approximately \$20.0 million \$5.0 million to \$30.0 million \$10.0 million and net cash outlays of approximately \$25.0 million \$8.0 million to \$35.0 million \$13.0 million for ongoing legal fees related to the Security Incident. Not included in these ranges are our previous settlements or current accruals for loss contingencies related to the matters discussed below. For full year 2024, we currently expect a significant decrease in net pre-tax expense related to the Security Incident for ongoing legal fees.

As of September 30, 2023 March 31, 2024, we have recorded approximately \$50.0 million \$8.5 million in aggregate liabilities for loss contingencies based primarily on recent negotiations with certain customers and governmental agencies related to the Security Incident that we believed we could reasonably estimate in accordance with our loss contingency procedures described above and as more fully described in Note 8. In connection with 9. It is reasonably possible that our estimated actual losses may change in the settlement near term for those matters and be materially in excess of the multi-state Attorneys General investigation (as discussed in Note 8 and Note 12), amounts accrued, but we expect are unable at this time to pay \$49.5 million during reasonably estimate the fourth quarter of 2023, possible additional loss.

There are other Security Incident-related matters, including customer claims, customer constituent class actions and governmental investigations, for which we have not recorded a liability for a loss contingency as of September 30, 2023 March 31, 2024 because we are unable at this time to reasonably estimate the possible loss or range of loss. Each of these matters could, separately or in the aggregate, result in an adverse judgment, settlement, fine, penalty or other resolution, the amount, scope and timing of



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which we are currently unable to predict, but could have a material adverse impact on our results of operations, cash flows or financial condition.

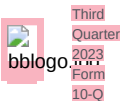
Termination of stockholder rights agreement

On March 18, 2024, the Company and Broadridge Corporate Issuer Solutions, LLC, a Pennsylvania limited liability company, entered into the Third Amendment to Stockholder Rights Agreement, dated as of March 18, 2024 (as amended, the "Rights Agreement"). The third amendment terminated the Rights Agreement by accelerating the expiration time of the Company's preferred share purchase rights (each, a "Right" and, collectively, the "Rights") to 5:00 P.M., New York City time, on March 18, 2024. At the time of the termination of the Rights Agreement, all of the Rights, which were previously distributed to holders of the Company's issued and outstanding common stock, par value \$0.001, pursuant to the Rights Agreement, expired.

April 2024 credit agreement refinancing

On April 30, 2024, we entered into the Amendment, which amended the Existing Credit Agreement to, among other things, (a) refinance the credit facilities under the Existing Credit Agreement to provide for (i) a \$700.0 million revolving credit facility with a \$50.0 million letter of credit subfacility, a \$50.0 million swingline subfacility and a \$150.0 million sublimit available for multicurrency borrowings (the "2024 Revolving Facility") and (ii) a \$800.0 million term loan facility (the "2024 Term Facility" and together with the 2024 Revolving Facility, the "2024 Credit Facilities"), (b) extend the maturity date to April 30, 2029, (c) modify the definition of Applicable Margin (as defined below) and (iv) modify certain negative and financial covenants to provide additional operational flexibility. See Part II, Item 5. "Other Information" for a summary of the terms of the 2024 Credit Agreement.

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Results of Operations

Comparison of the three and nine months ended September 30, 2023 March 31, 2024 and 2022 2023

Revenue and Cost of Revenue

Recurring

Revenue (\$M)	Cost of revenue (\$M)	Gross profit (\$M) and gross margin (%)
YoY Growth (%)	YoY Growth (%)	

383940

3340

Recurring revenue includes two components: contractual recurring and transactional recurring.

Contractual recurring revenue is primarily comprised of fees for the use of our subscription-based software solutions, which includes providing access to cloud solutions, Impact-as-a-Service™ Impact-as-a-Service™ digital educational content, hosting services, payment services, online training programs and subscription-based analytic services. Recurring Contractual recurring revenue also includes fees from maintenance services for our on-premises solutions, services included in our renewable subscription contracts, retained and managed services contracts that we expect to have a term consistent with our cloud solution contracts, and variable solutions.

Transactional recurring revenue is comprised of transaction revenue fees associated with the use of our solutions, solutions, including donation processing, tuition management, consumer giving and event-based usage.



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Cost of recurring revenue is primarily comprised of compensation costs for customer support and production IT personnel, hosting and data center costs, third-party contractor expenses, third-party royalty and data expenses, allocated depreciation, facilities and IT support costs, amortization of intangible assets from business combinations, amortization of software development costs, transaction-based costs related to payments services including remittances of amounts due to third-parties and other costs incurred in providing support and recurring services to our customers.

Our customers continue to prefer cloud subscription offerings with integrated analytics, training and payment services. We intend to continue focusing on innovation, quality and integration of our cloud solutions, which we believe will drive future revenue growth.

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Recurring revenue increased by \$19.6 million \$18.8 million, or 7.9%, and \$37.6 million, or 5.0% 7.4%, during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, driven primarily by the following:

- + Increases Increase in contractual recurring revenue of \$10.9 million \$13.3 million related to the impact of our modernized contract initiative and \$17.9 million, respectively, related to pricing within the Social Sector as well as the performance of our cloud solutions and, to a lesser extent, the early impact of our pricing initiatives; solutions; partially offset by decreases in maintenance revenue as customers migrate to our cloud solutions; also offsetting the increases in contractual recurring revenue during the nine months ended September 30, 2023 was a decrease related to fluctuations in foreign currency exchange rates of \$0.7 million; and revenue from EVERFI as discussed above
- + Increases Increase in transactional recurring revenue of \$8.7 million and \$19.7 million, respectively, \$5.5 million primarily due to positive results related to pricing initiatives we implemented at the beginning of 2023 and, to a lesser extent, increases in volume for our Blackbaud Tuition Management and JustGiving solutions; also offsetting the increases in transactional recurring revenue during the nine months ended September 30, 2023 was a decrease related to fluctuations in foreign currency exchange rates of \$0.9 million. solutions.

For additional information on the impact of foreign currency fluctuations on our financial results, see Foreign Currency Exchange Rates below on page 47.

Cost of recurring revenue increased by \$2.6 million \$4.7 million, or 2.4%, and \$4.4 million, or 1.3% 4.1%, during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, driven primarily by the following:

- + Increase in amortization of intangible assets from business combinations of \$1.6 million primarily due to our acquisition of EVERFI in December 2021
- + Increases Increase in transaction-based costs of \$2.8 million and \$6.1 million, respectively, \$1.5 million related to the increase in the volume of transactions for which we process payments and, to a lesser extent, increases in vendor rates
- + Increases Increase in amortization of software development hosting and data center costs of \$1.5 million and \$4.2 million, respectively, due to our continued investments in the innovation and security of our solutions
- + Increases in amortization of intangible assets from business combinations of \$1.2 million and \$2.6 million, respectively, primarily due to our acquisition of EVERFI in December 2021
- + Increases in stock-based compensation costs of \$0.8 million and \$1.6 million, respectively, primarily due to 2022 performance-based equity award adjustments and estimated overall Company performance against 2023 goals, partially offset by the targeted workforce reductions during the fourth quarter of 2022 and first quarter of 2023
- + Increase in third-party software costs of \$0.7 million, for the nine months ended September 30, 2023, primarily related to a higher number of licenses needed and also price increases for the software being used
- Decreases in compensation costs other than stock-based compensation of \$2.7 million and \$7.5 million, respectively, primarily due to our targeted workforce reductions discussed above
- Decreases in third-party contractor and hosting costs of \$0.9 million and \$4.2 million, respectively, \$1.3 million as we continue to migrate our cloud infrastructure to leading public cloud service providers and make investments in security; currently, we expect our cloud infrastructure migration efforts and increased level of cybersecurity investments to continue for the foreseeable future

Recurring gross margin increased by 230 and 160 140 basis points for the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, primarily due to the increases in recurring revenue outpacing the changes increases in cost of recurring revenue.





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One-time services and other

Revenue (\$M)	Cost of revenue (\$M)	Gross profit (\$M) and gross margin (%)
YoY Growth (%)	YoY Growth (%)	



One-time services and other revenue is comprised of fees for one-time consulting, (including creative services), analytic and onsite training services, and fees for retained and managed services contracts that we do not expect to have a term consistent with our cloud solution contracts, revenue from the sale of our software sold under perpetual license arrangements, and third-party software referral fees, contracts.



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Cost of one-time services and other is primarily comprised of compensation costs for professional services and onsite training personnel, other costs incurred in providing onsite customer training, third-party contractor expenses, data expense incurred to perform one-time analytic services, third-party software royalties, allocated depreciation, facilities and IT support costs and amortization of intangible assets from business combinations.

One-time services and other revenue decreased by \$3.3 million \$1.3 million, or 27.6%, and \$10.5 million, or 28.6% 14.1%, during the three and nine months ended September 30, 2023 March 31, 2024, when compared to the same periods period in 2022, 2023, driven primarily by the following:

- Decreases Decrease in one-time consulting revenue of \$2.1 million and \$7.8 million, respectively, \$1.1 million primarily due to less sales of creative services and implementation and customization services. As discussed in Note 3 to our unaudited, condensed consolidated financial statements in this report, our sale of EVERFI Limited contributed to the decrease in creative services revenue. Also contributing to the decrease in one-time consulting revenue is an increase in utilization of third-party service delivery partners. For several years, we have been strategically shifting away from a one-time services business model towards sales of retained and managed services and also embedding services in our renewable cloud solution contracts. Retained and managed services contracts that we expect to have a term consistent with our cloud solution contracts, and embedded services are recorded as recurring revenue.



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Cost of one-time services and other decreased by \$1.8 million \$1.6 million, or 19.2%, and \$8.0 million, or 25.1% 18.5%, during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, driven primarily by the following:

- Decreases Decrease in compensation costs of \$1.9 million and \$6.9 million, respectively, \$1.2 million primarily related to our prior period targeted workforce reductions discussed above and a continued shift in resources historically supporting one-time services and other towards recurring revenue

One-time services and other gross margin decreased increased by 920 basis points and 420 480 basis points during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, primarily due to the decrease in compensation costs discussed above outpacing the decrease of one-time services and other revenue outpacing the decrease in compensation costs discussed above. revenue.

Operating Expenses

Sales, marketing and customer success (\$M)	Research and development (\$M)	General and administrative (\$M)
Percentages indicate expenses as a percentage of total revenue		

25 26 27

29 30 31

Sales, marketing and customer success

Sales, marketing and customer success expense includes compensation costs, variable sales commissions, travel-related expenses, advertising and marketing materials, public relations costs, variable reseller commissions and allocated depreciation, facilities and IT support costs.

We see a large market opportunity in the long-term and will continue to make investments to drive sales effectiveness. We have also implemented software tools to enhance our digital footprint and drive lead generation. The enhancements we are making in our go-to-market approach are expected to reduce our average customer acquisition cost per customer as well as the related payback period while increasing sales velocity.

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Sales, marketing and customer success expense decreased by \$4.0 million \$3.5 million or 7.0%, and \$4.3 million or 2.6% 6.5%, during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023. The decreases in dollars and as a percentage of total revenue were primarily driven by the following:

- Net decreases Decrease in commission expense of \$3.5 million due to fewer sales headcount and a prospective increase in the following period of benefit over which we amortized costs of obtaining contracts with customers from 5 to 6 years beginning in the year ending December 31, 2024
- Decrease in employee severance costs of \$1.6 million primarily due to our prior period targeted workforce reductions discussed above:
  - Decreases in compensation costs other than stock-based compensation of \$3.7 million and \$7.1 million, respectively; and
  - Decrease in commissions expense of \$1.4 million during the nine months ended September 30, 2023; partially offset by
  - Increase in severance costs of \$2.2 million during the nine months ended September 30, 2023
- Decreases in third-party contractor costs of \$2.2 million and \$2.6 million, respectively, primarily related to strategic consulting costs incurred during 2022
- + Increase in stock-based compensation costs of \$2.6 million, during the nine months ended September 30, 2023, primarily due to 2022 performance-based equity award adjustments and estimated overall Company performance against 2023 goals, partially offset by the targeted workforce reductions during the fourth quarter of 2022 and first quarter of 2023
- + Increases in advertising costs of \$1.7 million and \$1.8 million, respectively \$2.0 million primarily due to timing differences compared to 2023

Research and development

Research and development expense includes compensation costs for engineering and product management personnel, third-party contractor expenses, software development tools and other expenses related to developing new solutions or upgrading and enhancing existing solutions that do not qualify for capitalization, and allocated depreciation, facilities and IT support costs.

We continue to make investments to delight our customers with innovative and secure cloud solutions. Research and development expenses decreased increased by \$2.5 million, \$2.2 million or 6.1%, and \$4.0 million or 3.4% 5.4%, during the three and nine months ended September 30, 2023 March 31, 2024, respectively, when compared to the same periods period in 2022, 2023, primarily driven by the following:

+

Increase in compensation costs of \$2.4 million primarily related to an increase in resources dedicated to the security-related compliance of our solutions

- Decreases in third-party contractor employee severance costs of \$1.9 million and \$5.5 million, respectively, primarily due to a decrease in our use of third-party software developers
- Decreases in compensation costs other than stock-based compensation of \$1.9 million and \$3.8 million, respectively, \$1.1 million primarily due to our prior period targeted workforce reductions discussed above

Not included in research and development expense for the three months ended September 30, 2023 March 31, 2024 and 2022 2023 were \$15.7 million \$13.7 million and \$15.1 million, respectively, and for the nine months ended September 30, 2023 and 2022 were \$45.4 million and \$43.6 million \$14.2 million, respectively, of qualifying costs associated with software and content development activities that are required to be capitalized under GAAP, such as those for our cloud solutions, as well as development costs associated with acquired companies. Qualifying capitalized development costs associated with our cloud solutions are subsequently amortized to cost of recurring revenue over the related assets' estimated useful life, which generally range from three to seven years. We expect that the amount of software and content development costs capitalized will be relatively consistent in the near-term as we continue making investments in innovation, quality, security and the integration of our solutions, which we believe will drive long-term revenue growth.

#### General and administrative

General and administrative expense consists primarily of compensation costs for general corporate functions, including senior management, finance, accounting, legal, human resources and corporate development, Security Incident-related expenses (including legal fees, settlements and loss contingency accruals), third-party professional fees, insurance, allocated depreciation, facilities and IT support costs, acquisition-related expenses and other administrative expenses.

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#### Blackbaud, Inc. (Unaudited)

General and administrative expense decreased by \$7.3 million \$5.1 million or 14.6% 9.6%, during the three months ended September 30, 2023 March 31, 2024, when compared to the same period in 2022, 2023. The decreases in dollars and as a percentage of total revenue were primarily driven by the following:

- Decrease in Security Incident-related expenses of \$9.6 million \$7.5 million. See "Security Incident update" on page 30 27
- Decrease in compensation costs other than stock-based compensation of \$1.4 million primarily due to our targeted workforce reductions discussed above
- Decrease in corporate costs of \$1.1 million \$2.2 million primarily related to the release of certain accrued tax liabilities due to favorable sales tax rulings partially offset by an increase and a decrease in bad debt expense
- Decrease in employee severance costs of \$0.8 million due to our prior period targeted workforce reductions discussed above
- + Increase in compensation costs of \$4.7 million primarily related to an increase in stock-based compensation due to overall Company performance against targets for certain performance-based equity awards
- + Increase in acquisition and disposition-related costs of \$4.6 million \$1.6 million primarily related to the noncash impairment charges against certain operating lease right-of-use assets and property and equipment assets resulting the sublease disposition of EVERFI Limited; see Note 3 to our Washington, DC office location unaudited, condensed consolidated financial statements in this report for more information

General and administrative expense increased by \$13.6 million or 9.6%, during the nine months ended September 30, 2023, when compared to the same period in 2022, primarily driven by the following:

- + Increase in Security Incident-related expenses of \$19.4 million. See "Security Incident update" on page 30
- + Increase in stock-based compensation costs of \$4.0 million primarily due to estimated overall Company performance against 2023 goals, partially offset by the targeted workforce reductions during the fourth quarter of 2022 and first quarter of 2023. 2022 performance-based equity award adjustments also contributed to the increase in stock-based compensation expense during the nine months ended September 30, 2023
- + Increase in acquisition and disposition-related costs of \$1.1 million primarily related to the noncash impairment discussed above, partially offset by the release of \$1.4 million in accrued contingent consideration related to our Kilter acquisition during the nine months ended September 30, 2023 and a \$2.0 million noncash impairment of certain insignificant intangible assets that were held for sale during the nine months ended September 30, 2022 which did not reoccur in the comparable 2023 period
- Decrease in compensation costs other than stock-based compensation of \$4.7 million primarily due to our targeted workforce reductions discussed above
- A \$2.3 million noncash impairment charge during the nine months ended September 30, 2022 against previously capitalized software development costs that reduced the carrying value of those assets to zero. The impairment charge resulted primarily from our decision to end customer support for certain solutions and did not reoccur in 2023
- Decrease in corporate costs of \$1.1 million primarily related to the release of certain accrued tax liabilities due to favorable sales tax rulings, partially offset by an increase in bad debt expense
- Decreases in travel costs and third-party contractor costs of \$0.8 million and \$0.8 million, respectively, primarily due to our focus on cost management

Blackbaud, Inc.  
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Interest Expense

Interest expense (\$M)

Percentages indicate expenses as a percentage of total revenue

83

83

Interest expense in dollars and as a percentage of total revenue during the three months ended September 30, 2023 March 31, 2024, was relatively in line with the same period in 2022. The increase in interest expense in dollars and as a percentage of total revenue during the nine months ended September 30, 2023, respectively, when compared to the same period in 2022, was primarily due to an increase in our weighted average effective interest rates, 2023. We currently expect interest expense for the full year 2023 2024 to be approximately \$37 \$48 million to \$41 \$52 million although as we had incremental borrowings to fund our ASR Transaction (as defined on page 40). We also expect interest rates to remain higher throughout 2024 than we originally anticipated. Our interest expense in connection with the variable rate portion of our outstanding debt could increase in a rising interest rate environment. See Note 7 8 to our unaudited, condensed consolidated financial statements in this report for more information regarding our derivative instruments, which we use to manage our variable interest rate risk, and Item 3. Quantitative and Qualitative Disclosures about Market Risk: Interest Rate Risk (below) for more information about our variable interest rate exposure and related risk.

Other Income

Other income (\$M)

Percentages indicate other income as a percentage of total revenue

549755815926

Other income increased in dollars and as a percentage of total revenue during the three months ended March 31, 2024 when compared to the same period in 2023, primarily due to an increase in interest income. Interest income increased primarily due to higher interest earned on restricted cash held and payable by us to customers for our payment processing solutions. See Note 6 to our unaudited, condensed consolidated financial statements in this report for more information regarding our other income.

Blackbaud, Inc.  
(Unaudited)

Deferred Revenue

The table below compares the components of deferred revenue from our unaudited, condensed consolidated balance sheets:

(dollars in millions)	(dollars in millions)	September 30, 2023	December 31, 2022	Change	(dollars in millions)	March 31, 2024	December 31, 2023	Change
Deferred revenue <sup>(1)</sup>	Deferred revenue <sup>(1)</sup>	\$ 418.8	\$ 385.2	8.7 %	Deferred revenue <sup>(1)</sup>	\$ 367.2	\$ 394.9	(7.0) %
Less: Long-term portion	Less: Long-term portion	3.0	2.8	7.3 %	Less: Long-term portion	6.8	2.4	2.4
Current portion <sup>(1)</sup>	Current portion <sup>(1)</sup>	\$ 415.8	\$ 382.4	8.7 %	Current portion <sup>(1)</sup>	\$ 360.4	\$ 392.5	(8.2) %

(1) The individual amounts for each year may not sum to deferred revenue or current portion of deferred revenue due to rounding.

To the extent that our customers are billed for our solutions and services in advance of delivery, we record such amounts in deferred revenue. Our recurring revenue contracts are generally for a term of three years at contract inception, billed annually in advance, and non-cancelable. We have been for several years successfully shifting our legacy customer base away from annual renewals and moving them onto multi-year renewal contracts. We generally invoice our customers with recurring revenue contracts in annual cycles 30 days prior to the end of each one-year period.

The increase decrease in deferred revenue during the nine three months ended September 30, 2023 March 31, 2024 was primarily due to a seasonal increase decrease in customer contract billings/renewals which includes impact from our recent pricing initiatives. Historically, due to the timing of customer budget cycles, we have an increase in customer contract renewals at or near the beginning of our third quarter. Generally, our lowest balance of deferred revenue during the year is at the end of our first quarter.



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(Unaudited)

Income Taxes

Income tax provision (benefit) benefit (\$M)
Percentages indicate effective income tax rates



The increases change in our effective income tax rate for the three and nine months ended September 30, 2023, March 31, 2024 when compared to the same periods period in 2022 were 2023 was primarily attributable to unfavorable impact favorable impacts of non-deductible Security Incident accruals. See Note 8 benefits attributable to our unaudited, condensed consolidated financial statements in this report for additional information about our loss contingency accruals related to the Security Incident, stock-based compensation and research and development tax credits.

Non-GAAP Financial Measures

The operating results analyzed below are presented on a non-GAAP basis. We use non-GAAP financial measures internally in analyzing our operational performance. Accordingly, we believe these non-GAAP measures are useful to investors, as a supplement to GAAP measures, in evaluating our ongoing operational performance. While we believe these non-GAAP measures provide useful supplemental information, non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with GAAP. In addition, these non-GAAP financial measures may not be completely comparable to similarly titled measures of other companies due to potential differences in the exact method of calculation between companies.

The non-GAAP financial measures discussed below exclude the impact of certain transactions because we believe they are not directly related to our operating performance in any particular period, but are for our long-term benefit over multiple periods. We believe that these non-GAAP financial measures reflect our ongoing business in a manner that allows for meaningful period-to-period comparisons and analysis of trends in our business.

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(Unaudited)

		Three months ended September 30,		Nine months ended September 30,				
		Three months ended March 31,						
		Three months ended March 31,						
		Three months ended March 31,						
(dollars in millions, except per share amounts)	(dollars in millions, except per share amounts)	2023	2022	2023	2022	(dollars in millions, except per share amounts)	2024	2023
GAAP	GAAP							
Revenue	Revenue	\$ 277.6	\$ 261.3	\$ 810.4	\$ 783.3			
GAAP gross profit	GAAP gross profit	\$ 155.9	\$ 140.4	\$ 444.1	\$ 413.4			
GAAP gross profit								
GAAP gross profit								
GAAP gross margin	GAAP gross margin	56.1 %	53.7 %	54.8 %	52.8 %	GAAP gross margin	54.8 %	53.0 %
Non-GAAP adjustments:	Non-GAAP adjustments:							
Add: Stock-based compensation expense								
Add: Stock-based compensation expense								
Add: Stock- based compensation expense	Add: Stock- based compensation expense	4.1	3.4	12.2	11.3			
Add: Amortization of intangibles from business combinations	Add: Amortization of intangibles from business combinations	13.1	11.9	39.4	36.8			
Add: Employee severance	Add: Employee severance	—	—	0.8	0.3			
Subtotal <sup>(1)</sup>	Subtotal <sup>(1)</sup>	17.3	15.3	52.4	48.5			
Subtotal <sup>(1)</sup>								
Subtotal <sup>(1)</sup>								

Non-GAAP	Non-GAAP								
gross profit <sup>(1)</sup>	gross profit <sup>(1)</sup>	\$ 173.1	\$ 155.7	\$ 496.5	\$ 461.9				
Non-GAAP gross margin	Non-GAAP gross margin	62.4 %	59.6 %	61.3 %	59.0 %	Non-GAAP gross margin	61.4 %	59.8 %	
GAAP income (loss) from operations	GAAP income (loss) from operations	\$ 22.0	\$ (7.0)	\$ 12.4	\$ (12.9)				
GAAP income (loss) from operations									
GAAP income (loss) from operations									
GAAP operating margin	GAAP operating margin	7.9 %	(2.7)%	1.5 %	(1.7)%	GAAP operating margin	3.8 %	(3.8) %	
Non-GAAP adjustments:	Non-GAAP adjustments:								
Add: Stock-based compensation expense	Add: Stock-based compensation expense	32.4	27.9	95.7	83.7				
Add: Stock-based compensation expense									
Add: Stock-based compensation expense									
Add: Amortization of intangibles from business combinations	Add: Amortization of intangibles from business combinations	13.9	12.6	41.7	39.1				
Add: Employee severance	Add: Employee severance	0.1	0.2	5.1	0.7				
Add: Acquisition and disposition-related costs <sup>(2)(3)</sup>	Add: Acquisition and disposition-related costs <sup>(2)(3)</sup>	7.0	2.5	6.8	5.7				
Add: Restructuring and other real estate activities	Add: Restructuring and other real estate activities	—	—	—	0.1				
Add: Security Incident-related costs, net of insurance <sup>(4)</sup>	Add: Security Incident-related costs, net of insurance <sup>(4)</sup>	4.1	13.7	48.6	29.2				
Add: Impairment of capitalized software development costs	Add: Impairment of capitalized software development costs	—	—	—	2.3				
Add: Acquisition and disposition-related costs									
Add: Security Incident-related costs <sup>(2)</sup>									
Add: Security Incident-related costs <sup>(2)</sup>									
Add: Security Incident-related costs <sup>(2)</sup>									
Subtotal <sup>(1)</sup>									
Subtotal <sup>(1)</sup>									
Subtotal <sup>(1)</sup>	Subtotal <sup>(1)</sup>	57.5	56.9	197.9	160.7				
Non-GAAP income from operations <sup>(1)</sup>	Non-GAAP income from operations <sup>(1)</sup>	\$ 79.6	\$ 49.8	\$ 210.3	\$ 147.7				
Non-GAAP operating margin	Non-GAAP operating margin	28.7 %	19.1 %	26.0 %	18.9 %	Non-GAAP operating margin	25.9 %	21.6 %	

GAAP income (loss) before provision (benefit) for income taxes	\$	18.1	\$	(11.9)	\$	(8.6)	\$	(30.1)
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GAAP income (loss) before benefit for income taxes								
GAAP income (loss) before benefit for income taxes								
GAAP income (loss) before benefit for income taxes								

GAAP net income (loss)	GAAP net income (loss)	\$	9.0	\$	(10.3)	\$	(3.6)	\$	(24.1)
Shares used in computing GAAP diluted earnings (loss) per share	Shares used in computing GAAP diluted earnings (loss) per share		54,089,897		51,692,152		52,495,556		51,519,340
GAAP diluted earnings (loss) per share	GAAP diluted earnings (loss) per share	\$	0.17	\$	(0.20)	\$	(0.07)	\$	(0.47)

Non-GAAP adjustments:	Non-GAAP adjustments:								
Add: GAAP income tax provision (benefit)			9.1		(1.6)		(5.0)		(6.0)

Less: GAAP income tax benefit								
Less: GAAP income tax benefit								
Less: GAAP income tax benefit								

Add: Total non-GAAP adjustments affecting income from operations	Add: Total non-GAAP adjustments affecting income from operations		57.5		56.9		197.9		160.7
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Non-GAAP income before provision for income taxes	Non-GAAP income before provision for income taxes		75.6		45.0		189.3		130.5
Assumed non-GAAP income tax provision <sup>(5)</sup>			15.1		9.0		37.9		26.1

Non-GAAP income before provision for income taxes								
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Non-GAAP income before provision for income taxes								
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Assumed non-GAAP income tax provision <sup>(3)</sup>								
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Non-GAAP net income <sup>(4)</sup>	Non-GAAP net income <sup>(4)</sup>	\$	60.5	\$	36.0	\$	151.5	\$	104.4
Shares used in computing non-GAAP diluted earnings per share	Shares used in computing non-GAAP diluted earnings per share		54,089,897		52,362,781		53,469,768		51,985,207



Shares used in computing non-GAAP diluted earnings per share

Shares used in computing non-GAAP diluted earnings per share

Non-GAAP diluted earnings per share	Non-GAAP diluted earnings per share								
		\$	1.12	\$	0.69	\$	2.83	\$	2.01

- (1) The individual amounts for each year may not sum to subtotal, non-GAAP gross profit, non-GAAP income from operations, non-GAAP income before provision for income taxes or non-GAAP net income due to rounding.
- (2) Includes a \$2.0 million noncash impairment of certain intangible assets held for sale during the nine months ended September 30, 2022.
- (3) Includes noncash impairment charges incurred during the three and nine months ended September 30, 2023 related to the sublease of our Washington, DC office location the lease of which was acquired during the EVERFI acquisition.
- (4) Includes Security Incident-related costs incurred during the three and nine months ended September 30, 2023 March 31, 2024 of \$4.1 million and \$48.6 million, respectively, \$10.3 million which includes approximately \$0.0 million and \$30.0 million, respectively, \$7.0 million in recorded liabilities for loss contingencies net of insurance recoveries during the same periods of \$0.0 million, and during the three and nine months ended September 30, 2022 March 31, 2023 of \$13.7 million and \$31.1 million, respectively, net of insurance recoveries during the same periods that were \$0.0 million and \$1.9 million, respectively, \$17.8 million which included approximately \$10.2 million in recorded liabilities for loss contingencies. Recorded expenses consisted primarily of payments to third-party service providers and consultants, including legal fees, as well as settlements of customer claims, negotiated settlements and accruals for certain loss contingencies. Not included in this adjustment were costs associated with enhancements to our cybersecurity program. For full year 2023, 2024, we currently expect net pre-tax expense expenses of approximately \$20 million \$5 million to \$30 million \$10 million and net cash outlays of approximately \$25 million \$8 million to \$35 million \$13 million for ongoing legal fees related to the Security Incident. Not included in these ranges are our previous settlements or current accruals for loss contingencies related to the matters discussed below. For full year 2024, we currently expect a significant decrease in net pre-tax expense related to the Security Incident for ongoing legal fees. In line with our policy, legal fees are expensed as incurred. As of September 30, 2023 March 31, 2024, we have recorded approximately \$50.0 million \$8.5 million in aggregate liabilities for loss contingencies based primarily on recent negotiations with certain customers and governmental agencies related to the Security Incident that we believe we can reasonably estimate. In connection with it is reasonably possible that our estimated or actual losses may change in the settlement near term for those matters and be materially in excess of the multi-state Attorneys General investigation (as discussed in Note 8 and Note 12), amounts accrued, but we expect are unable at this time to pay \$49.5 million during reasonably estimate the fourth quarter of 2023, possible additional loss. There are other Security Incident-related matters, including customer claims, customer constituent class actions and governmental investigations, for which we have not



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recorded a liability for a loss contingency as of September 30, 2023 March 31, 2024 because we are unable at this time to reasonably estimate the possible loss or range of loss. Each of these matters could, separately or in the aggregate, result in an adverse judgment, settlement, fine, penalty or other resolution, the amount, scope and timing of which we are currently unable to predict, but could have a material adverse impact on our results of operations, cash flows or financial condition.

- (5) (3) We Beginning in 2024, we now apply a non-GAAP effective tax rate of 20.0% 24.5% when calculating non-GAAP net income and non-GAAP diluted earnings per share. For the three months ended March 31, 2023, the tax impact related to non-GAAP adjustments is calculated under our historical non-GAAP effective tax rate of 20.0%.



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Non-GAAP organic revenue growth

In addition, we use non-GAAP organic revenue growth, non-GAAP organic revenue growth on a constant currency basis, non-GAAP organic recurring revenue growth and non-GAAP organic recurring revenue growth on a constant currency basis in analyzing our operating performance. We believe that these non-GAAP measures are useful to investors, as a supplement to GAAP measures, for evaluating the periodic growth of our business on a consistent basis. Each of these measures of non-GAAP organic revenue growth excludes incremental acquisition-related revenue attributable to companies acquired in the current fiscal year. For companies, if any, acquired in the immediately preceding fiscal year, each of these non-GAAP organic revenue growth measures reflects presentation of full year incremental non-GAAP revenue derived from such companies as if they were combined throughout the prior period. In addition, each of these non-GAAP organic revenue growth measures excludes prior period revenue associated with divested businesses.

The exclusion of the prior period revenue is to present the results of the divested businesses within the results of the combined company for the same period of time in both the prior and current periods. We believe this presentation provides a more comparable representation of our current business' organic revenue growth and revenue run-rate.

(dollars in millions)							
(dollars in millions)	(dollars in millions)	Three months ended September 30,		Nine months ended September 30,		(dollars in millions)	Three months ended March 31,
		2023	2022	2023	2022		
GAAP revenue	GAAP revenue	\$277.6	\$261.3	\$810.4	\$783.3		
GAAP revenue growth	GAAP revenue growth	6.2 %		3.5 %			
Less: Non-GAAP revenue from divested businesses <sup>(1)</sup>	Less: Non-GAAP revenue from divested businesses <sup>(1)</sup>	—	(0.9)	—	(3.5)		
Less: Non-GAAP revenue from divested businesses <sup>(1)</sup>							
Less: Non-GAAP revenue from divested businesses <sup>(1)</sup>							
Non-GAAP organic revenue <sup>(2)</sup>							
Non-GAAP organic revenue <sup>(2)</sup>							
Non-GAAP organic revenue <sup>(2)</sup>	Non-GAAP organic revenue <sup>(2)</sup>	\$277.6	\$260.4	\$810.4	\$779.8		
Non-GAAP organic revenue growth	Non-GAAP organic revenue growth	6.6 %		3.9 %			
Non-GAAP organic revenue <sup>(2)</sup>							
Non-GAAP organic revenue <sup>(2)</sup>							
Non-GAAP organic revenue <sup>(2)</sup>	Non-GAAP organic revenue <sup>(2)</sup>	\$277.6	\$260.4	\$810.4	\$779.8		
Foreign currency impact on Non-GAAP organic revenue <sup>(3)</sup>	Foreign currency impact on Non-GAAP organic revenue <sup>(3)</sup>	(1.9)	—	1.7	—		
Non-GAAP organic revenue on constant currency basis <sup>(3)</sup>	Non-GAAP organic revenue on constant currency basis <sup>(3)</sup>	\$275.7	\$260.4	\$812.1	\$779.8		
Non-GAAP organic revenue growth on constant currency basis	Non-GAAP organic revenue growth on constant currency basis	5.9 %		4.1 %			
GAAP recurring revenue	GAAP recurring revenue	\$269.0	\$249.4	\$784.1	\$746.6		

GAAP recurring revenue						
GAAP recurring revenue						
GAAP recurring revenue growth	GAAP recurring revenue growth	7.9 %		5.0 %		
Less: Non-GAAP recurring revenue from divested businesses <sup>(1)</sup>	Less: Non-GAAP recurring revenue from divested businesses <sup>(1)</sup>	— (0.9)		— (3.4)		
Less: Non-GAAP recurring revenue from divested businesses <sup>(1)</sup>						
Less: Non-GAAP recurring revenue from divested businesses <sup>(1)</sup>						
Non-GAAP organic recurring revenue <sup>(2)</sup>						
Non-GAAP organic recurring revenue <sup>(2)</sup>						
Non-GAAP organic recurring revenue <sup>(2)</sup>	Non-GAAP organic recurring revenue <sup>(2)</sup>	\$269.0	\$248.5	\$784.1	\$743.1	
Non-GAAP organic recurring revenue growth	Non-GAAP organic recurring revenue growth	8.3 %		5.5 %		
Non-GAAP organic recurring revenue <sup>(2)</sup>						
Non-GAAP organic recurring revenue <sup>(2)</sup>						
Non-GAAP organic recurring revenue <sup>(2)</sup>	Non-GAAP organic recurring revenue <sup>(2)</sup>	\$269.0	\$248.5	\$784.1	\$743.1	
Foreign currency impact on non-GAAP organic recurring revenue <sup>(3)</sup>	Foreign currency impact on non-GAAP organic recurring revenue <sup>(3)</sup>	(1.7)		1.6 —		
Non-GAAP organic recurring revenue on constant currency basis <sup>(3)</sup>	Non-GAAP organic recurring revenue on constant currency basis <sup>(3)</sup>	\$267.3	\$248.5	\$785.8	\$743.1	

Non-GAAP organic recurring revenue growth on constant currency basis	Non-GAAP organic recurring revenue growth on constant currency basis	7.5 %	5.7 %
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- (1) Non-GAAP revenue from divested businesses excludes revenue associated with divested businesses. The exclusion of the prior period revenue is to present the results of the divested business with the results of the combined company for the same period of time in both the prior and current periods.
- (2) Non-GAAP organic revenue and non-GAAP organic recurring revenue for the prior year periods presented herein may not agree to non-GAAP organic revenue and non-GAAP organic recurring revenue presented in the respective prior period quarterly financial information solely due to the manner in which non-GAAP organic revenue growth and non-GAAP organic recurring revenue growth are calculated.
- (3) To determine non-GAAP organic revenue growth and non-GAAP organic recurring revenue growth on a constant currency basis, revenues from entities reporting in foreign currencies were translated to U.S. Dollars using the comparable prior period's quarterly weighted average foreign currency exchange rates. The primary foreign currencies creating the impact are the Australian Dollar, British Pound, Canadian Dollar and Euro.

Blackbaud, Inc. (Unaudited)									
Rule of 40									
We previously defined define Rule of 40 as non-GAAP organic revenue growth plus non-GAAP adjusted EBITDA margin. Non-GAAP adjusted EBITDA is defined as GAAP net income plus interest, net; income tax provision (benefit); depreciation; amortization of intangible assets from business combinations; amortization of software and content development costs; stock-based compensation; employee severance; acquisition and disposition-related costs; restructuring and other real estate activities; Security Incident-related costs, net of insurance; costs; and impairment of capitalized software development costs. Beginning in the fiscal quarter ended June 30, 2022, we now also include in non-GAAP adjusted EBITDA impairment of capitalized software development costs because we believe it is not directly related to our operating performance in any particular period.									
		Three months ended September 30,			Nine months ended September 30,				
		Three months ended March 31,							
		Three months ended March 31,							
		Three months ended March 31,							
(dollars in millions)	(dollars in millions)	2023	2022		2023	2022	(dollars in millions)	2024	2023
GAAP net income (loss)	GAAP net income (loss)	\$ 9.0	\$ (10.3)		\$ (3.6)	\$ (24.1)			
Non-GAAP adjustments:	Non-GAAP adjustments:								
Add: Interest, net	Add: Interest, net	6.6	8.7		24.9	25.0			
Add: GAAP income tax provision (benefit)		9.1	(1.6)		(5.0)	(6.0)			
Add: Interest, net									
Add: Interest, net									
Less: GAAP income tax benefit									
Add: Depreciation	Add: Depreciation	3.3	3.5		9.9	10.6			
Add: Amortization of intangibles from business combinations	Add: Amortization of intangibles from business combinations	13.9	12.6		41.7	39.1			

Add: Amortization of software and content development costs <sup>(1)</sup>	Add: Amortization of software and content development costs <sup>(1)</sup>	11.6	9.8	33.1	28.5
Subtotal <sup>(2)</sup>	Subtotal <sup>(2)</sup>	44.5	33.0	104.6	97.3
Non-GAAP EBITDA <sup>(2)</sup>	Non-GAAP EBITDA <sup>(2)</sup>	\$ 53.5	\$ 22.6	\$ 101.0	\$ 73.1
Non-GAAP EBITDA margin <sup>(3)</sup>	Non-GAAP EBITDA margin <sup>(3)</sup>	19.3	%	12.5	%
Non-GAAP adjustments:	Non-GAAP adjustments:				

Non-GAAP adjustments:

Non-GAAP adjustments:

Add: Stock-based compensation expense  
Add: Stock-based compensation expense

Add: Stock-based compensation expense	Add: Stock-based compensation expense	32.4	27.9	95.7	83.7
Add: Employee severance	Add: Employee severance	0.1	0.2	5.1	0.7

Add: Acquisition and disposition-related costs<sup>(4)</sup>

Add: Restructuring and other real estate activities

Add: Security Incident-related costs, net of insurance<sup>(4)</sup>

Add: Impairment of capitalized software development costs

Add: Acquisition and disposition-related costs

Add: Security Incident-related costs<sup>(4)</sup>

Add: Security Incident-related costs<sup>(4)</sup>

Add: Security Incident-related costs<sup>(4)</sup>

Subtotal<sup>(2)</sup>

Subtotal<sup>(2)</sup>

Subtotal <sup>(2)</sup>	Subtotal <sup>(2)</sup>	43.6	44.3	156.2	121.6
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Non-GAAP Adjusted EBITDA <sup>(2)</sup>	Non-GAAP Adjusted EBITDA <sup>(2)</sup>	\$ 97.1	\$ 66.9	\$ 257.2	\$ 194.7
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Non-GAAP Adjusted EBITDA margin <sup>(5)</sup>	Non-GAAP Adjusted EBITDA margin <sup>(5)</sup>	35.0	%	31.7	%
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Rule of 40 <sup>(6)</sup>	Rule of 40 <sup>(6)</sup>	41.6	%	35.6	%
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Rule of 40<sup>(6)</sup>

Rule of 40<sup>(6)</sup>

Non-GAAP adjusted EBITDA

Non-GAAP adjusted EBITDA

Non-GAAP adjusted EBITDA	Non-GAAP adjusted EBITDA	97.1	66.9	257.2	194.7
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Foreign currency impact on Non-GAAP adjusted EBITDA <sup>(7)</sup>	Foreign currency impact on Non-GAAP adjusted EBITDA <sup>(7)</sup>	(1.2)	2.8	0.7	5.0
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Non-GAAP adjusted EBITDA on constant currency basis <sup>(7)</sup>	Non-GAAP adjusted EBITDA on constant currency basis <sup>(7)</sup>	\$ 95.9	\$ 69.8	\$ 257.9	\$ 199.7
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Non-GAAP adjusted EBITDA margin on constant currency basis	Non-GAAP adjusted EBITDA margin on constant currency basis	34.8	%	31.8	%
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Rule of 40 on constant currency basis <sup>(8)</sup>	Rule of 40 on constant currency basis <sup>(8)</sup>	40.7	%	35.9	%
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Rule of 40 on constant currency basis <sup>(8)</sup>
Rule of 40 on constant currency basis <sup>(8)</sup>

- (1) Includes amortization expense related to software development costs and amortization expense from capitalized cloud computing implementation costs.
- (2) The individual amounts for each year may not sum to subtotal, non-GAAP EBITDA, non-GAAP adjusted EBITDA or non-GAAP adjusted EBITDA on a constant currency basis due to rounding.
- (3) Measured by GAAP revenue divided by non-GAAP EBITDA.
- (4) See additional details in the reconciliation of GAAP to Non-GAAP operating income above.
- (5) Measured by non-GAAP organic revenue divided by non-GAAP adjusted EBITDA.
- (6) Measured by non-GAAP organic revenue growth plus non-GAAP adjusted EBITDA margin. See Non-GAAP organic revenue growth table above.
- (7) To determine non-GAAP adjusted EBITDA on a constant currency basis, non-GAAP adjusted EBITDA from entities reporting in foreign currencies were translated to U.S. Dollars using the comparable prior period's quarterly weighted average foreign currency exchange rates. The primary foreign currencies creating the impact are the Australian Dollar, British Pound, Canadian Dollar and Euro.
- (8) Measured by non-GAAP organic revenue growth on constant currency basis plus non-GAAP adjusted EBITDA margin on constant currency basis. See Non-GAAP organic revenue growth table above.

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Blackbaud, Inc.

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Non-GAAP free cash flow and non-GAAP adjusted free cash flow

Non-GAAP free cash flow is defined as operating cash flow less capital expenditures, including costs required to be capitalized for software and content development, and capital expenditures for property and equipment.

Non-GAAP adjusted free cash flow is defined as operating cash flow less capital expenditures, including costs required to be capitalized for software and content development and capital expenditures for property and equipment, plus cash outflows **net of insurance**, related to the Security Incident.

We believe non-GAAP free cash flow and non-GAAP adjusted free cash flow provides useful measures of the Company's operating performance. Non-GAAP adjusted free cash flow is not intended to represent and should not be viewed as the amount of residual cash flow available for discretionary expenditures.

		Nine months ended September 30,	
		Three months ended March 31,	
		Three months ended March 31,	
		Three months ended March 31,	
(dollars in millions)			
(dollars in millions)			
(dollars in millions)	(dollars in millions)	2023	2022
GAAP net cash provided by operating activities	GAAP net cash provided by operating activities	\$ 203.0	\$ 189.8
GAAP net cash provided by operating activities			
GAAP net cash provided by operating activities			
GAAP operating cash flow margin			
GAAP operating cash flow margin			
GAAP operating cash flow margin			
Non-GAAP adjustments:			
Non-GAAP adjustments:			
Non-GAAP adjustments:			
Less: purchase of property and equipment			

Less: purchase of property and equipment				
Less: purchase of property and equipment	Less: purchase of property and equipment		(4.2)	(10.5)
Less: capitalized software and content development costs	Less: capitalized software and content development costs		(44.7)	(42.8)
Less: capitalized software and content development costs				
Less: capitalized software and content development costs				
Non-GAAP free cash flow <sup>(1)</sup>	Non-GAAP free cash flow <sup>(1)</sup>	\$	154.1	\$ 136.5
Add: Security Incident-related cash flows, net of insurance			23.1	9.5
Non-GAAP free cash flow <sup>(1)</sup>				
Non-GAAP free cash flow <sup>(1)</sup>				
Non-GAAP free cash flow margin				
Non-GAAP free cash flow margin				
Non-GAAP free cash flow margin				
Non-GAAP adjustments:				
Non-GAAP adjustments:				
Non-GAAP adjustments:				
Add: Security Incident-related cash flows				
Add: Security Incident-related cash flows				
Add: Security Incident-related cash flows				
Non-GAAP adjusted free cash flow <sup>(1)</sup>	Non-GAAP adjusted free cash flow <sup>(1)</sup>	\$	177.2	\$ 146.1
Non-GAAP adjusted free cash flow <sup>(1)</sup>				
Non-GAAP adjusted free cash flow <sup>(1)</sup>				
Non-GAAP adjusted free cash flow margin				
Non-GAAP adjusted free cash flow margin				
Non-GAAP adjusted free cash flow margin				

(1) The individual amounts for each year may not sum to non-GAAP free cash flow or non-GAAP adjusted free cash flow due to rounding.

Seasonality

Our revenues normally fluctuate as a result of certain seasonal variations in our business. Our first quarter has historically been the seasonal low for bookings, with the second and fourth quarters historically being seasonally higher, and our bookings tend to be back-end loaded within individual quarters given our quarterly quota plans. Transactional revenue is non-contractual and less predictable given the susceptibility to certain drivers such as timing and number of events and marketing campaigns, as well as fluctuations in donation volumes and tuition payments. Our transactional revenue has historically been at its lowest in the first quarter due to the timing of customer fundraising initiatives and events. We have historically experienced seasonal highs during the fourth quarter due to year-end giving campaigns and during the second quarter when a large number of events are held. Our revenue from professional services has historically been lower in the first quarter when many of those services commence and in the fourth quarter due to the holiday season. As a result of these and other factors, our total revenue has historically been lower in the first quarter than in the remainder of our fiscal year, with the fourth quarter historically achieving the highest total revenue. Our expenses, other than transaction-based costs related to our payments services, do not vary significantly as a result of these factors, but do fluctuate on a quarterly basis due to varying timing of expenditures.

Our cash flow from operations normally fluctuates quarterly due to the combination of the timing of customer contract renewals including renewals associated with customers of acquired companies, delivery of professional services and occurrence of customer events, as well as merit-based salary increases, among other factors. Historically, due to lower revenues in our first quarter, combined with the payment of certain annual vendor contracts, our cash flow from operations has been lowest in our first quarter. Due to the timing of customer contract renewals and student enrollments, many of which take place at or near the beginning of our third quarter, our cash flow from operations has generally been lower in our second quarter as compared to our third and fourth quarters. Partially offsetting these favorable drivers of cash flow from operations in our third and fourth quarters are base salary merit increases, which occur in July. In addition, deferred revenues can vary on a seasonal basis due to the timing of customer contract renewals and student enrollments or significant acquisitions. Our cash

flow from financing is negatively impacted in our first quarter when most of our equity awards vest, as we pay taxes on behalf of our employees related to the settlement or exercise of equity awards.

These patterns may change as a result of the continued shift to online giving, growth in volume of transactions for which we process payments, large dollar customer bookings and contract renewals, fluctuations in the timing of vendor payments, or as a result of acquisitions, new market opportunities, new solution introductions or other factors. For example, we currently do not expect that our operating cash flow in the second quarter of 2024 will be higher than that of our first quarter primarily due to fluctuations in the timing of vendor and tax payments.

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Liquidity and Capital Resources

The following table presents selected financial information about our financial position:

(dollars in millions)	(dollars in millions)	September 30, 2023	December 31, 2022	Change	(dollars in millions)	March 31, 2024	December 31, 2023	Change
Cash and cash equivalents	Cash and cash equivalents	\$ 31.1	\$ 31.7	(1.9)%	Cash and cash equivalents	\$ 26.4	\$ 31.3	(15.6) (15.6) %
Property and equipment, net	Property and equipment, net	100.6	107.4	(6.4)%	Property and equipment, net	96.1	98.7	(2.6) (2.6) %
Software and content development costs, net	Software and content development costs, net	155.9	141.0	10.6 %	Software and content development costs, net	162.5	160.2	1.4 1.4 %
Total carrying value of debt	Total carrying value of debt	742.6	859.0	(13.6)%	Total carrying value of debt	1,039.8	779.7	33.4 33.4 %
Working capital	Working capital	(358.2)	(312.0)	(14.8)%	Working capital	(285.5)	(267.4)	(6.8) (6.8) %

The following table presents selected financial information about our cash flows:

		Nine months ended September 30,							Three months ended March 31,	
(dollars in millions)	(dollars in millions)	2023	2022	Change	(dollars in millions)	2024	2023	Change		
Net cash provided by operating activities	Net cash provided by operating activities	\$203.0	\$189.8	6.9 %	Net cash provided by operating activities	\$ 64.6	\$ 21.8	196.3	196.3 %	
Net cash used in investing activities	Net cash used in investing activities	(49.2)	(67.8)	(27.5)%	Net cash used in investing activities	(14.5)	(15.3)	(15.3)	(5.4)	(5.4) %
Net cash used in financing activities	Net cash used in financing activities	(496.7)	(384.2)	29.3 %	Net cash used in financing activities	(394.6)	(353.2)	(353.2)	11.7	11.7 %




Our principal sources of liquidity are our operating cash flow, funds available under the 2020 2024 Credit Facility and cash on hand. Our operating cash flow depends on continued customer renewal of our subscription and maintenance arrangements, market acceptance of our solutions and services, the volume and size of transactions for which we process payments and our customers' ability to pay. Based on current estimates of revenue and expenses, we believe that the currently available sources of funds and anticipated cash flows from operations will be adequate for at least the next twelve months to finance our operations, fund anticipated capital expenditures and meet our debt obligations. We also believe that we will be able to continue to meet our long-term cash requirements due to our anticipated cash flow from operations, solid financial position and ability to access capital from financial markets. To the extent we undertake future material acquisitions or investments or unanticipated capital or operating expenditures, including in connection with the Security Incident, we may require additional capital. In that context, we regularly evaluate opportunities to enhance our capital structure, including through potential debt or equity issuances. In the near term, excluding any future material events noted above or otherwise, we intend to reduce our net leverage, which was 2.11 to 1.00 at September 30, 2023, as defined by our credit agreement, to our target level of 2 to 1 or less. We also currently expect to resume stock repurchases during the fourth quarter of 2023.

As a well-known seasoned issuer, we filed an automatic shelf registration statement for an undetermined amount of debt and equity securities with the SEC on January 14, 2022. Under this universal shelf registration statement we may offer and sell, from time to time, debt securities, common stock, preferred stock, depositary shares, warrants, stock purchase contracts and stock purchase units. Subject to certain conditions, this registration statement will be effective through January 13, 2024 January 13, 2025.

At September 30, 2023 March 31, 2024, our total cash and cash equivalents balance included approximately \$19.7 million \$14.3 million of cash that was held by operations outside the U.S. While these funds may not be needed to fund our U.S. operations for at least the next twelve months, if we need these funds, we may be required to accrue and pay taxes to repatriate the funds. We currently do not intend nor anticipate a need to repatriate our cash held outside the U.S.

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## Blackbaud, Inc. (Unaudited)

### Operating Cash Flow

Our cash flows from operations are derived principally from: (i) our earnings from on-going operations prior to non-cash expenses such as depreciation, amortization, stock-based compensation, deferred taxes, amortization of deferred financing costs and debt discount and adjustments to our provision for credit losses and sales returns; and (ii) changes in our working capital.

Working capital changes are composed of changes in accounts receivable, prepaid expenses and other assets, trade accounts payable, accrued expenses and other liabilities, and deferred revenue.

Net cash provided by operating activities increased by \$13.2 million \$42.8 million during the nine three months ended September 30, 2023 March 31, 2024, when compared to the same period in 2022, 2023, primarily due to a \$27.5 million \$5.3 million increase in net income adjusted for non-cash expenses and a \$14.4 million decrease \$37.5 million increase in cash flow from operations associated with working capital.

The decrease increase in cash flow from operations associated with working capital during the nine three months ended September 30, 2023 March 31, 2024, when compared to the same period in 2022, 2023, was primarily due to:

- fluctuations in the timing of vendor payments; and
- a decrease in taxes payable; partially offset by
- an increase in accrued expenses, including accrued bonuses and the Security Incident, taxes payable.

### Security Incident update

As discussed in Note 8 9 to our unaudited, condensed consolidated financial statements in this report, total costs related to the Security Incident exceeded the limit of our insurance coverage in the first quarter of 2022. Accordingly, the Security Incident has negatively impacted, and we expect it to continue for the foreseeable future to negatively impact, our GAAP profitability and GAAP cash flow (see discussion regarding non-GAAP free cash flow and non-GAAP adjusted free cash flow on page 42 37). For full year 2023, 2024, we currently expect net pre-tax expense expenses of approximately \$20 million \$5 million to \$30 million \$10 million and net cash outlays of approximately \$25 million \$8 million to \$35 million \$13 million for ongoing legal fees related to the Security Incident. In line with our policy, legal fees are expensed as incurred. Not included in these ranges are our previous settlements or current accruals for loss contingencies related to the matters discussed below. For full year 2024, we currently expect a significant decrease in net pre-tax expense related to the Security Incident for ongoing legal fees.

As of September 30, 2023 March 31, 2024, we have recorded approximately \$50.0 million \$8.5 million in aggregate liabilities for loss contingencies based primarily on recent negotiations with certain customers and governmental agencies related to the Security Incident that we believed we could reasonably estimate in accordance with our loss contingency procedures described above and as more fully described in Note 8. In connection with 9. It is reasonably possible that our estimated actual losses may change in the settlement near term for those matters and be materially in excess of the multi-state Attorneys General investigation (as discussed in Note 8 and Note 12), amounts accrued, but we expect pay \$49.5 million during are unable at this time to reasonably estimate the fourth quarter of 2023, possible additional loss.

There are other Security Incident-related matters, including customer claims, customer constituent class actions and governmental investigations, for which we have not recorded a liability for a loss contingency as of September 30, 2023 March 31, 2024 because we are unable at this time to reasonably estimate the possible loss or range of loss. Each of these matters could, separately or in the aggregate, result in an adverse judgment, settlement, fine, penalty or other resolution, the amount, scope and timing of which we are currently unable to predict, but could have a material adverse impact on our results of operations, cash flows or financial condition.

Investing Cash Flow

Net cash used in investing activities of \$49.2 million \$14.5 million decreased by \$18.6 million \$0.8 million during the nine three months ended September 30, 2023 March 31, 2024, when compared to the same period in 2022 2023.

During the nine three months ended September 2022, we received net cash of \$6.4 million related to our disposition of Blackbaud FIMS™ and DonorCentral® NXT.

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(Unaudited)

During the nine months ended September 30, 2022 March 31, 2024, we used \$20.9 million of net cash for our acquisitions of EVERFI and Kilter, comprised primarily of (i) \$17.4 million that had not been paid by EVERFI to its former option holders as of December 31, 2021, solely due to the timing of the acquisition on the last day of 2021; (ii) \$2.9 million that was paid to acquire Kilter; and (iii) \$2.6 million that was paid to a number of EVERFI's selling shareholders after determining they would be paid in cash, rather than shares of our common stock.

During the nine months ended September 30, 2023, we used \$44.7 million \$13.1 million for software and content development costs, which was up \$1.9 million down \$0.9 million from cash spent during the same period in 2022 2023. We also spent \$4.2 million \$0.3 million of cash for purchases of property and equipment during the nine three months ended September 30, 2023 March 31, 2024, which was a decrease of \$6.3 million \$1.1 million when compared to the same period in 2022 2023. In addition, we used net cash of \$1.2 million in the disposition of a business during the three months ended March 31, 2024.

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Financing Cash Flow

During the nine three months ended September 30, 2023 March 31, 2024, we had a net decrease increase in borrowings of \$118.2 million, \$260.5 million, primarily due to our ASR Transaction (as defined below) in March 2024.

We paid \$35.6 million \$52.7 million to satisfy tax obligations of employees upon settlement of equity awards during the nine three months ended September 30, 2023 March 31, 2024 compared to \$36.1 million \$31.4 million during the same period in 2022 2023. The amount of taxes paid by us on behalf of employees related to the settlement of equity awards varies from period to period based upon the timing of grants and vesting, as well as the market price for shares of our common stock at the time of settlement. Most of our equity awards currently vest in our first quarter.

During the nine three months ended September 30, 2023 March 31, 2024, cash flow from financing activities associated with changes in restricted cash due to customers decreased \$339.7 million \$336.6 million, compared to a decrease of \$243.1 million \$337.2 million during the same period in 2022 2023. This line in the statement of cash flows represents the change in the amount of restricted cash held and payable by us to customers from one period to the next.

Stock repurchase program

In December 2021, On January 17, 2024, our Board of Directors reauthorized, expanded and replenished our stock repurchase program that authorizes us by raising the total capacity under the program from \$250.0 million to purchase up to \$250.0 million of our outstanding shares of common stock, \$500.0 million available for repurchases. The program does not have an expiration date. Under the stock repurchase program, we are authorized to repurchase shares from time to time in accordance with applicable laws both on the open market, including under trading plans established pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, and in privately negotiated transactions. The timing and amount of repurchases depends on several factors, including market and business conditions, the trading price of our common stock and the nature of other investment opportunities. The repurchase program may be limited, suspended or discontinued at any time without prior notice.

In March 2024, we announced that we intend to repurchase between 7% and 10% of our outstanding common stock as of December 31, 2023 under our existing \$500 million stock repurchase program. Consistent with that commitment, in March 2024, we entered into an issuer forward repurchase transaction with a large financial institution to repurchase an aggregate \$200 million of shares of our common stock (the "ASR Transaction"). Pursuant to the terms of the ASR Transaction, we provided the financial institution with a prepayment of \$200 million and received an initial delivery of 2.1 million shares of our common stock, representing approximately 70% of the total shares then-expected to be repurchased under the ASR Transaction. The final number of shares of common stock delivered to us under the ASR Transaction will be based on the average of the daily volume-weighted average prices of the common stock during the term of the ASR Transaction, less a discount and subject to customary adjustments upon events affecting the common stock (e.g., dilutive or concentrative events, mergers and acquisitions, and market disruptions). The final settlement of the ASR Transaction is scheduled to occur by the fourth quarter of 2024, unless settled earlier at the election of the financial institution.

The difference of \$52.2 million between the prepayment of \$200 million and the value of the shares repurchased on the ASR Transaction date represents an unsettled prepaid forward contract indexed to our common stock and met all of the applicable criteria for equity classification; therefore, it was not accounted for as a derivative instrument as of March 31, 2024. Because of our ability to settle in shares, the \$52.2 million prepaid forward contract was classified as a reduction to additional paid-in capital within our unaudited, condensed consolidated statement of stockholders' equity in this report. We funded the ASR Transaction prepayment with borrowings pursuant to a revolving credit loan under the 2020 Credit Facility.

During the three and nine months ended September 30, 2023 March 31, 2024, we did not purchase any shares. repurchased 2,954,211 shares for \$262.6 million. The remaining amount available to purchase stock under the stock repurchase program was \$250.0 million \$259.7 million as of September 30, 2023 March 31, 2024. We currently expect After 2024, we plan to resume stock repurchases during repurchase shares to at least offset the fourth quarter of 2023, dilution from our annual stock-based compensation and possibly beyond that amount as market conditions and our strategic plans permit.

2020 Credit Facility

Historically, we have drawn on our credit facility from time to time to help us meet financial needs, primarily due to the seasonality of our cash flows from operations and financing for business acquisitions. At September 30, 2023 March 31, 2024, our available borrowing capacity under the 2020 Credit Facility was \$425.7 million \$119.6 million. The 2020 Credit Facility matures in October 2025.

At September 30, 2023 March 31, 2024, the carrying amount of our debt under the 2020 Credit Facility was \$683.2 million \$981.7 million. Our average daily borrowings during the three and nine months ended September 30, 2023 March 31, 2024 were \$727.8 million and \$785.5 million, respectively, \$806.1 million.

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The following is a summary of the financial covenants under the 2020 Credit Facility:

Financial covenant	Requirement	Ratio as of September 30, 2023 March 31, 2024
Net leverage ratio <sup>(1)</sup>	≤ 4.00 3.75 to 1.00	2.11 2.72 to 1.00
Interest coverage ratio	≥ 2.50 to 1.00	8.24 9.75 to 1.00

(1) Under the terms of the 2020 Credit Facility, the Net Leverage Ratio requirement may be increased by up to 0.50 provided we satisfy certain requirements, including a permitted business acquisition, and provided that the maximum Net Leverage Ratio shall not exceed 4.25 to 1.00.

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Under the 2020 Credit Facility, we also have restrictions on our ability to declare and pay dividends and our ability to repurchase shares of our common stock. In order to pay any cash dividends and/or repurchase shares of stock: (i) no default or event of default shall have occurred and be continuing under the 2020 Credit Facility, and (ii) our pro forma net leverage ratio, as set forth in the 2020 Credit Facility, must be 0.25 less than the net leverage ratio requirement at the time of dividend declaration or share repurchase. At September 30, 2023 March 31, 2024, we were in compliance with our debt covenants under the 2020 Credit Facility. See Note 6 7 to our unaudited, condensed consolidated financial statements in this report for additional information regarding the 2020 Credit Facility.

Debt refinancing

On April 30, 2024, we refinanced our debt. See Part II, Item 5. "Other Information" for detailed information relating to the terms of the 2024 Credit Agreement.

Commitments and Contingencies

		Payments due by period							Payments due by period	
		Payments due by period							Payments due by period	
		Less than	More than	Total <sup>(1)</sup>		Less than	More than	Total <sup>(1)</sup>		
(in millions)	(in millions)	1 year	1 year		(in millions)	1 year	1 year			
Recorded contractual obligations:	Recorded contractual obligations:									
Debt	Debt									
Debt	Debt									
Debt	Debt	\$ 19.2	\$ 725.2	\$ 744.4						
Operating leases	Operating leases	8.8	49.0	57.8						
Contingent consideration	Contingent consideration	—	1.4	1.4						
Contingent consideration	Contingent consideration									
Contingent consideration	Contingent consideration									
Unrecorded contractual obligations:	Unrecorded contractual obligations:									
Purchase obligations	Purchase obligations									
Purchase obligations	Purchase obligations									
Purchase obligations	Purchase obligations	85.8	187.6	273.3						
Interest payments on debt	Interest payments on debt	23.8	77.8	101.6						
Total contractual obligations <sup>(1)</sup>	Total contractual obligations <sup>(1)</sup>	\$137.5	\$1,040.9	\$1,178.4						

(1) The individual amounts may not sum to the total due to rounding.

Debt

As of September 30, 2023 March 31, 2024, we had total remaining principal payments of \$744.4 million \$1.0 billion. These payments represent principal payments only, under the following assumptions: (i) that the amounts outstanding under the 2020 Credit Facility, our real estate loans and our other debt at September 30, 2023 March 31, 2024 will remain outstanding until maturity, with minimum payments occurring as currently scheduled, and (ii) that there are no assumed future borrowings on the revolving credit loans under the 2020 Credit Facility for the purposes of determining minimum commitment amounts. See Note 6 7 to our unaudited, condensed consolidated financial statements in this report for more information.

Interest payments on debt

In addition to principal payments, as of September 30, 2023 March 31, 2024, we expect to pay interest expense over the life of our debt obligations of approximately \$101.6 million \$122.0 million. These payments represent our estimated future interest payments on debt using our debt balances and the related weighted average effective interest rates as of September 30, 2023 March 31, 2024, which includes the effect of interest rate swap agreements. The actual interest expense recognized in our unaudited, condensed consolidated statements of comprehensive income will depend on the amount of debt, the length of time the debt is outstanding and the interest rate, which could be different from our assumptions on our remaining principal payments described above.



#### Operating leases

As of September 30, 2023 March 31, 2024, we had remaining operating lease payments of \$57.8 million \$53.4 million. These payments have not been reduced by sublease income, incentive payments, reimbursement of leasehold improvements or the amount representing imputed interest of \$9.2 million \$8.2 million. Our operating leases are generally for corporate offices, subleased offices and certain equipment and furniture. Given our remote-first workforce strategy and real estate footprint optimization efforts, as discussed above, we do not anticipate entering any new, material operating leases for offices for the foreseeable future. See Note 8 9 to our unaudited, condensed consolidated financial statements in this report for more information.

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#### Purchase obligations

As of September 30, 2023 March 31, 2024, we had remaining purchase obligations of \$273.3 million \$239.8 million. These purchase obligations are for third-party technology used in our solutions and for other services we purchase as part of our normal operations. In certain cases, these arrangements require a minimum annual purchase commitment by us. Our purchase obligations are not recorded as liabilities on our unaudited, condensed consolidated balance sheets as of September 30, 2023 March 31, 2024, as we had not received the related services. See Note 8 9 to our unaudited, condensed consolidated financial statements in this report for more information.

The total liability for uncertain tax positions as of September 30, 2023 March 31, 2024 was \$3.4 million \$3.5 million. Our accrued interest and penalties related to tax positions taken on our tax returns was insignificant as of September 30, 2023 March 31, 2024.

In connection with the settlement of the multi-state Attorneys General investigation relating to the Security Incident, as discussed in Note 12 11 to our unaudited, condensed audited consolidated financial statements contained in this report, our Annual Report on Form 10-K filed with the SEC on February 21, 2024, we have agreed to implement and improve certain of our cybersecurity programs and tools through October 2030. The currently anticipated costs in connection with these efforts are expected to be expensed as incurred.

#### Contingent consideration

In connection with our acquisition of Kilter in August 2022, we may be required to pay up to a maximum of \$3.0 million in additional cash consideration if, during the two-year period commencing January 1, 2023, Kilter meets certain application participation targets. As of September 30, 2023 March 31, 2024, a liability for the contingent consideration is recorded at its current estimated fair value of \$1.4 million in accrued expenses and other current liabilities on our unaudited, condensed consolidated balance sheets.

### Foreign Currency Exchange Rates

Approximately 15% of our total revenue for the nine three months ended September 30, 2023 March 31, 2024 was generated from operations outside the U.S. We do not have significant operations in countries in which the economy is considered to be highly inflationary. Our consolidated financial statements are denominated in U.S. dollars and, accordingly, changes in the exchange rate between foreign currencies and the U.S. dollar will affect the translation of our subsidiaries' financial results into U.S. dollars for purposes of reporting our consolidated financial results. The accumulated currency translation adjustment, recorded within accumulated other comprehensive income (loss) as a component of stockholders' equity, was a loss of \$14.5 million \$11.0 million as of September 30, 2023 March 31, 2024 and a loss of \$14.9 million \$9.8 million as of December 31, 2022 December 31, 2023. We have entered into foreign currency forward contracts to hedge a portion of the foreign currency exposure that arises on translation of our investments denominated in British Pounds into U.S. dollars.

The vast majority of our contracts are entered into by our U.S. or U.K. entities. The contracts entered into by the U.S. entity are almost always denominated in U.S. dollars or Canadian dollars, and contracts entered into by our U.K., Australian and Irish subsidiaries are generally denominated in British Pounds, Australian dollars and Euros, respectively. Historically, as the U.S. dollar weakened, foreign currency translation resulted in an increase in our revenues and expenses denominated in non-U.S. currencies. Conversely, as the U.S. dollar strengthened, foreign currency translation resulted in a decrease in our revenue and expenses denominated in non-U.S. currencies. During the nine three months ended September 30, 2023 March 31, 2024, foreign translation resulted in a decrease increases in our revenues and an immaterial increase in our expenses denominated in non-U.S. currencies. Though we have exposure to fluctuations in currency exchange rates, primarily those between the U.S. dollar and both the British Pound and Canadian dollar, the impact has generally not been material to our consolidated results of operations or financial position. For the nine three months ended September 30, 2023 March 31, 2024, the fluctuation in foreign currency exchange rates reduced increased our total revenue by \$1.7 million and increased our income from operations by an insignificant amount \$0.9 million and \$0.3 million, respectively. We have entered into foreign currency forward contracts to hedge

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revenues denominated in the Canadian dollar against changes in the exchange rate with the U.S. dollar. We will continue monitoring such exposure and take action as appropriate. To determine the impacts on revenue (or income from operations) from fluctuations in currency exchange rates, current period revenues (or income from operations) from entities reporting in foreign currencies were translated into U.S. dollars using the comparable prior year period's weighted average foreign currency exchange rates. These impacts are non-GAAP financial information and are not in accordance with, or an alternative to, information prepared in accordance with GAAP.

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**(Unaudited)**

## Critical Accounting Policies and Estimates

There have been no significant changes in our critical accounting policies and estimates during the **nine** **three** months ended **September 30, 2023** **March 31, 2024** as compared to those disclosed in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the fiscal year ended **December 31, 2022** **December 31, 2023**.

## Recently Issued Accounting Pronouncements

For a discussion of the impact that recently issued accounting pronouncements are expected to have on our financial position and results of operations when adopted in the future, see Note 2 to our unaudited, condensed consolidated financial statements in this report.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We have market rate sensitivity for interest rates and foreign currency exchange rates.

### Interest Rate Risk

Our variable rate debt is our primary financial instrument with market risk exposure for changing interest rates. We manage our variable rate interest rate risk through a combination of short-term and long-term borrowings and the use of derivative instruments entered into for hedging purposes. Our interest rate exposure includes SOFR rates. **Because the Financial Conduct Authority in the U.K. previously stated that it would phase out all tenors of LIBOR by June 2023, we modified our financial contracts that were indexed to LIBOR to reference SOFR during 2022. These modifications did not have a significant financial impact.** Due to the nature of our debt, the materiality of the fair values of the derivative instruments and the highly liquid, short-term nature and level of our cash and cash equivalents as of **September 30, 2023** **March 31, 2024**, we believe that the risk of exposure to changing interest rates for those positions is immaterial. There were no significant changes in how we manage interest rate risk between **December 31, 2022** **December 31, 2023** and **September 30, 2023** **March 31, 2024**.

### Foreign Currency Risk

For a discussion of our exposure to foreign currency exchange rate fluctuations, see "Management's Discussion and Analysis of Financial Condition and Results of Operations — Foreign Currency Exchange Rates" in this report.

## ITEM 4. CONTROLS AND PROCEDURES

### Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures (as defined in Securities Exchange Act Rule 13a-15(e) and 15d-15(e)) are designed only to provide reasonable assurance that they will meet their objectives. As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer (principal executive officer) and Chief Financial Officer (principal financial and accounting officer), of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e)) pursuant to Securities Exchange Act Rule 13a-15(b). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures are effective to provide the reasonable assurance discussed above.

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(Unaudited)

Changes in Internal Control Over Financial Reporting

No changes in internal control over financial reporting occurred during the most recent fiscal quarter ended September 30, 2023 March 31, 2024 with respect to our operations, which have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For a discussion of our legal proceedings, see Note 89 to our unaudited, condensed consolidated financial statements in this report.

ITEM 1A. RISK FACTORS

We are supplementing Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, as filed with the Securities and Exchange Commission on February 24, 2023 February 21, 2024 (the "Annual Report"). The following risk factors should be read in conjunction with the risk factors set forth in that Annual Report.

Strategic Financial Risks

We are incorporating generative artificial intelligence, or AI, into certain significantly increased our leverage in connection with acquisition of EVERFI and may increase our products and services. This technology is new and developing, and while we aim to adopt known best practices, it may result in operational, financial and reputational harm and other adverse consequences to our business.

We are implementing AI features in certain of our products and services. The technologies underpinning these features are leverage in the early stages of commercial use and exist future in an emerging regulatory environment, which presents regulatory, litigation, ethical, reputational, operational and financial risks. Many U.S. and international governmental bodies and regulators have proposed, or are in the process of developing, new regulations related to the use of AI and machine learning technologies. The final form of these may impose obligations related to our development, offering and use of AI technologies and expose us to increased risk of regulatory enforcement and litigation. We also expect that many of our generative AI features will include the processing of personal data and may be subject to laws, policies, legal obligations and codes of conduct related to privacy and data protection. There is uncertainty about the extent to which privacy and data protection laws apply to AI technologies, and any delay in addressing privacy or data protection concerns relating to our AI features may result in liability or regulatory investigations and fines, as well as harm to our sales and reputation. In addition, issues relating to intellectual property rights in AI-generated content have not been fully addressed by the courts, laws or regulations. Accordingly, the implementation of generative AI technologies



into our products and services may result in exposure to claims related to copyright infringement connection with additional acquisitions, Security Incident costs or other intellectual property misappropriation.

Furthermore, many of our AI features may rely on third-party service providers. As such, any improper processing of personal data by these service providers could harm our reputation, business or customers, or expose us to legal liability. Any disruption or failure in our AI systems or infrastructure could result in delays or errors in our operations, purposes, which could harm adversely impact our business and financial results, performance.

Our generative AI features may also generate output that is misleading, insecure, inaccurate, harmful We incurred a substantial amount of indebtedness in connection with acquisitions, including our acquisition of EVERFI, Inc. (as described in Note 3 in our most recently filed Annual Report on Form 10-K). As a result of this indebtedness and other borrowings, including our borrowings in March 2024 to fund the ASR Transaction, our interest payment obligations have increased. In addition, we have been named as a party in various lawsuits in connection with the Security Incident, claims have been asserted by or otherwise flawed, which may harm on behalf of our reputation, business or customers or expose their constituents, and we are subject to various governmental inquiries, requests or investigations. Responding to and resolving these current and any future lawsuits, claims and/or investigations could result in material remedial and other expenses. Although we intend to defend ourselves vigorously against the claims asserted against us, we cannot predict the potential outcomes, cost and expenses associated with current and any future claims, lawsuits, inquiries and investigations, which could require that we incur additional indebtedness to fund. (See Note 9 to our unaudited, condensed consolidated financial statements in this report for additional information regarding the Security Incident.)

The degree to which we are leveraged could have adverse effects on our business, including the following:

- Requiring us to legal liability. Also, some AI scenarios present ethical issues. dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions, dividends, stock repurchases and other general corporate purposes;
- Increasing the amount of interest we pay, particularly if interest rates increase;
- Limiting our flexibility in planning for, or reacting to, changes in our business and the industries in which we operate;
- Restricting us from making additional strategic acquisitions or exploiting business opportunities;
- Placing us at a competitive disadvantage compared to our competitors that have less debt;
- Reducing our currently available borrowing capacity or limiting our ability to borrow additional funds; and
- Decreasing our ability to compete effectively or operate successfully under adverse economic and industry conditions.

If we enable or offer AI solutions that incur additional debt, these risks may intensify. Our ability to meet our debt service obligations will depend upon our future performance, which will be subject to the financial, business and other factors affecting our operations, many of which are controversial because of their purported or actual impact on human rights, privacy, employment or other social issues, we may experience reputational harm, beyond our control.

New and emerging AI technologies may require In addition, additional investment in the development and maintenance of various models, approaches and processes, as well as development of protections and safeguards for the use of AI technologies, which may be expensive and leverage could impact our ability to meet certain financial results and other covenants contained in our 2024 Credit Facilities. (See Note 13 to our unaudited, condensed consolidated financial statements included in this report for a more detailed description of our 2024 Credit Facilities.) There can be no assurance that we will be able to remain in compliance with the covenants to which we are now subject or may be subject in the future and, if we decide fail to further expand generative AI into do so, that we will be able to obtain waivers from our products and services. Likewise, lenders or amend the use of AI involves significant technical complexity and requires specialized expertise. The success of any enhancement or new product depends on many factors, including its relevance to our customers, timely implementation and market acceptance. If our enhanced products and services do not achieve widespread market adoption or there is a reduction in demand due to a lack of customer acceptance, technology challenges, strengthening competition, weakening economic conditions, or security or privacy concerns, our business could be harmed and our financial results could be adversely affected. covenants.

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Although in the event of a default under our 2024 Credit Facilities, we aim could be required to develop immediately repay all outstanding borrowings, which we might not be able to do and use AI responsibly which would materially negatively affect our business, operations and attempt to identify and mitigate ethical and legal issues presented by its use, we may be unsuccessful in identifying or resolving issues before they arise, financial condition.

Operational Risks

The Security Incident has had, and may continue to have, numerous adverse effects on our business, results of operations, financial condition and cash flows.

As previously disclosed, on July 16, 2020, we contacted certain customers to inform them about the Security Incident, including that in May 2020 we discovered and stopped a ransomware attack. Prior to our successfully preventing the cybercriminal from blocking our system access and fully encrypting files, and ultimately expelling them from our system with no significant disruption to our operations, the cybercriminal removed a copy of a subset of data from our self-hosted environment that affected over 13,000 customers. Based



on the nature of the incident, our research and third party (including law enforcement) investigation we believe that no data went beyond the cybercriminal, was or will be misused, or will be disseminated or otherwise made available publicly. However, our investigation into the Security Incident remains ongoing and may provide additional information.

To date, we have received approximately 260 customer specific requests from customers for reimbursement requests of expenses incurred by them related to the Security Incident, approximately 214 (or 82%) of which have been fully resolved and closed and approximately 39 (or 15%) are inactive and are considered by us to have been abandoned by the customers. We have also received approximately 400 reservations of the right to seek expense recovery in the future from customers or their attorneys in the U.S., U.K. and Canada related to the Security Incident, none of which resulted in claims submitted to us and are considered by us to have been abandoned by the customers. We have also received notices of proposed claims on behalf of a number of U.K. data subjects, which we are reviewing. In addition, insurance companies representing various customers' interests through subrogation claims have contacted us, and certain insurance companies have filed subrogation claims in court. Customer court, of which 3 cases remain active and insurer subrogation claims generally seek reimbursement of their costs and expenses associated with notifying their own customers of the Security Incident and taking steps to assure that personal information has not been compromised as a result of the Security Incident, unresolved. In addition, presently, we are a defendant in putative consumer class action cases in U.S. federal courts (most of which have been consolidated under multi district litigation to a single federal court) and in Canadian courts alleging harm from the Security Incident. The plaintiffs in these cases, who generally purport to represent various classes of individual constituents of our customers, generally claim to have been harmed by alleged actions and/or omissions by us in connection with the Security Incident and assert a variety of common law and statutory claims seeking monetary damages, injunctive relief, costs and attorneys' fees, and other related relief. We have received a Civil Investigative Demand from the office of the California Attorney General relating to the Security Incident. In addition, we are subject to pending governmental actions or investigations by the U.S. Federal Trade Commission, the U.S. Department of Health and Human Services, the Office of the Australian Information Commissioner and the Office of the Privacy Commissioner of Canada. (See Note 9 to our unaudited, condensed consolidated financial statements included in this report for a more detailed description of the Security Incident and related matters.)

On March 9, 2023, the Company reached a settlement with the SEC in connection with the Security Incident that fully resolved the previously disclosed SEC investigation of the Security Incident.

On October 5, 2023, the Company reached a settlement entered into separate, substantially similar Administrative Orders with each of 49 state Attorneys General and the District of Columbia in connection with the Security Incident. This settlement Incident which fully resolves resolved the previously disclosed multi-state Civil Investigative Demand and the separate Civil Investigative Demand from the Office of the Indiana Attorney General relating to the Security Incident, Incident.

As previously disclosed, on February 1, 2024, the FTC announced its approval of an Agreement Containing Consent Order (the "Proposed Order") evidencing its settlement with the Company in connection with the Security Incident. Pursuant to its rules, the FTC placed the Proposed Order and related draft complaint on the public record for a period of 30 days for the receipt of public comments after which the FTC will consider any comments received from interested persons prior to determining whether and in what form to finalize the Proposed Order. The 30-day comment period is further expired on March 14, 2024. As part of the FTC's proposed order, the Company has not been fined and is not otherwise required to make any payment. Furthermore, the Company has agreed to the FTC's proposed order without admitting or denying any of the FTC's allegations, except as expressly stated otherwise in the Proposed Order. If finalized, the settlement described in the Proposed Order will fully resolve the FTC investigation. Although we believe the Proposed Order will be finalized in substantially similar Administrative Orders filed in each of the 49 states and the District of Columbia.

its current form, there can be no assurances as to whether that will occur or its timing. Under the terms of the Administrative Orders, Proposed Order, we have agreed: agreed (i) to comply with state consumer protection laws, data breach notification laws, and HIPAA; (ii) not misrepresent (a) the extent to make misleading misrepresentations to our customers which we maintain, use, delete or the individuals whose data is stored by us concerning (a) disclose certain customer information, (b)

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Blackbaud, Inc.

the extent to which we protect the privacy, security, availability, confidentiality or integrity of certain data, (b) the likelihood that data impacted by a security incident may be subject to unauthorized access, disclosure, or other misuse, such information or (c) the extent of any security incident or unauthorized disclosure, misuse, loss, theft, alteration, destruction or other compromise of such information, and (ii) to delete certain data, breach notification requirements, adopt and (iii) to make public certain record retention limits, establish, implement and improve certain cybersecurity programs and tools.

As part maintain a specified information security program, obtain regular independent assessments of the Administrative Orders, we also agreed to pay a total of \$49.5 million mandated information security program, provide to the 49 states and District of Columbia. We expect to pay the full settlement amount to each state and the District of Columbia during the fourth quarter of 2023 from FTC specified certifications regarding our existing liquidity. This amount was fully accrued as a contingent liability in our financial statements as of June 30, 2023. We entered into the Administrative Orders without admitting fault of liability in connection compliance with the matters subject Proposed Order, provide to the Multistate Investigation, FTC reports of any future security incidents and create and maintain specified recordkeeping. The form of Administrative Proposed Order was furnished as Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the SEC on October 5, 2023 February 2, 2024.

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Blackbaud, Inc.

On March 9, 2023, As noted above, the Company reached a terms of the FTC Proposed Order, the Attorneys General Administrative Orders and our settlement with the SEC require that we implement and maintain certain processes and programs and comply with certain legal requirements related to cybersecurity and data protection. Any future regulatory investigation or litigation settlements may also contain such requirements. Effectively implementing, monitoring and updating these requirements is expected to be expensive and time-consuming over an extended period. Our failure to do so in connection accordance with the Security Incident. This settlement fully resolves terms of our agreements with FTC, the previously disclosed SEC investigation of the Security Incident Attorneys General and is further described in with the SEC, Order. Under and possibly others, could expose us to additional material liability under the terms of the SEC Order, the Company agreed to cease-and-desist from committing or causing any violations or any future violations of Sections 17(a)(2) and (3) of the Securities Act and Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-13 and 13a-15(a) thereunder. As part of Administrative Orders, the SEC Order, the Company also agreed to pay, and has paid, a civil penalty in the amount of \$3.0 million, settlement, or otherwise.

See Note 9 to our unaudited, condensed consolidated financial statements in this report for a more detailed description of the Security Incident and related matters.

We may be named as a party in additional lawsuits, other claims may be asserted by or on behalf of our customers or their constituents, and we may be subject to additional governmental inquiries, requests or investigations. Responding to and resolving these current and any future lawsuits, claims and/or investigations could result in material remedial and other expenses that will not be covered by insurance. It is reasonably possible that our estimated or actual losses may change in the near term for those matters and be materially in excess of the amounts accrued. Certain governmental authorities are seeking to impose undertakings, injunctive relief, consent decrees, or other civil or criminal penalties, which could, among other things, materially increase our data security costs or otherwise require us to alter how we operate our business. Although we intend to defend ourselves vigorously against the claims asserted against us, we cannot predict the potential outcomes, cost and expenses associated with current and any future claims, lawsuits, inquiries and investigations.

In addition, any legislative or regulatory changes adopted in reaction to the Security Incident or other companies' data breaches could require us to make modifications to the operation of our business that could have an adverse effect and/or increase or accelerate our compliance costs.

Significant management time and Company resources have been, and are expected to continue to be, devoted to the Security Incident. For example, for the three and nine months ended September 30, 2023 March 31, 2024, we incurred net pre-tax expenses of \$4.1 million and \$48.6 million, respectively, \$10.3 million related to the Security Incident, which included \$4.1 million and \$18.6 million, respectively, \$3.3 million for ongoing legal fees and additional accruals for loss contingencies of \$0.0 million and \$30.0 million, respectively, \$7.0 million. During the nine three months ended September 30, 2023 March 31, 2024, we had net cash outlays of \$23.1 million \$2.0 million related to the Security Incident which included for ongoing legal fees and the \$3.0 million civil penalty paid during the first quarter of 2023 related to the SEC settlement (as discussed in Note 8). fees. For full year 2023, we currently expect net pre-tax expense expenses of approximately \$20.0 million \$5.0 million to \$30.0 million \$10.0 million and net cash outlays of approximately \$25.0 million \$8.0 million to \$35.0 million \$13.0 million for ongoing legal fees related to the Security Incident. Although we carry insurance against certain losses related to the Security Incident, we exceeded the limit of that insurance coverage in the first quarter of 2022. As a result, we will be responsible for all expenses or other losses (including penalties, fines or other judgments) or all types of claims that may arise in connection with the Security Incident, which could materially and adversely affect our liquidity and results of operations. (See Note 9 to our unaudited, condensed consolidated financial statements in this report.) If any such fines or penalties were great enough that we could not pay them through funds generated from operating activities and/or cause a default under the 2020 2024 Credit Facility, Facilities, we may be forced to renegotiate or obtain a waiver under the 2020 2024 Credit Facility Facilities and/or seek additional debt or equity financing. Such renegotiation or financing may not be available on acceptable terms, or at all. In these circumstances, if we were unable to obtain sufficient financing, we may not be able to meet our obligations as they come due.

In addition, publicity or developments related to the Security Incident could in the future have a range of other adverse effects on our business or prospects, including causing or contributing to loss of customer confidence, reduced customer demand, reduced customer retention, strategic growth opportunities, and associated retention and recruiting difficulties, some or all of which could be material.

Blackbaud, Inc.

Legal and Compliance Risks

Provisions in our organizational documents, our Stockholder Rights Agreement (as described below, the "Rights Agreement"), certain officer compensation arrangements and Delaware law may delay or prevent an acquisition or change of control of our Company that could be deemed beneficial to our stockholders.

Certain provisions in our organizational documents, the Rights Agreement, compensation arrangements with our officers and Delaware law (as summarized below) may have the effect of delaying, deferring, discouraging or preventing an acquisition or change in control of the Company or a change in our management. This includes tender offers for our common stock, proxy contests or other takeover attempts. These anti-takeover effects may discourage transactions that might result in the payment of a premium over the market price for shares of our common stock. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if they are viewed as discouraging takeover attempts in the future.

Certificate of Incorporation and Bylaw provisions. The Board of Directors is divided into three classes of directors, as nearly equal in number as possible, with each class serving a staggered term of three years. The classification of directors will have the effect of making it more difficult and time-consuming for stockholders to change the composition of the

Board of Directors, could discourage a third-party from making a tender offer or otherwise attempting to obtain control of the Company and may maintain the incumbency of the Board of Directors.


Our Bylaws contain an advance notice procedure for stockholders proposals to be brought before a meeting of stockholders, including any proposed nominations of persons for election to the Board of Directors. The Bylaws may have the effect of precluding the conduct of business at a meeting if the proper procedures are not followed and may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempting to obtain control of the Company.

The Board of Directors has the authority to issue up to an aggregate of 20,000,000 shares of preferred stock in one or more classes or series and to determine, with respect to any such class or series, the designations, powers, preferences and rights of such class or series, and the qualifications, limitations and restrictions thereof, including dividend rights, dividend rates, conversion rights, voting rights, terms of redemption (including sinking fund provisions), redemption prices, liquidation preferences, and the number of shares constituting any class or series or the designation of such class or series, without further vote or action by the stockholders. This preferred stock, including the Series A Preferred Stock described below, could have terms that may discourage a potential acquirer from making, without first negotiating with the Board of Directors, an acquisition attempt through which such acquirer may be able to change the composition of the Board of Directors, including a tender offer or other takeover attempt.

The Board of Directors possesses the authority to call and hold emergency special meetings of the Board of Directors with less than forty-eight hours' notice. This power to hold an emergency special meeting of the Board of Directors on short notice could discourage a potential acquirer from launching a bid to acquire majority ownership of the Company, a proxy solicitation in order to replace the current Board of Directors, or otherwise attempting to obtain control of the Company.

**Stockholder Rights Agreement.** **Agreement (the "Rights Agreement").** On October 7, 2022, the Company declared a dividend of one preferred share purchase right for each of the Company's issued and outstanding shares of Common Stock. The description and terms of these Rights are set forth in the Rights Agreement by and between the Company and American Stock Transfer & Trust Company, LLC. Each Right **entitles** **entitled** the registered holder, subject to the terms of the Rights Agreement, to purchase from us one one-thousandth of a share of the Series A Junior Participating Preferred Stock, par value \$0.001 per share (the "Series A Preferred Stock") at a price of \$313.00, subject to certain adjustments (as adjusted from time to time, the "Exercise Price"). Under the Rights Agreement, the Rights **will** **would have** become exercisable if an entity, person or group acquires beneficial ownership of 20% or more of the outstanding Common Stock in a transaction not approved by the Board of Directors. In the event that the Rights **become** **became** exercisable due to the ownership threshold being crossed, each Right **will** **entitle** **would have entitled** its holder (other than the person, entity or group triggering the Rights Plan, whose rights **will** **would have** become void and **will** **not be** exercisable) to purchase additional shares of Common Stock having a then-current market value of twice the Exercise Price, which would **have** **likely** **make** **made** any takeover or change of control attempt by such entity, person or group prohibitively expensive. Subject to the terms of the Rights Agreement, the Rights were scheduled to expire on October 2, 2023. On October 2, 2023, the Company amended the Rights Agreement to extend the final expiration date from October 2, 2023 to October 2, 2024. **The** **On January 26, 2024, the** Company **expects** **amended the Rights Agreement to** **submit** **substitute Broadridge Corporate Issuer Solutions, LLC as the** **Amendment to new rights agent under** the **Company's stockholders for ratification at** Rights Agreement. **On March 18, 2024, the** **Company's 2024 annual meeting** Company terminated the Rights Agreement and eliminated the Series A Preferred Stock as a series of **stockholders. Additional** stock under its Amended and Restated Certificate of Incorporation.

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Blackbaud, Inc.

**At the time of the termination of the Rights Agreement, all of the Rights expired. Additional** information regarding the **Amendment, including a copy of the Amendment, Rights Agreement and its termination,** is contained in the Company's Current **Report** **Reports** on Form 8-K filed with the SEC on October 2, 2023, **January 26, 2024 and March 18, 2024 and in the Company's Form 8-A/A filed with the SEC on March 18, 2024.**

**Officer Compensation Arrangements.** We have entered into an employment agreement with our Chief Executive Officer and retention agreements with certain of our officers, which provide that, upon the occurrence of a change in control of us and either the termination of their employment without cause (as defined) or their resignation for good reason (as defined), such persons would be entitled to certain termination or severance payments made by us (which may include a lump sum payment equal to defined percentages of compensation and accelerated vesting of certain equity stock awards paid in accordance with the terms and conditions of the respective agreement). Such provisions could significantly increase the costs to a third-party acquirer and/or deter such third-party from acquiring us.

**Delaware anti-takeover law.** We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation, such as the Company, from engaging in a "business combination" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless certain criteria are met. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns, or is an affiliate or associate of the corporation, and within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Issuer Purchases of Equity Securities

The following table provides information about shares of common stock acquired or repurchased during the three months ended September 30, 2023 March 31, 2024 under the stock repurchase program then in effect, as well as common stock withheld by us to satisfy the minimum tax obligations of employees due upon vesting of restricted stock awards and units.

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Approximate dollar value of shares that may yet be purchased under the plans or programs (in thousands)
Beginning balance, July 1, 2023				\$ 250,000
July 1, 2023 through July 31, 2023	—	\$ —	—	250,000
August 1, 2023 through August 31, 2023	25,710	73.16	—	250,000
September 1, 2023 through September 30, 2023	—	—	—	250,000
Total	25,710	\$ 73.16	—	\$ 250,000

Period	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Approximate dollar value of shares that may yet be purchased under the plans or programs (in thousands)
Beginning balance, January 1, 2024				\$ 231,169
January 1, 2024 through January 31, 2024	273,907	\$ 83.56	273,907	499,424
February 1, 2024 through February 29, 2024	845,090	72.51	124,901	490,870
March 1, 2024 through March 31, 2024	2,555,403	90.46	2,555,403	259,716
Total	3,674,400	\$ 85.82	2,954,211	\$ 259,716

- (1) Includes 25,710 720,189 shares in August February withheld by us to satisfy the minimum tax obligations of employees due upon vesting of restricted stock awards and units. The level of this acquisition activity varies from period to period based upon the timing of award grants and vesting.
- (2) In December 2021, January 2024, our Board of Directors reauthorized, expanded and replenished our stock repurchase program to authorize us to purchase up to \$250.0 million \$500.0 million of our outstanding shares of common stock. The program does not have an expiration date.



ITEM 5. OTHER INFORMATION

Trading Arrangements Adopted or Terminated

During the three months ended **September 30, 2023** **March 31, 2024**, none of the Company's directors or executive officers adopted or terminated any contract, instruction or written plan for the purchase or sale of Company securities.

April 2024 Credit Agreement Refinancing

On April 30, 2024, we entered into the Amendment. The Amendment amends the Existing Credit Agreement.

The Amendment amends the Existing Credit Agreement to, among other things, (a) refinance the credit facilities under the Existing Credit Agreement to provide for (i) the 2024 Revolving Facility and (ii) the 2024 Term Facility, (b) extend the maturity date to April 30, 2029, (c) modify the definition of Applicable Margin and (iv) modify certain negative and financial covenants to provide additional operational flexibility.

Under the 2024 Credit Facilities, dollar tranche revolving loans and term loans bear interest at a rate per annum equal to, at the option of the Company: (a) a base rate equal to the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the prime rate announced by Bank of America, N.A., and (iii) the Base Rate, plus the Applicable Margin; (b) Term SOFR plus the Applicable Margin; or (c) the Daily SOFR Rate plus the Applicable Margin. The Applicable Margin shall be adjusted quarterly, varies based on our net leverage ratio and varies based on whether the loan is a Base Rate Loan (0.375% to 1.500%), or a Term SOFR Loan/Daily SOFR Loan (1.375% to 2.500%). The 2024 Credit Agreement also provides for a commitment fee of between 0.250% and 0.500% of the unused commitment under the 2024 Revolving Facility depending on our net leverage ratio.

Under the 2024 Credit Facilities, designated currency tranche revolving loans bear interest at a rate per annum equal to, at the option of the Company: (a) the Designated Currency Daily Rate (as defined in the 2024 Credit Agreement) plus the Applicable Margin; or (b) the Designated Currency Term Rate (as defined in the 2024 Credit Agreement) plus the Applicable Margin. The Applicable Margin shall be adjusted quarterly and varies based on our net leverage ratio for both Designated Currency Daily Rate Loans and Designated Currency Term Rate Loans (1.375% to 2.500%).

We may prepay the 2024 Credit Agreement in whole or in part at any time without premium or penalty, other than customary breakage costs with respect to certain types of loans.

Under the terms of the 2024 Credit Agreement, we are entitled on one or more occasion, subject to the satisfaction of certain conditions, to request an increase in the commitments under the 2024 Revolving Facility and/or request additional incremental term loans in the aggregate principal amount of up to the sum of (i)(x) the greater of (A) \$360.0 million and (B) 100% of EBITDA (as defined in the 2024 Credit Agreement), plus (ii) at our option, up to an amount such that the net leverage ratio shall be no greater than 3.50 to 1.00.

The 2024 Credit Agreement contains various representations, warranties and affirmative, negative and financial covenants customary for financings of this type. Financial covenants include a net leverage ratio and an interest coverage ratio.

The descriptions of the Amendment and the 2024 Credit Agreement contained in this Part II, Item 5 of our Quarterly Report on Form 10-Q do not purport to be complete and are subject to, and qualified in their entirety by, the full and complete terms contained in the Amendment, a copy of which is filed as Exhibit 10.1 and is incorporated herein by reference.

Blackbaud, Inc.

ITEM 6. EXHIBITS

The exhibits listed below are filed or incorporated by reference as part of this Quarterly Report on Form 10-Q:

Exhibit Number	Description of Document	Filed In			
		Filed Herewith	Form	Exhibit Number	Filing Date
<a href="#">4.1</a>	<a href="#">Amendment to Stockholder Rights Agreement, dated as of October 2, 2023, between Blackbaud, Inc. and Equiniti Trust Company, LLC (f/k/a American Stock Transfer &amp; Trust Company, LLC), as Rights Agent.</a>		8-K	4.2	10/02/2023
<a href="#">10.1</a>	<a href="#">Amended and Restated Blackbaud, Inc. 2016 Equity and Incentive Compensation Plan</a>		DEF 14A	Appendix B	4/25/2023
<a href="#">31.1</a>	<a href="#">Certification by the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	X			
<a href="#">31.2</a>	<a href="#">Certification by the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	X			
<a href="#">32.1</a>	<a href="#">Certification by the Chief Executive Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	X			

32.2	<a href="#">Certification by the Chief Financial Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	X
101.INS	Inline XBRL Instance Document - the Instance Document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL Document.	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).	X

Exhibit Number	Description of Document	Filed In			
		Filed Herewith	Form	Exhibit Number	Filing Date
3.1	<a href="#">Certificate of Elimination of the Series A Junior Participating Preferred Stock of Blackbaud, Inc.</a>		8-A12B/A	3.1	3/18/2024
4.1	<a href="#">Second Amendment to Stockholder Rights Agreement, dated as of January 26, 2024, by and among Blackbaud, Inc. and Broadridge Corporate Issuer Solutions, LLC.</a>		8-K	4.3	1/26/2024
4.2	<a href="#">Third Amendment to Stockholder Rights Agreement, dated as of March 18, 2024, by and between Blackbaud, Inc. and Broadridge Corporate Issuer Solutions, LLC.</a>		8-K	4.4	3/18/2024
10.1	<a href="#">Third Amendment to Credit Agreement, dated as of April 30, 2024, by and among Blackbaud, Inc., the lenders party thereto and Bank of America N.A., as administrative agent.</a>	X			
31.1	<a href="#">Certification by the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	X			
31.2	<a href="#">Certification by the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	X			
32.1	<a href="#">Certification by the Chief Executive Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	X			
32.2	<a href="#">Certification by the Chief Financial Officer pursuant to 18 U.S.C. 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	X			
101.INS	Inline XBRL Instance Document - the Instance Document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL Document.	X			
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	X			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	X			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	X			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	X			
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	X			
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).	X			

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## SIGNATURES

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

### BLACKBAUD, INC.

Date: May 1, 2024

By: /s/ Michael P. Gianoni

Michael P. Gianoni

Chief Executive Officer, President and Vice Chairman of the Board

(Principal Executive Officer)

Date: May 1, 2024

By: /s/ Anthony W. Boor

Anthony W. Boor

Executive Vice President and Chief Financial Officer

(Principal Financial and Accounting Officer)

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EXHIBIT 10.1

EXECUTION VERSION

### THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "Agreement"), dated as of April 30, 2024 (the "Third Amendment Effective Date"), is entered into among BLACKBAUD, INC., a Delaware corporation (the "Company"), the Lenders party hereto, and BANK OF AMERICA, N.A., a national banking association, as Administrative Agent (the "Administrative Agent") for the Lenders (as hereinafter defined).

All capitalized terms not otherwise defined herein shall have the meanings attributed thereto in the Credit Agreement (as hereinafter defined).

### RECITALS

WHEREAS, the Company, the other borrowers from time to time party thereto, the lenders from time to time party thereto (the "Lenders") and the Administrative Agent entered into that certain Amended and Restated Credit Agreement, dated as of October 30, 2020 (as amended by that certain LIBOR Transition Amendment, dated as of September 20, 2021, as further amended by that certain First Incremental Term Loan Agreement, dated as of December 31, 2021, as further amended by that certain First Amendment to Credit Agreement, dated as of January 31, 2022, as amended by that certain LIBOR Transition Amendment, dated as of August 26, 2022, the "Existing Credit Agreement" and, the Existing Credit Agreement as amended by this Agreement, the "Credit Agreement");

WHEREAS, the Company has requested that the Lenders agree to modify certain provisions of the Existing Credit Agreement; and

WHEREAS, the Lenders have agreed to amend the Existing Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:



**ARTICLE I**  
**AMENDMENTS TO EXISTING CREDIT AGREEMENT**

**1.1 Amendments to Existing Credit Agreement.** Subject to the terms and conditions herein:

(a) Effective as of the Third Amendment Effective Date, the Existing Credit Agreement is hereby amended to (i) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~), and (ii) add the double underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the Credit Agreement attached hereto as Annex I.

(b) Schedules 1.1(b) (Lenders and Commitments), 6.1(a) (Jurisdictions of Organization), 6.1(b) (Subsidiaries and Capitalization), 6.1(l) (Material Domestic Subsidiaries), 6.1(m) (Labor and Collective Bargaining Agreements), 10.1 (Existing Indebtedness), 10.2 (Existing Liens), 10.3 (Existing Loans, Advances and Investments) and 10.8 (Transactions with Affiliates) to the Existing Credit Agreement are each hereby amended to read in the respective forms attached as Schedule 1.1(b), Schedule 6.1(a), Schedule 6.1(b), Schedule 6.1(l), Schedule 6.1(m), Schedule 10.1, Schedule 10.2, Schedule 10.3 and Schedule 10.8 hereto.

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(c) Exhibits B (Form of Loan Notice) and D (Form of Notice of Prepayment) to the Existing Credit Agreement are each hereby amended to read in the respective forms attached as Exhibit B and Exhibit D.

(d) A new Schedule 4.2 to the Credit Agreement (Day Basis for Designated Currencies) is hereby inserted to read in the form attached as Schedule 4.2 hereto.

**ARTICLE II**  
**CONDITIONS TO EFFECTIVENESS**

**2.1 Closing Conditions.** This Agreement shall be deemed effective as of the Third Amendment Effective Date upon satisfaction (or waiver) of the following conditions (in form and substance reasonably satisfactory to the Administrative Agent):

(a) **Executed Amendment.** This Agreement shall have been duly authorized, executed and delivered to the Administrative Agent by the parties hereto, shall be in full force and effect and no Default or Event of Default shall exist hereunder.

(b) **Officer's Certificate.** The Administrative Agent shall have received a duly executed certificate, in form and substance reasonably satisfactory to the Administrative Agent, from a Responsible Officer of the Company certifying that the conditions set forth in Section 2.1(d) hereof and Sections 5.2(a) and 5.2(b) of the Credit Agreement are satisfied as of the Third Amendment Effective Date.

(c) **Certificate of Secretary of each Credit Party.** A certificate of a Responsible Officer of each Credit Party certifying as to the incumbency and genuineness of the signature of each officer of such Credit Party executing this Agreement and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation of such Credit Party and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation or formation, (B) the bylaws or other governing document of such Credit Party as in effect on the Third Amendment Effective Date, (C) resolutions duly adopted by the board of directors or other governing body of such Credit Party authorizing the transactions contemplated hereunder and the execution, delivery and performance of this Agreement, the Credit Agreement and the other Loan Documents delivered in connection with this Agreement to which it is a party, and (D) certificates as of a recent date of the good standing of each Credit Party under the laws of its jurisdiction of organization; provided, that, to the extent there have been no amendments or other modifications to the documents described in clauses (A) and (B) above since the Closing Date (or the date such Credit Party was joined to the Loan Documents, if applicable), instead of attaching such documents, the certificate required pursuant to this Section 2.1(c) may contain a certification of a Responsible Officer of such Credit Party that such documents described in clauses (A) and (B) above have not been amended or otherwise modified since the Closing Date or the date of the applicable joinder, as applicable.

(d) **Consents.** The Administrative Agent shall have received evidence that all boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(e) **Opinions of Counsel.** The Administrative Agent shall have received favorable opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders party hereto with respect to the Credit Parties, this Agreement, the other Loan Documents and



such other matters as the Lenders shall request, each in form and substance reasonably satisfactory to the Administrative Agent.

- (f) **Financial Condition Certificate.** The Company shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by a Responsible Officer of the Company, that (A) after giving effect to the transactions contemplated hereby on the Third Amendment Effective Date, the Company and each of its Restricted Subsidiaries, taken as a whole are Solvent, (B) after giving effect to the transactions contemplated hereby on the Third Amendment Effective Date, the Company is in pro forma compliance with the covenants contained in Section 9.1 and Section 9.2 of the Credit Agreement, and (C) the financial projections previously delivered to the Administrative Agent represent the good faith estimates (utilizing reasonable assumptions) of the financial condition and operations of the Company and its Restricted Subsidiaries, taken as a whole, in all material respects.
- (g) **Anti-Money-Laundering; Beneficial Ownership.** To the extent reasonably requested by any Lender at least ten (10) days prior to the Third Amendment Effective Date, each Credit Party shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, and any Credit Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Credit Party.
- (h) **Lien Search.** The Administrative Agent shall have received the results of a Lien search (including a search as to judgments, pending litigation and tax matters), in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordations under the Uniform Commercial Code should be made to evidence or perfect security interests in substantially all of the assets of such Credit Party, indicating among other things that its assets are free and clear of any Lien except for Permitted Liens.
- (i) **Payment at Closing; Fee Letters.** The Company shall have paid to the Administrative Agent and the Lenders the fees set forth or referenced in Section 4.3 of the Credit Agreement to the extent payable on the Third Amendment Effective Date and any other accrued and unpaid fees due under the Credit Agreement and the other Loan Documents (including, without limitation, reasonable and documented out-of-pocket legal fees and expenses) and to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of this Agreement or any of the Loan Documents, in each case to the extent invoiced at least two days prior to the Third Amendment Effective Date.
- (j) **Existing Credit Agreement.** The Credit Parties shall have (A) paid all accrued and unpaid interest on the term loan outstanding under the Existing Credit Agreement immediately prior to the Third Amendment Effective Date, (B) paid all accrued and unpaid interest on the dollar tranche revolving credit loans outstanding under the Existing Credit Agreement immediately prior to the Third Amendment Effective, (C) paid all accrued and unpaid interest on the designated currency tranche revolving credit loans outstanding under the Existing Credit Agreement immediately prior to the Third Amendment Effective, (D) to the extent necessary, repaid any term loans in excess of the Term Loan Commitments of the Lenders hereunder as of the Third Amendment Effective Date, (E) prepaid any dollar tranche revolving

credit loans outstanding under the Existing Credit Agreement immediately prior to the Third Amendment Effective to the extent necessary to keep the outstanding Dollar Tranche Revolving Credit Loans ratable with the revised Dollar Tranche Revolving Credit Commitments as of the Third Amendment Effective Date, (F) prepaid any designated currency tranche revolving credit loans outstanding under the Existing Credit Agreement immediately prior to the Third Amendment Effective to the extent necessary to keep the outstanding Designated Currency Tranche Revolving Credit Loans ratable with the revised Designated Currency Tranche Revolving Credit Commitments as of the Third Amendment Effective Date and (G) paid all accrued fees owing to the Lenders under the Credit Agreement immediately prior to the Third Amendment Effective Date.

Without limiting the generality of the provisions of Section 12.3(c) of the Existing Credit Agreement, for purposes of determining compliance with the conditions specified in this Article II, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or

to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Third Amendment Effective Date specifying its objection thereto.

### ARTICLE III

#### REALLOCATION

##### 3.1 New Lender Joinder.

- (a) Each Lender party hereto that was not party to the Existing Credit Agreement immediately prior to the Third Amendment Effective Date (each, a “New Lender”) acknowledges and agrees that upon the occurrence of the Third Amendment Effective Date, (i) it shall be bound under this Agreement and (ii) with respect to its Commitment and its Loans it shall be bound under the Credit Agreement as a Lender holding a Commitment and a Loan for all purposes of, the Credit Agreement and the other Loan Documents, and shall perform all the obligations of and shall have all rights of a Lender thereunder.
- (b) Each New Lender (i) confirms that it has received a copy of the Credit Agreement and the other Loan Documents and the exhibits and schedules thereto, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement, provide the Loans and perform its obligations under the Credit Agreement; (ii) agrees that it will, independently and without reliance upon the Administrative Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iii) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (iv) agrees that it will perform all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender, in accordance with the terms thereof as set forth in the Credit Agreement.

3.2 Reallocation of Loans. After giving effect to this Agreement, any Loans outstanding on the date hereof may not be held pro rata by the Lenders in accordance with their respective Designated Currency Tranche Revolving Credit Commitment Percentage, Dollar Tranche Revolving Credit

4

13565900v9

Commitment Percentage and Term Loan Commitment Percentage. To remedy the foregoing, on the date hereof, to the extent any Loans are then outstanding, the Administrative Agent is authorized to reallocate the Loans (the “Reallocated Loans”) so that after giving effect thereto the Loans will be held by all the Lenders (including the New Lenders) pro rata in accordance with their respective Commitments. From and after the date hereof, Administrative Agent shall make all payments in respect of the Reallocated Loans (including payments of interest, fees, and other amounts) to the respective Lenders that held such Reallocated Loans prior to the date hereof for amounts which have accrued to but excluding the date hereof and to the respective Lenders that held such Reallocated Loans on and after the date hereof for amounts which have accrued from and after the date hereof. If any Reallocated Loans are reallocated as set forth above on any day other than on the last day of an Interest Period applicable thereto, the Borrowers shall pay each Lender the amount that would be payable under Section 4.10 of the Existing Credit Agreement as if such Reallocated Loans had been prepaid on the date hereof.

### ARTICLE IV

#### MISCELLANEOUS

##### 4.1 Authority/Enforceability. Each Credit Party represents and warrants as follows:

- (a) such Credit Party has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement in accordance with their respective terms;
- (b) this Agreement has been duly executed and delivered by the duly authorized officers of such Credit Party and constitutes the legal, valid and binding obligation of such Credit Party, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal debtor relief laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies; and
- (c) the execution, delivery and performance by such Credit Party of this Agreement do not and will not, by the passage of time, the giving of notice or otherwise, (i) require any material Governmental Approval except any approvals previously or concurrently received or violate any material Applicable Law, in each case relating to the Company or any of its Restricted Subsidiaries, (ii) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of such Credit Party and (iii) require any consent or authorization of, filing with, or other act in

respect of, an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, other than (A) consents, authorizations, filings or other acts or consents obtained or for which the failure to obtain or make could not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (B) consents or filings, if any, under the UCC.

4.2 Representations and Warranties of the Credit Parties. Each Credit Party represents and warrants to the Lenders that after giving effect to this Agreement (a) the representations and warranties contained in Article VI of the Credit Agreement shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date hereof and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date hereof with the same effect as if made on and as of such date, except for any representation and warranty made as of an earlier date, shall (x) with respect to representations and warranties that contain a materiality qualification, be true and correct as of such earlier date and (y) with respect to representations and warranties that do not contain a materiality

qualification, be true and correct in all material respects as of such earlier date and (b) no event has occurred and is continuing which constitutes a Default or Event of Default.

4.3 Reaffirmation of Obligations. Each Credit Party hereby ratifies the Credit Agreement and acknowledges and reaffirms (a) that it is bound by all terms of the Credit Agreement applicable to it and (b) that it is responsible for the observance and full performance of its respective Obligations.

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

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

4.6 Electronic Execution; Electronic Records. This Agreement may be in the form of an electronic record (in ".pdf" form or otherwise) and may be executed using electronic signatures, which shall be considered as originals and shall have the same legal effect, validity and enforceability as a paper record. This Agreement may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts shall be one and the same Agreement. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent of a manually signed Agreement which has been converted into electronic form (such as scanned into ".pdf" format), or an electronically signed Agreement converted into another format, for transmission, delivery and/or retention.

4.7 Severability. Any provision of this Agreement held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

4.8 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. The terms of the Credit Agreement with respect to governing law, submission to jurisdiction, waiver of venue and waiver of jury trial are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

[Signature pages follow]

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

BORROWER

BLACKBAUD, INC.

By: /s/ Anthony W. Boor  
Name: Anthony W. Boor  
Title: Chief Financial Officer and Executive Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

ADMINISTRATIVE AGENT:

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

By: /s/ Liliana Claar  
Name: Liliana Claar  
Title: Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

LENDERS:

BANK OF AMERICA, N.A.,  
as a Lender, Swingline Lender and an Issuing Lender

By: /s/ Thomas M. Paulk  
Name: Thomas M. Paulk  
Title: Senior Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

PNC BANK, NATIONAL ASSOCIATION,

BLACKBAUD,  
INC.

as a Lender

November 1, 2023 By: /s/ Michael P. Gianoni Kentaro Umezono

Name: Kentaro Umezono  
Title: Assistant Vice President

Michael  
P.  
Gianoni

President and Chief Executive  
Officer  
(Principal Executive Officer)

Date:

November 1, 2023 By: /s/ Anthony W. Boor  
Anthony W. Boor  
Executive Vice President and  
Chief Financial Officer  
(Principal Financial and  
Accounting Officer)

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

56 FIFTH THIRD BANK N.A.,  
as a Lender

By: /s/ Jason Hessberg  
Name: Jason Hessberg  
Title: SVP

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

---

**TD BANK, N.A.,**

as a Lender

By: /s/ Nate Barrett

Name: Nate Barrett

Title: Vice President

**BLACKBAUD, INC.**

**THIRD AMENDMENT TO CREDIT AGREEMENT**

---

**U.S. BANK NATIONAL ASSOCIATION,**

as a Lender

By: /s/ Brian Seipke

Name: BRIAN SEIPKE

Title: SENIOR VICE PRESIDENT

**BLACKBAUD, INC.**

**THIRD AMENDMENT TO CREDIT AGREEMENT**

**REGIONS BANK,**  
as a Lender

By: /s/ Joanmarie Marini  
Name: Joanmarie Marini  
Title: Associate

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

---

**CITIZENS BANK, N.A.,**  
as a Lender

By: /s/ Bryan L. Bains  
Name: Bryan L. Bains  
Title: Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

---

**THE HUNTINGTON NATIONAL BANK,**  
as a Lender

By: /s/ Mark J. Neifing  
Name: Mark J. Neifing  
Title: Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

---

**FIRST-CITIZENS BANK & TRUST COMPANY,**  
as a Lender

By: /s/ Sherryn Reckin  
Name: Sherryn Reckin  
Title: Director

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

---

**JPMORGAN CHASE BANK, N.A.,**  
as a Lender

By: /s/ Jorge Diaz Granados  
Name: Jorge Diaz Granados  
Title: Authorized Officer

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT



GOLDMAN SACHS BANK USA,  
as a Lender

By: /s/ Dan Starr  
Name: Dan Starr  
Title: Authorized Signatory

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

---

SANTANDER BANK, N.A.,  
as a Lender

By: /s/ Felix Nebrat  
Name: Felix Nebrat  
Title: SVP UWPM

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

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SOUTHSTATE BANK, N.A.,  
as a Lender

By: /s/ Brian Geppi  
Name: Brian Geppi  
Title: Senior Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

UNITED COMMUNITY BANK,  
as a Lender

By: /s/ Jeff Wilson  
Name: Jeff Wilson  
Title: Senior Vice President

BLACKBAUD, INC.  
THIRD AMENDMENT TO CREDIT AGREEMENT

ANNEX I  
CREDIT AGREEMENT  
[See attached.]

13565900v3  
13565900v9

~~\*This Credit Agreement has been modified by a LIBOR Transition Amendment, dated of September 20, 2021\*\*~~ EXECUTION VERSION

Published Deal CUSIP: ~~09227UAS0~~09227UAX9  
Dollar Tranche CUSIP: ~~09227UAT8~~09227UBA8  
Designated Currency Tranche CUSIP: ~~09227UAU5~~09227UAY7  
Term Loan CUSIP: ~~09227UAV3~~09227UAZ4

ANNEX I  
~~\$900,000,000~~1,500,000,000

~~AMENDED AND RESTATED~~AMENDED AND RESTATED CREDIT AGREEMENT

dated as of October 30, 2020,  
by and among

**BLACKBAUD, INC.**  
**AND CERTAIN OF ITS SUBSIDIARIES,**  
as Borrowers,

the Lenders referred to herein,

and

**BANK OF AMERICA, N.A.,**  
as Administrative Agent,  
Swingline Lender and an Issuing Lender,

and

**PNC BANK, NATIONAL ASSOCIATION;**  
and  
**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**  
as Syndication ~~Agent~~ Agents

and

CITIZENS BANK, N.A.,  
~~REGIONS BANK~~ REGIONS BANK,  
~~BBVA USA~~ TD BANK, N.A.,  
U.S. BANK NATIONAL ASSOCIATION  
and  
~~FIFTH THIRD BANK, NATIONAL ASSOCIATION;~~  
as Co-Documentation Agents  
THE HUNTINGTON NATIONAL BANK,  
as Co-Documentation Agents

~~13544612v4~~ 13544612v17

with

~~BoFA SECURITIES, INC~~ BOFA SECURITIES, INC.,  
~~PNC BANK, NATIONAL ASSOCIATION;~~ BANK, NATIONAL ASSOCIATION  
REGIONS CAPITAL MARKETS;  
~~BBVA USA;~~  
and  
FIFTH THIRD BANK, NATIONAL ASSOCIATION,  
~~FIFTH THIRD BANK, NATIONAL ASSOCIATION;~~  
as Joint Lead Arrangers and Joint Bookrunners

~~13544612v4~~ 13544612v17

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AMENDED AND RESTATED CREDIT AGREEMENT, dated as of October 30, 2020, by and among BLACKBAUD, INC., a Delaware corporation (the "Company"), certain Subsidiaries of the Company party hereto pursuant to Section 2.10 (each a "Subsidiary Borrower", and together with the Company, collectively the "Borrowers" and any of them individually, each a "Borrower" or the "Borrower"), the lenders who are or may become a party to this Agreement (collectively, the "Lenders") and BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for the Lenders.

## STATEMENT OF PURPOSE

**WHEREAS**, the Company, the other borrowers from time to time party thereto, the lenders party thereto and Bank of America, N.A., as administrative agent, swingline lender and an issuing lender, have entered into that certain Credit Agreement, dated as of June 2, 2017 (as amended or modified from time to time prior to the Closing Date, the “Existing Credit Agreement”); ~~and~~

WHEREAS, prior to the Third Amendment Effective Date, the parties hereto amended and restated the Existing Credit Agreement to (a) provide for a \$500,000,000 revolving credit facility, with a \$50,000,000 letter of credit subfacility and a \$50,000,000 swingline subfacility, in favor of the Borrowers, and (ii) a term loan to the Company in an initial aggregate principal amount equal to \$400,000,000 and (b) make certain other amendments and modifications to the Existing Credit Agreement; and

**WHEREAS**, the parties hereto wish to ~~further amend and restate~~ the Existing Credit Agreement as of the Third Amendment Effective Date, to (a) provide for ~~(i) a \$500,000,000, as of the Third Amendment Effective Date, (i) a \$700,000,000~~ revolving credit facility, with a \$50,000,000 letter of credit subfacility and a \$50,000,000 swingline subfacility, in favor of the Borrowers, and (ii) a term loan to the Company in an initial aggregate principal amount equal to ~~\$400,000,000~~ \$800,000,000 and (b) make certain other amendments and modifications to the Existing Credit Agreement, as of the Third Amendment Effective Date, subject to the conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**SECTION 1.1 Definitions.** The following terms when used in this Agreement shall have the meanings assigned to them below:

~~“Adjustment” has the meaning assigned to such term in Section 4.8(e);~~

“Administrative Agent” means Bank of America (or any of its designated branch offices or affiliates) in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent appointed pursuant to Section 12.6.

“Administrative Agent Fee Letter” means the fee letter dated as of ~~October 12, 2020~~ March 25, 2024 among the Company, the Administrative Agent and BAS.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.1(a) with respect to such currency, or such

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other address or account with respect to such currency as the Administrative Agent may from time to time notify the Company and the Lenders.

“Administrative Questionnaire” means an administrative questionnaire in substantially the form supplied by the Administrative Agent.

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

“Affiliate” means, with respect to any Person, any other Person (other than a Restricted Subsidiary of the Company) which directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term “control” means (a) the power to vote ten percent (10%) or more of the securities or other equity interests of a Person having ordinary voting power, or (b) the possession, directly or indirectly, of any other power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreed Currencies” means Dollars ~~and Foreign Currencies~~ or any Designated Currency, as applicable.

“Agreement” means this Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

~~“Applicable Currency” means Dollars or any Foreign Currency that bears interest at a rate based on an Applicable Reference Rate, as applicable.~~

“Applicable Authority” means (a) with respect to SOFR, the SOFR Administrator or any governmental authority having jurisdiction over the Administrative Agent or the SOFR Administrator with respect to its publication of SOFR, in each case, acting in such capacity, (b) with respect to Term SOFR, CME or any successor administrator of the Term SOFR Screen Rate or a governmental authority having jurisdiction over the Administrative Agent or such administrator with




respect to its publication of Term SOFR, in each case, acting in such capacity and (c) with respect to any Designated Currency, the applicable administrator for the Relevant Rate for such Designated Currency or any Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of the applicable Relevant Rate, in each case acting in such capacity.

“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Margin” means:

- (a) with respect to any Incremental Term Loans, as determined pursuant to, and in accordance with, Section 2.9(g), and
- (b) subject to the terms of Section 2.8, with respect to Revolving Credit Loans, Swingline Loans, the Term Loan and the commitment fee, the corresponding percentages per annum as set forth below based on the Net Leverage Ratio:

Pricing Level	Net Leverage Ratio	Base Rate +	 Eurocurrency Term SOFR Loans/Daily	Third Quarter 2023 Form 10-Q Commitment Fee
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			SOFR Loans/Designated Currency Rate Loans +	
I	≥ 3.50:1.00	1.500%	2.500%	0.500%
II	≥ 3.00:1.00 but < 3.50:1.0	1.125%	2.125%	0.375%
III	≥ 2.50:1.00 but < 3.00:1.00	0.875%	1.875%	0.375%
IV	≥ <del>1.752:00</del> :1.00 but < 2.50:1.00	0.625%	1.625%	0.250%
V	≥ 1.25:1.00 but < <del>1.752:00</del> :1.00	0.500%	1.500%	0.250%
VI	< 1.25:1.00	0.375%	1.375%	0.250%

The Applicable Margin shall be determined and adjusted quarterly on the first Business Day (each a “Calculation Date”) immediately following the date by which the Company provides an Officer’s Compliance Certificate pursuant to Section 7.2 for the most recently ended fiscal quarter of the Company; provided, however, that (a) the Applicable Margin shall be based on Pricing Level ~~IV~~ until the first Calculation Date following receipt of the Officer’s Compliance Certificate for the fiscal quarter ended ~~June 30, 2022~~ March 31, 2024 and, thereafter the Pricing Level shall be determined by reference to the Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Company preceding the applicable Calculation Date, and (b) if the Company fails to provide the Officer’s Compliance Certificate within five (5) days of the date for delivery required by Section 7.2 for the most recently ended fiscal quarter of the Company preceding the applicable Calculation Date, then, upon the request of the Required Lenders, the Applicable Margin from such Calculation Date shall be based on Pricing Level I until such time as an appropriate Officer’s Compliance Certificate is provided, at which time the Pricing Level shall be determined by reference to the Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Company preceding such Calculation Date. The Applicable Margin shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Applicable Margin shall be applicable to all Extensions of Credit then existing or subsequently made or issued. The Applicable Margin set forth above shall be increased as, and to the extent, required by ~~Sections 2.8 and 2.9~~ and 2.11.

“Applicable Percentage” means, with respect to any Revolving Credit Lender, the percentage of the total Revolving Credit Commitments represented by such Revolving Credit Lender’s Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments.

~~“Applicable Reference Rate” means, for any Eurocurrency Rate Loan denominated in any LIBOR Quoted Currency, LIBOR, for any Eurocurrency Rate Loan denominated in euros, EURIBOR, for any Eurocurrency Rate Loan denominated in Australian Dollars, BBSY, for any Eurocurrency Rate Loan denominated in Canadian Dollars, CDOR and for any Eurocurrency Rate Loan denominated in New Zealand Dollars, BKBM, as applicable.~~

~~“Applicable Reference Rate Replacement Date” has~~ Period” shall have the meaning assigned to such term in Section 4.8(c)4.2.

"Applicable Time" means, with respect to any borrowings and payments in any ~~Foreign~~Designated Currency, the local time in the place of settlement for such ~~Foreign~~Designated Currency as may be determined by the Administrative Agent or the applicable Issuing Lender, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

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"Appropriate Lender" means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the L/C Commitments, (i) the Issuing Lenders and (ii) if any Letters of Credit have been issued pursuant to Section 2.3, the Revolving Credit Lenders and (c) with respect to the Swingline Commitment, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.4(a), the Revolving Credit Lenders.

"Approved Fund" means any Person (other than a natural Person), including, without limitation, any special purpose entity, that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business; provided, that such Approved Fund must be administered by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrangers" means BAS, PNC Bank, National Association, ~~Regions Capital Markets, BBVA USA~~ and Fifth Third Bank, National Association, in their capacities as joint lead arrangers and joint bookrunners.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 13.9(b)), and accepted by the Administrative Agent, in substantially the form of **Exhibit G** or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"Australian Dollar" means the lawful currency of Australia.

"Availability Period" means in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (a) the Maturity Date for the Revolving Credit Facility, (b) the date of termination of the Revolving Credit Commitments pursuant to Section 2.6, and (c) the date of termination of the Commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the Issuing Lenders to make L/C Credit Extensions pursuant to Section 11.2.

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

"~~Bail-In~~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 EU, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU ~~Bail-In~~Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

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"Bank Product" means any of the following products, services or facilities extended to any Credit Party or Restricted Subsidiary by any Bank Product Provider (including those in existence as of the Closing Date): (a) Cash Management Services; (b) products under any Hedging Agreement (including, without

limitation, non-speculative foreign exchange swaps); and (c) commercial credit card, purchase card and merchant card services; provided, however, that for any of the foregoing to be included as "Obligations" for purposes of a distribution under Section 11.4, the applicable Bank Product Provider must have previously provided a Bank Product Provider Notice to the Administrative Agent which shall notify the Company and the Administrative Agent of the existence of such Bank Product (with the understanding that Lenders party hereto as of the Closing Date shall be entitled to notify the Company and the Administrative Agent of Bank Products in effect as of the Closing Date promptly after the Closing Date). Any Bank Product established from and after the time that the Lenders have received written notice from the Company or the Administrative Agent that an Event of Default exists, until such Event of Default has been waived in accordance with Section 13.2, shall not be included as "Obligations" for purposes of a distribution under Section 11.4.

"Bank Product Debt" means the Indebtedness and other obligations of any Credit Party or Restricted Subsidiary relating to Bank Products.

"Bank Product Provider" means any Person that provides Bank Products to any Credit Party or Restricted Subsidiary to the extent that such Person is a Lender or an Affiliate of a Lender at the time such Bank Product was entered into or as of the Closing Date with respect to any Bank Product designated as such promptly after the Closing Date.

"Bank Product Provider Notice" means a notice substantially in the form of Exhibit J.

"Bankruptcy Code" means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Bankruptcy Event of Default" means any Event of Default specified in Section 11.1(j) or (k).

"BAS" means BofA Securities, Inc.

"Base Rate" means for any day a fluctuating rate ~~of interest~~ per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) ~~the Eurocurrency Rate~~ Term SOFR plus 1.00%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to ~~Section 4.10 hereof~~ 4.8, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"Base Rate Loan" means any Loan bearing interest at a rate based upon the Base Rate. All Base Rate Loans are only available to the Company and Subsidiary Borrowers that are Domestic Subsidiaries and Loans denominated in Dollars.

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

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

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

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

"Blackbaud Payment Services Account" means any deposit account in the name of a Credit Party for the processing of donations, tuition payments or other payments made to client organizations of the Credit Parties.

"Borrower" and "Borrowers" have the meaning assigned to such terms in the introductory paragraph hereto.

"Borrower Materials" has the meaning assigned thereto in Section 7.3.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located; provided that:

(a) if such day relates to any interest rate settings as to a ~~Eurocurrency~~ Designated Currency Rate Loan denominated in ~~Dollars~~ euro, any fundings, disbursements, settlements and payments in ~~Dollars~~ euro in respect of any such ~~Eurocurrency~~ Designated Currency Rate Loan, or any other dealings in ~~Dollars~~ euro to be carried out pursuant to this Agreement in respect of any such ~~Eurocurrency~~ Designated Currency Rate Loan, means ~~any such day a Business Day~~ that is also a ~~London Banking~~ TARGET Day;

(b) if such day relates to any interest rate settings as to a ~~Eurocurrency~~ Designated Currency Rate Loan denominated in ~~euro~~, Pounds Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom;

(c) when used in connection with any fundings, disbursements, settlements ~~and~~, payments ~~in euro in respect of any such Eurocurrency and interest rate settings as to a Designated Currency Term~~ Rate Loan ~~denominated in Canadian Dollars~~, or any other dealings in ~~euro~~ Canadian Dollars to be carried out pursuant to this Agreement ~~in respect of any such Eurocurrency Rate Loan, means a Business Day that is also a TARGET Day or any of the other Loan Documents, means any such day other than a day on which banking institutions in Toronto, Ontario are authorized by Applicable Law to close;~~

(d) ~~(e)~~ if such day relates to any interest rate settings as to a ~~Eurocurrency~~ Designated Currency Rate Loan denominated in a currency other than ~~euro~~, Canadian Dollars or ~~euro~~ Pounds Sterling, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the ~~London or other~~ applicable offshore interbank market for such currency; and

(e) ~~(d)~~ if such day relates to any fundings, disbursements, settlements and payments in a currency other than ~~euro~~, Canadian Dollars or ~~euro~~ Pounds Sterling in respect of a

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~~Eurocurrency~~ Designated Currency Rate Loan denominated in a currency other than ~~Dollars or~~ euro, or any other dealings in any currency other than ~~Dollars or~~ euro to be carried out pursuant to this Agreement in respect of any such ~~Eurocurrency~~ Designated Currency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"Calculation Date" has the meaning assigned thereto in the definition of Applicable Margin.

"Canadian Dollar" and "CAD" mean the lawful currency of Canada.

"Capital Lease" means any lease of any property by the Company or any of its Restricted Subsidiaries, as lessee, that should, in accordance with GAAP, be classified and accounted for as a capital lease on a Consolidated balance sheet of the Company and its Restricted Subsidiaries; provided that for purposes of calculating Indebtedness hereunder (including for purposes of calculating the Net Leverage Ratio), the term "Capital Lease" shall not include any Capital Lease that was classified as an Operating Lease under GAAP as in effect on December 31, 2015 or would have been classified as an Operating Lease had such agreement been in effect on December 31, 2015.

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

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the Lenders, as collateral for L/C Obligations, obligations in respect of Swingline Loans, or obligations of the Lenders to fund participations in respect of any thereof (as the context may require), cash or deposit account balances or, if the Issuing Lenders or Swingline Lender benefiting from such collateral shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the Issuing Lenders or the Swingline Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" has the meaning assigned thereto in Section 10.3.

"Cash Management Services" means any services provided from time to time to the Company or any Restricted Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services and all other treasury and cash management services.

"Cash on Hand" means as of any date of determination, the aggregate amount of unrestricted cash and Cash Equivalents of the Company and its Restricted Subsidiaries as set forth in the most recent Consolidated balance sheet of the Company and its Restricted Subsidiaries delivered to the Administrative Agent in accordance with [Section 7.1](#).

"Change in Control" means (a) any event or series of events in which any person or group of persons (within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended) shall obtain ownership or control in one or more series of transactions of more than thirty-five percent (35%) of

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the Capital Stock or thirty-five percent (35%) of the voting power of the Company entitled to vote in the election of members of the board of directors of the Company, (b) there shall have occurred under any indenture or other instrument evidencing any Indebtedness in excess of \$40,000,000 any "change in control" (as defined in such indenture or other evidence of Indebtedness) requiring the Company to repurchase, redeem or repay all or any part of the Indebtedness or Capital Stock provided for therein or (c) the Company shall cease to own and control, directly or indirectly, 100% of each Subsidiary Borrower.

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

"Closing Date" means ~~the date of this Agreement or such later Business Day upon which each condition described in [Section 5.1](#) shall be satisfied or waived in all respects in a manner acceptable to the Administrative Agent, in its sole discretion.~~[October 30, 2020](#).

["CME" means CME Group Benchmark Administration Limited.](#)

"Code" means the Internal Revenue Code of 1986, as amended or modified from time to time.

"Collateral" means the collateral security for the Obligations pledged or granted pursuant to the Security Documents.

"Commitment" means, as to any Lender, such Lender's Dollar Tranche Revolving Credit Commitment, Designated Currency Tranche Revolving Credit Commitment, Swingline Commitment, Term Loan Commitment and/or Incremental Term Loan Commitment, as applicable.

["Commitment Fee" has the meaning assigned to such term in \[Section 4.3\\(a\\)\]\(#\).](#)

"Commitment Percentage" means, as to any Lender at any time, such Lender's Dollar Tranche Revolving Credit Commitment Percentage, Designated Currency Tranche Revolving Credit Commitment Percentage, Term Loan Commitment Percentage, or Incremental Term Loan Percentage, as applicable.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Communication" means this Agreement, any Loan Document and any document, any amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

"Company" has the meaning assigned thereto in the introductory paragraph hereto.

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"Computation Date" means (a) with respect to any Loan, each of the following: (i) each date of an Extension of Credit of a ~~Eurocurrency Rate Loan~~ ~~denominated in a Foreign Currency~~, (ii) [Designated Currency Rate Loan](#), (ii) [with respect to a Designated Currency Daily Rate Loan](#), each Interest Payment Date,

(iii) each date of a continuation of a Eurocurrency Designated Currency Term Rate Loan ~~denominated in a Foreign Currency~~ pursuant to Section 2.2, and (iiiiv) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in a Foreign Designated Currency, (ii) each date of any payment by any Issuing Lender under any Letter of Credit denominated in a Foreign Designated Currency, (iii) in the case of all Existing Letters of Credit denominated in Foreign Designated Currencies, the Closing Date, and (iv) such additional dates as the Administrative Agent or any Issuing Lender shall determine or the Required Lenders shall require.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR, Term SOFR, Daily SOFR, SONIA, EURIBOR, BBSY, CORRA, Term CORRA, BKBM or any proposed Successor Rate for an Agreed Currency, as applicable, any conforming changes to the definitions of "Base Rate", "SOFR", "Term SOFR", "Daily SOFR", "SONIA", "EURIBOR", "BBSY", "CORRA", "Term CORRA", "BKBM" and "Interest Period", timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day", timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods and the day basis for calculating interest for an agreed currency listed on Schedule 4.2) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice for such Agreed Currency (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate for such Agreed Currency exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

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

"Consolidated" means, when used with reference to financial statements or financial statement items of the Company and its Restricted Subsidiaries, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

"CORRA" means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

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

"Covered Party" has the meaning assigned to such term in Section 13.26.

"Credit Facility" and "Credit Facilities" means, collectively, the Dollar Tranche Revolving Credit Facility, the Designated Currency Tranche Revolving Credit Facility, the Term Loan Credit Facility, the Swingline Facility, the L/C Facility and the Incremental Term Loan Facility.

"Credit Parties" means, collectively, the Borrowers and the Guarantors.

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"Daily SOFR" means the rate per annum equal to SOFR determined for any day pursuant to the definition thereof plus the SOFR Adjustment. Any change in Daily SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Daily SOFR Loan" means a Loan that bears interest at a rate based on Daily SOFR.

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

"Default" means any of the events specified in Section 11.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

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



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

"Defaulting Lender" means, subject to Section 4.14(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Company in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, an Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Company, the Administrative Agent, an Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Company, to confirm in writing to the Administrative Agent and the Company that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a ~~Bail-In~~ Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such

Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 4.14(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Company, each Issuing Lender, the Swingline Lender and each other Lender promptly following such determination.

"Designated Currency" means each of the following currencies: (i) euro, (ii) Pounds Sterling, (iii) Australian Dollars, (iv) New Zealand Dollars and (v) Canadian Dollars, together with each other currency (other than Dollars) that is approved in accordance with Section 1.9; provided that each Designated Currency is lawful, readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders or the applicable Issuing Lender, as applicable, in such market and as to which a Dollar Amount may be readily calculated. If, after the designation by the Lenders or the applicable Issuing Lender, as applicable, of any currency as a Designated Currency (or if, with respect to any currency that constitutes a Designated Currency on the Third Amendment Effective Date, after the Third Amendment Effective Date), (1) any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are imposed in the country in which such currency is issued, result in, in the reasonable opinion of the Administrative Agent (in the case of any Loans to be denominated in a Designated Currency) or the applicable Issuing Lender (in the case of any Letter of Credit to be denominated in a Designated Currency), (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Amount is no longer readily calculable with respect to such currency, (c) providing such currency is impracticable for the Lenders or the applicable Issuing Lender, as applicable, or (d) no longer a currency in which the Required Lenders are willing to make such Extensions of Credit (each of clauses (a), (b), (c), and (d) a "Disqualifying Event"), and (2) it is the general practice of the Administrative Agent or the applicable Issuing Lender to cease making Loans or issuing Letters of Credit in such currency to borrowers similarly situated in similar circumstances under comparable provisions of other credit agreements, then the Administrative Agent shall promptly notify the Lenders and the Company, and such country's currency shall no longer be a Designated Currency until such time as the Disqualifying Event(s) no longer exist(s). Within five (5) Business Days after receipt of such notice from the Administrative Agent, the Borrowers shall repay all Loans in such currency to which the Disqualifying Event applies or convert such Loans into the Dollar Amount of Loans in Dollars (provided, that, such conversion of Loans into Dollars shall not require satisfaction of the conditions set forth in Section 5.2(a) and (b), and the Loan Notice provided in connection with any such conversion of Loans into Dollars shall not be deemed to be a representation and warranty by such Borrower that the conditions specified in Sections 5.2(a) and (b) have been satisfied on and as of the date of such conversion).

"Designated Currency Daily Rate" means, for any day, with respect to any Extension of Credit:

(a) denominated in Pounds Sterling, the rate per annum equal to SONIA determined pursuant to the definition thereof plus the SONIA Adjustment;  
and

(b) denominated in any other Designated Currency (to the extent such Loans denominated in such currency will bear interest at a daily rate), the daily rate per annum as designated with respect to such Designated Currency at the time such Designated Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.9(a), plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.9(a);

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provided, that, if any Designated Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in a Designated Currency Daily Rate shall be effective from and including the date of such change without further notice.

"Designated Currency Daily Rate Loan" means a Loan that bears interest at a rate based on the definition of "Designated Currency Daily Rate." All Designated Currency Daily Rate Loans must be denominated in a Designated Currency.

"Designated Currency Rate Loan" means a Designated Currency Daily Rate Loan or a Designated Currency Term Rate Loan, as applicable.

"Designated Currency Term Rate" means, for any Interest Period, with respect to any Extension of Credit:

(a) denominated in euros, the rate per annum equal to the Euro Interbank Offered Rate ("EURIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(b) denominated in Canadian Dollars, the rate per annum equal to the forward-looking term rate based on CORRA ("Term CORRA"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "Term CORRA Rate") that is two (2) Business Days prior to the Rate Determination Date with a term equivalent to such Interest Period plus the Term CORRA Adjustment for such Interest Period;

(c) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate ("BBSY"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period;

(d) denominated in New Zealand dollars, the rate per annum equal to the Bank Bill Reference Bid Rate ("BKBM"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(e) denominated in any other Designated Currency (to the extent such Loans denominated in such currency will bear interest at a term rate), the term rate per annum as designated with respect to such Designated Currency at the time such Designated Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.9(a), plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.9(a);

provided, that, if any Designated Currency Term Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"Designated Currency Term Rate Loan" means a Loan that bears interest at a rate based on the definition of "Designated Currency Term Rate." All Designated Currency Term Rate Loans must be denominated in a Designated Currency.

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"Designated Currency Tranche" means the Designated Currency Tranche Revolving Credit Commitment and the Designated Currency Tranche Revolving Credit Loans.



**“Designated Currency Tranche Revolving Credit Commitment”** means (a) as to any Designated Currency Tranche Revolving Credit Lender, the obligation of such Designated Currency Tranche Revolving Credit Lender to make Designated Currency Tranche Revolving Credit Loans for the account of the Borrowers hereunder, in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Designated Currency Tranche Revolving Credit Lender's name on [Schedule 1.1\(b\)](#), as such Designated Currency Tranche Revolving Credit Commitment may be increased, reduced or modified at any time or from time to time pursuant to the terms hereof and (b) as to all Designated Currency Tranche Revolving Credit Lenders, the aggregate commitment of all Designated Currency Tranche Revolving Credit Lenders to make Designated Currency Tranche Revolving Credit Loans, as such amount may be increased, reduced or modified at any time or from time to time pursuant to the terms hereof.

**“Designated Currency Tranche Revolving Credit Commitment Percentage”** means, as to any Designated Currency Tranche Revolving Credit Lender at any time, the ratio of (a) the amount of the Designated Currency Tranche Revolving Credit Commitment of such Designated Currency Tranche Revolving Credit Lender to (b) the Designated Currency Tranche Revolving Credit Commitments of all Designated Currency Tranche Revolving Credit Lenders.

**“Designated Currency Tranche Revolving Credit Facility”** means the revolving credit facility established pursuant to [Article II](#) but excluding the Swingline Facility, the Dollar Tranche Revolving Credit Facility and any Incremental Term Loan Facility.

**“Designated Currency Tranche Revolving Credit Lender”** means any Lender with a Designated Currency Tranche Revolving Credit Commitment.

**“Designated Currency Tranche Revolving Credit Loans”** means any revolving loan made to any Borrower pursuant to [Section 2.1\(b\)](#) or [2.8](#) (and designated as contemplated thereunder), and all such revolving loans collectively as the context requires.

**“Designated Currency Tranche Revolving Credit Note”** means a promissory note made by a Borrower in favor of a Designated Currency Tranche Revolving Credit Lender evidencing the Designated Currency Tranche Revolving Credit Loans made by such Designated Currency Tranche Revolving Credit Lender, substantially in the form of [Exhibit A-4](#) hereto, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

**“Designated Jurisdiction”** means any country or territory to the extent that such country or territory is itself the subject of any [Sanction.comprehensive Sanction \(as of the Third Amendment Effective Date, Cuba, Iran, North Korea, Syria, the so-called Donetsk People's Republic, so-called Luhansk People's Republic, and Crimea, Kherson and Zaporizhzhia regions of Ukraine\)](#).

**“Disqualified Capital Stock”** means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than Bank Product Debt) that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Capital

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Stock) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than Bank Product Debt) that are accrued and payable and the termination of the Commitments), in whole or in part, (c) provides for the scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the Maturity Date; *provided*, that if such Capital Stock is issued pursuant to a plan for the benefit of the Company or its Restricted Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the Company or its Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

**“Disqualified Institution”** means (a) competitors of the Company or its Subsidiaries that are in the same or a similar line of business as the Company and its Subsidiaries (it being understood that a bank or financial institution providing payment processing services shall not be considered a competitor) and are identified by legal name in writing to the Administrative Agent on or prior to the Closing Date, as such list may be updated in writing from time to time by the Company, (b) any other entity identified by legal name in writing to the Administrative Agent on or prior to the Closing Date, as such list may be updated in writing from time to time by the Company [upon one \(1\) day's notice to the Administrative Agent](#) (such list and all updates and supplements thereto, together with the list and all updates and supplements thereto referenced in the preceding clause (a), collectively, the “[DQ List](#)”) and (c) any Affiliates thereof to the extent clearly identifiable as such on the basis that such Affiliate's names include the name of the specified Disqualified Institution; *provided* that “Disqualified Institutions” shall exclude any Person that the Company has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent and the Lenders from time to time.

"Dollar Amount" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any ~~Foreign~~ Designated Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable Issuing Lender, as the case may be, at such time on the basis of the Exchange Rate (determined in respect of the most recent Computation Date) for the purchase of Dollars with such ~~Foreign~~ Designated Currency.

~~"Dollar LIBOR Successor Rate" has the meaning assigned to such term in Section 4.8(e).~~

"Dollar Tranche" means the Dollar Tranche Revolving Credit Commitment, the Dollar Tranche Revolving Credit Loans, the L/C Obligations and the Swingline Loans.

"Dollar Tranche Revolving Credit Commitment" means (a) as to any Dollar Tranche Revolving Credit Lender, the obligation of such Dollar Tranche Revolving Credit Lender to (i) make Dollar Tranche Revolving Credit Loans for the account of the Borrowers hereunder, (ii) purchase participations in L/C Obligations, and (iii) refund Swingline Loans, in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Dollar Tranche Revolving Credit Lender's name on Schedule 1.1(b), as such Dollar Tranche Revolving Credit Commitment may be increased, reduced or modified at any time or from time to time pursuant to the terms hereof and (b) as to all Dollar Tranche Revolving Credit Lenders, the aggregate commitment of all Dollar Tranche Revolving Credit Lenders to (i) make Dollar Tranche Revolving Credit Loans, (ii) purchase participations in L/C Obligations, and (iii) refund Swingline Loans, as such amount may be increased, reduced or modified at any time or from time to time pursuant to the terms hereof.

"Dollar Tranche Revolving Credit Commitment Percentage" means, as to any Dollar Tranche Revolving Credit Lender at any time, the ratio of (a) the amount of the Dollar Tranche Revolving

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Credit Commitment of such Dollar Tranche Revolving Credit Lender to (b) the Dollar Tranche Revolving Credit Commitments of all Dollar Tranche Revolving Credit Lenders.

"Dollar Tranche Revolving Credit Facility" means the revolving credit facility established pursuant to Article II but excluding the Swingline Facility, the Designated Currency Tranche Revolving Credit Facility, Term Loan Facility and any Incremental Term Loan Facility.

"Dollar Tranche Revolving Credit Lender" means any Lender with a Dollar Tranche Revolving Credit Commitment.

"Dollar Tranche Revolving Credit Loans" means any revolving loan made to any Borrower pursuant to Section 2.1(a) or 2.8 (and designated as contemplated thereunder), and all such revolving loans collectively as the context requires.

"Dollar Tranche Revolving Credit Note" means a promissory note made by a Borrower in favor of a Dollar Tranche Revolving Credit Lender evidencing the Dollar Tranche Revolving Credit Loans made by such Dollar Tranche Revolving Credit Lender, substantially in the form of Exhibit A-1 hereto, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Dollars" or "\$" means, unless otherwise qualified, dollars in lawful currency of the United States.

"Domestic Credit Party" means any Credit Party that is a U.S. Person.

"Domestic Subsidiary" means any Subsidiary that is a U.S. Person other than an Excluded Domestic Subsidiary.

"DQ List" has the meaning assigned to such term in the definition of Disqualified Institution.

"EBITDA" means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Company and its Restricted Subsidiaries in accordance with GAAP: (a) Net Income for such period plus (b) the sum of the following to the extent deducted in determining Net Income for such period: (i) income and franchise taxes, (ii) Interest Expense, (iii) amortization, depreciation and all other non-cash charges, expenses or losses (including non-cash stock compensation charges and expenses and including fair market value adjustments on acquired deferred revenue) otherwise deducted in determining the Net Income for such period (excluding reserves for future cash charges), (iv) any extraordinary losses, (v) Transaction Costs, (vi) Pro Forma Adjustments; provided that the aggregate amount of Pro Forma Adjustments added back to EBITDA shall not exceed ten percent (10%) of EBITDA (determined prior to giving effect to the add back in this clause (vi)), (vii) after the Third Amendment Effective Date, up to \$25,000,000 of ~~non-recurring~~ non-recurring costs and expenses incurred in connection with the ~~restructuring of leases to lower ongoing lease and rent expense as reported in the Officer's Compliance Certificate delivered pursuant to Section 7.2 for such fiscal quarter of the Company; provided that such costs and expenses (x) may only be added back in the calculation of EBITDA once and (y) are incurred on or~~

~~before March 31, 2021 and (viii) up to \$50,000,000 of non-recurring legal expenses paid in cash and associated with the~~ data breach and related ransomware attack occurring in 2020, ~~less~~ (c) interest income ~~earned on corporate funds~~ and any extraordinary gains: ~~(for the avoidance of doubt, the term corporate funds does not include customer cash on payment platforms). Notwithstanding the foregoing, for purposes of determining Transaction Costs and Pro Forma Adjustments, all such amounts shall be included, if at all, in any determination of EBITDA during the four consecutive quarter period following the applicable transaction (including, without limitation, the quarter in which such transaction occurs). (it~~

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~~being agreed and understood that if such transaction occurs during the last month of a fiscal quarter, such amounts shall be included in the full twelve month period following such transaction).~~

**"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 EU, 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 Copy"** has the meaning assigned to such term in [Section 13.24](#).

**"Eligible Assignee"** means any Person that meets the requirements to be an assignee under [Section 13.9](#) (subject to such consents, if any, as may be required under [Section 13.9\(b\)\(iii\)](#)). For the avoidance of doubt, any Disqualified Institution is subject to [Section 13.9\(g\)](#).

**"Employee Benefit Plan"** means any employee benefit plan within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan) which (a) is maintained, sponsored or contributed to by the Company or any ERISA Affiliate or (b) has at any time within the preceding six (6) years been maintained, sponsored or contributed to by the Company or any current or former ERISA Affiliate.

**"Environmental Claims"** means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, compensation or injunctive relief resulting from releases of Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

**"Environmental Laws"** means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, and orders of courts or Governmental Authorities, relating to the protection of human health (with respect to exposure to Hazardous Materials) or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

**"Equivalent Amount"** means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable ~~Foreign~~[Designated](#) Currency as determined by the Administrative Agent or the applicable Issuing Lender, as the case may be, at such time on the basis of the Exchange Rate (determined in respect of the most recent Computation Date) for the purchase of such ~~Foreign~~[Designated](#) Currency with Dollars.

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"ERISA" means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

"ERISA Affiliate" means any Person who together with any Credit Party is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"ESG" has the meaning specified in Section 2.11(a).

"ESG Amendment" has the meaning specified in Section 2.11(a).

"ESG Pricing Provisions" has the meaning specified in Section 2.11(a).

"EU" means the European Union.

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

"euro" and/or "EUR" means the single currency of the participating member states of the EU.

"Eurocurrency Rate" means:

(a) for any Interest Period, with respect to any Extension of Credit:

(i) ~~denominated in a LIBOR Quoted Currency, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period) ("LIBOR"), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "LIBOR Rate") at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in the relevant currency, with a term equivalent to such Interest Period;~~

(ii) ~~denominated in euros, the rate per annum equal to the Euro Interbank Offered Rate ("EURIBOR"), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "EURIBOR Rate") at or about 11:00 a.m. (Brussels, Belgium time) on the Rate Determination Date with a term equivalent to such Interest Period;~~

(iii) ~~denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate ("BBSY"), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 10:30 a.m. (Melbourne, Australia time) on the Rate Determination Date with a term equivalent to such Interest Period;~~

(iv) ~~denominated in New Zealand Dollars, the rate per annum equal to the Bank Bill Reference Bid Rate ("BKBM"), or a comparable or successor rate which rate is~~

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~~approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 10:45 a.m. (Auckland, New Zealand time) on the Rate Determination Date with a term equivalent to such Interest Period;~~

(v) ~~denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate ("CDOR"), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "CDOR Rate") at or about 10:00 a.m. (Toronto, Ontario time) on the Rate Determination Date with a term equivalent to such Interest Period;~~

(vi) ~~with respect to any Extension of Credit denominated in any other Non-LIBOR Quoted Currency, the rate per annum as designated with respect to such Foreign Currency at the time such Foreign Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.9(a); and~~

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

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

~~"Eurocurrency Rate Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Eurocurrency Rate". Eurocurrency Rate Loans may be denominated in Dollars or in a Foreign Currency. All Loans denominated in a Foreign Currency or made to a Subsidiary Borrower that is a Foreign Subsidiary must be Eurocurrency Rate Loans.~~

"Event of Default" means any of the events specified in Section 11.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

"Exchange Rate" for a Foreign Designated Currency means the rate determined by the Administrative Agent or an Issuing Lender, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately ~~11:00 a.m.~~ 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or such Issuing Lender may obtain such spot rate from another financial institution designated by the Administrative Agent or such Issuing Lender if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that each Issuing Lender may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in a Foreign Designated Currency.

"Excluded Domestic Subsidiary" means any Subsidiary that is a U.S. Person and (a) is a Subsidiary of a "controlled foreign corporation" under Section 957 of the Code (a "CFC") or (b) substantially all of the assets of such Subsidiary consists of Capital Stock or Capital Stock and Indebtedness of one or more CFCs or of other U.S. Persons substantially all of the assets of which consist of Capital Stock or Capital Stock and Indebtedness of one or more CFCs.

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"Excluded Hedging Obligation" shall mean, with respect to any Credit Party, any Hedging Obligation if, and to the extent that, all or a portion of the Guaranty Agreement of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Hedging Obligation (or any Guaranty Obligation 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 Credit Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guaranty Agreement of such Credit Party, or the grant by such Credit Party of a security interest, becomes effective with respect to such Hedging Obligation; provided that, for the avoidance of doubt, in determining whether any Credit Party is an "eligible contract participant" under the Commodity Exchange Act, the keepwell agreement set forth in Section 2.12 of the Guaranty Agreement shall be taken into account. If a Hedging Obligation arises under a master agreement governing more than one Hedging Agreement, such exclusion shall apply only to the portion of such Hedging Obligation that is attributable to Hedging Agreements for which such guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal or United Kingdom withholding Taxes (excluding the portion of United Kingdom withholding Taxes with respect to which the applicable Lender is entitled to claim a reduction under an income tax treaty) imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Company under Section 4.12), (ii) such Lender changes its Lending Office or (iii), if later than clauses (i) or (ii), the date on which a Subsidiary Borrower organized in the United Kingdom is joined, except in each case to the extent that, pursuant to Section 4.11(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 4.11(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement" has the meaning assigned to such term in the preliminary statements hereto.

"Existing Letters of Credit" means the letters of credit set forth on Schedule 1.1(c).

**"Extensions of Credit"** means, as to any Lender at any time (and as the context requires, with respect to one or both Tranches), (a) an amount equal to the sum of (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding, (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding, (iv) the aggregate principal amount of all the portion of the Term Loan made by such Lender ~~then~~ outstanding, and (v) the aggregate principal amount of all Incremental Term Loans made by such Lender then outstanding, or (b) the making of any Loan or participation in any Letter of Credit, or Swingline Loan by such Lender, as the context requires.

**"Facility"** means the Dollar Tranche Revolving Credit Facility, the Designated Currency Tranche Revolving Credit Facility, the Term Loan Credit Facility, the Swingline Facility, the L/C Facility and the Incremental Term Loan Facility, as the context may require.

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**"Facility Termination Date"** means the date as of which all of the following shall have occurred: (a) the Commitments have terminated, (b) all Obligations have been paid in full (other than contingent ~~indemnification~~ obligations for which no claim has been asserted), and (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the applicable Issuing Lender shall have been made).

**"FATCA"** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements implementing the foregoing.

**"Federal Funds Rate"** means, for any day, the rate per annum ~~equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published~~ calculated by the Federal Reserve Bank of New York ~~on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, the~~ by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent; as so determined would be less than 0%, such rate shall be deemed to be 0% for purposes of this Agreement.

**"Fee Letters"** means the Administrative Agent Fee Letter and the other fee letters executed by the Company in favor of each of the Arrangers, in each case, executed on or before the ~~Closing~~ Third Amendment Effective Date.

**"First Amendment Effective Date"** means January 31, 2022.

**"Fiscal Year"** means the fiscal year of the Company and its Restricted Subsidiaries ending on December 31.

**"Foreign Currencies"** means (i) euro, (ii) Pounds Sterling, (iii) Australian Dollars, (iv) New Zealand Dollars and (v) Canadian Dollars, together with each other currency (other than Dollars) that is approved in accordance with ~~Section 1.9; provided that each Foreign Currency is~~ readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Amount may be readily calculated. ~~If, after the designation by the Lenders of any currency as a Foreign Currency, (1) any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are imposed in the country in which such currency is issued, result in, in the reasonable opinion of the Administrative Agent (in the case of any Loans to be denominated in a Foreign Currency) or the applicable Issuing Lender (in the case of any Letter of Credit to be denominated in a Foreign Currency), (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Amount is no longer readily calculable with respect to such currency, (c) providing such currency is impracticable for the Lenders or (d) no longer a currency in which the Required Lenders are willing to make such Extensions of Credit (each of (a), (b), (c), and (d) a "Disqualifying Event") and (2) solely in the case of the currencies identified in (i) through (v) above, it is the general practice of the Administrative Agent or the applicable Issuing Lender to cease making Loans or issuing Letters of Credit in such currency to borrowers similarly situated in similar circumstances under comparable provisions of other credit agreements, then the Administrative Agent shall~~



promptly notify the Lenders and the Company, and such country's currency shall no longer be a ~~Foreign~~ Currency until such time as the Disqualifying Event(s) no longer exist. Within five (5) Business Days after receipt of such notice from the Administrative Agent, the Borrowers shall repay all Loans in such currency to which the Disqualifying Event applies or convert such Loans into the Dollar Amount of Loans in Dollars, ~~subject to the other terms contained herein.~~

~~"Foreign Currency Successor Rate~~Fixed Incremental Revolving Amount" has the meaning assigned to such term in Section 4.82.8(c)(v).

"Fixed Incremental Term Loan Amount" has the meaning assigned to such term in Section 2.9(c)(v).

"Foreign Lender" means a Lender that is not a U.S. Person.

"Foreign Obligor" means a Credit Party that is a Foreign Subsidiary.

"Foreign Subsidiary" means any (a) Subsidiary that is not a Domestic Subsidiary ~~and~~ (b) any Excluded Domestic Subsidiary and (c) any Subsidiary of any Subsidiary described in clauses (a) or (b) of this definition.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to an Issuing Lender, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender under such Defaulting Lender's Tranche, other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders under such Tranche or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender's Applicable Percentage of outstanding Swingline Loans made by the Swingline Lender under the Dollar Tranche, other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"GAAP" means generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Company and its Restricted Subsidiaries throughout the period indicated and (subject to Section 1.3) consistent with the prior financial practice of the Company and its Restricted Subsidiaries.

"Governmental Approvals" means all authorizations, consents, approvals, permits, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

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

"Guarantors" means, collectively, (a) each Material Domestic Subsidiary of the Company in existence on the Closing Date, (b) each Material Domestic Subsidiary of the Company which becomes a party to a Guaranty Agreement pursuant to Section 8.11 and (c) with respect to (i) any Hedging Obligations between any ~~Credit Party (other than the Company)~~Restricted Subsidiary and any Lender or an Affiliate of a Lender and any Bank Product Debt owing by any ~~Credit Party (other than the Company)~~Restricted Subsidiary, the Company and each Subsidiary Borrower that is a Domestic Subsidiary and (ii) the payment

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and performance by each Specified Credit Party of its obligations under its Guaranty Agreement with respect to all Hedging Obligations, the Company.

"Guaranty Agreement" means the amended and restated unconditional guaranty agreement made by the Guarantors in favor of the Administrative Agent for the ratable benefit of itself and the Lenders, substantially in the form of **Exhibit H**, as amended, restated, supplemented or otherwise modified from time to time.

"Guaranty Obligation" means, with respect to the Company and its Restricted Subsidiaries, without duplication, any obligation, contingent or otherwise, of any such Person pursuant to which such Person has directly or indirectly guaranteed any Indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of any such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services or to take-or-pay, or to maintain financial statement condition or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in

part); provided, that the term Guaranty Obligation shall not include (i) endorsements for collection or deposit in the ordinary course of business or (ii) the Company's obligations pursuant to the Equity Contribution Agreement, dated as of August 13, 2020 among the Company, BBHQ1, LLC, BB Real Property Development, LLC, and Wells Fargo Bank Northwest, National Association, as trustee, as in effect on the Closing Date.

"Hazardous Materials" means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to human health or the environment and are or become regulated by any Governmental Authority, (c) the presence of which require investigation or remediation under any Environmental Law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, or (e) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

"Hedging Agreement" means any agreement with respect to any Interest Rate Contract, forward rate agreement, commodity swap, forward foreign exchange agreement, currency swap agreement, cross-currency rate swap agreement, currency option agreement or other agreement or arrangement designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices, all as amended, restated, supplemented or otherwise modified from time to time.

"Hedging Obligations" means all existing or future payment and other obligations owing by a Credit Party or a Restricted Subsidiary under any Hedging Agreement (which such Hedging Agreement is permitted hereunder) with any Person that is a Lender or an Affiliate of a Lender.

"Honor Date" has the meaning assigned thereto in Section 2.3(c).

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

"Increasing Revolving Lenders" has the meaning assigned thereto in Section 2.8.

"Incremental Term Lenders" has the meaning assigned thereto in Section 2.9.

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"Incremental Term Loan Commitment" means (a) as to any Incremental Term Lender, the obligation of such Incremental Term Lender to make an Incremental Term Loan to or for the account of a Borrower in accordance with Section 2.9 and (b) as to all Incremental Term Lenders, the aggregate commitment of all Incremental Term Lenders to make Incremental Term Loans in accordance with Section 2.9.

"Incremental Term Loan Effective Date" means the date, which shall be a Business Day, on or before the Maturity Date, but no earlier than thirty (30) days after any Incremental Term Loan Notification Date (unless a shorter period is agreed to by all the affected Incremental Term Lenders), on which each of the Incremental Term Lenders makes Incremental Term Loans to a Borrower pursuant to Section 2.9.

"Incremental Term Loan Facility" means the incremental term loan facility established pursuant to Section 2.9.

"Incremental Term Loan Note" means a promissory note made by a Borrower in favor of an Incremental Term Lender evidencing the Incremental Term Loans made by such Incremental Term Lender, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Incremental Term Loan Notification" means the written notice by the Company of its request to borrow Incremental Term Loans pursuant to Section 2.9.

"Incremental Term Loan Notification Date" means the date on which the Incremental Term Loan Notification is received by the Administrative Agent.

"Incremental Term Loan Percentage" means, as to any Incremental Term Lender at any time, the ratio of (a) the amount of the Incremental Term Loan Commitment of such Incremental Term Lender to (b) the Incremental Term Loan Commitments of all Incremental Term Lenders.

"Incremental Term Loans" has the meaning assigned thereto in Section 2.9.

"Indebtedness" means, with respect to the Company and its Restricted Subsidiaries at any date and without duplication, the sum of the following calculated in accordance with GAAP:



(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (including, without limitation, all obligations under non-competition, earn-out or similar agreements), except trade payables arising in the ordinary course of business not more than one hundred eighty (180) days past due or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the applicable Person;

(c) the Attributable Indebtedness of such Person with respect to such Person's obligations in respect of Capital Leases and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

(d) all Indebtedness of any other Person secured by a Lien on any asset owned or being purchased by the Company or any of its Restricted Subsidiaries (including indebtedness arising

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under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business not more than one hundred eighty (180) days past due), whether or not such indebtedness shall have been assumed by the Company or any of its Restricted Subsidiaries or is limited in recourse;

(e) all Guaranty Obligations of any such Person;

(f) all obligations, contingent or otherwise, of any such Person relative to the face amount of letters of credit, whether or not drawn, including, without limitation, any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person;

(g) all mandatory obligations of any such Person to redeem, repurchase, exchange, defease or otherwise make payments in respect of Disqualified Capital Stock of such Person; and

(h) all net obligations incurred by any such Person pursuant to Hedging Agreements;

provided that no obligations in respect of Hedging Agreements shall be included in any determination of the Company's and its Restricted Subsidiaries' compliance with Article IX hereof. For the avoidance of doubt, Indebtedness shall be calculated subject to the proviso included in the definition of "Capital Lease." For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation of any Person under any Hedging Agreement on any date shall be deemed to be the Termination Value thereof as of such date.

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

"Information" has the meaning assigned thereto in [Section 13.10](#).

"Intercompany Debt" has the meaning assigned thereto in [Section 10.1\(e\)](#).

"Interest Expense" means, with respect to the Company and its Restricted Subsidiaries for any period, the gross interest expense (including, without limitation, interest expense attributable to Capital Leases, Synthetic Leases and all net payment obligations pursuant to Hedging Agreements) of the Company and its Restricted Subsidiaries, all determined for such period on a Consolidated basis, without duplication, in accordance with GAAP.

"Interest Payment Date" means, (a) as to any ~~Eurocurrency~~ Term SOFR Loan or any Designated Currency Term Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a ~~Eurocurrency~~ Term SOFR Loan or a Designated Currency Term Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Daily SOFR Loan, the first Business Day of each month and the Maturity Date of the Facility under which such Loan was made; and (c) as to any Designated Currency Daily Rate Loan, Base Rate Loan or Swingline Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swingline Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

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"Interest Period" means, as to each ~~Eurocurrency~~ Designated Currency Term Rate Loan or Term SOFR Loan, the period commencing on the date such ~~Eurocurrency Rate~~ Loan is disbursed or converted to or continued as a ~~Eurocurrency~~ Designated Currency Term Rate Loan or Term SOFR Loan and ending on the date one (1), ~~two (2)~~, three (3) or six (6) months (~~or provided, that, only interest periods of one (1) or three (3) months may be selected for Designated Currency Term Rate Loans denominated in Canadian Dollars) (or twelve (12) months or such other periods, in each case,~~ if agreed to by all of the Appropriate Lenders; ~~twelve (12) months~~) thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the applicable Borrower in its Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

"Interest Rate Contract" means any interest rate swap agreement, interest rate cap agreement, interest rate floor agreement, interest rate collar agreement, interest rate option or any other agreement regarding the hedging of interest rate risk exposure executed in connection with hedging the interest rate exposure of any Person and any confirming letter executed pursuant to such agreement, all as amended, restated, supplemented or otherwise modified from time to time.

"Investment" has the meaning assigned thereto in Section 10.3.

"IRS" means the United States Internal Revenue Service.

~~"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.~~

"ISP" means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the applicable Issuing Lender and the Company (or any Restricted Subsidiary) or in favor of the applicable Issuing Lender and relating to such Letter of Credit.

"Issuing Lender" means each of (a) Bank of America, through itself or through one of its designated Affiliates or branch offices, (b) such other Lender selected by the Company pursuant to Section 2.3(k) from time to time to issue such Letter of Credit (provided that no Lender shall be required to become an Issuing Lender pursuant to this clause (b) without such Lender's consent), or any successor issuer thereof or (c) any Lender selected by the Company (with the prior consent of the Administrative Agent) to replace a Lender who is a Defaulting Lender at the time of such Lender's appointment as an Issuing Lender (provided that no Lender shall be required to become an Issuing Lender pursuant to this clause (c) without such

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Lender's consent), or any successor issuer thereof, each in its capacity as issuer of any Letter of Credit, or any successor thereto.

"L/C Advance" means, with respect to each Revolving Credit Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a borrowing of Revolving Credit Loans. All L/C Borrowings shall be denominated in Dollars.

"L/C Commitment" means the lesser of (a) \$50,000,000 and (b) the Dollar Tranche Revolving Credit Commitment. The initial amount of each Issuing Lender's L/C Commitment is set forth on Schedule 2.3, or if an Issuing Lender has entered into an Assignment and Assumption or has otherwise assumed an L/C Commitment after the Closing Date, the amount set forth for such Issuing Lender as its L/C Commitment in the Register maintained by the Administrative Agent. The Letter of Credit Commitment of an Issuing Lender may be modified from time to time by agreement between such Issuing Lender and the Company, and notified to the Administrative Agent.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Facility" means the letter of credit facility under the Dollar Tranche established pursuant to Section 2.3.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (including all L/C Credit Extensions). For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.7. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"LCT Test Date" means, with respect to a Limited Condition Transaction, the date of the definitive agreement (or other relevant definitive documentation) for such Limited Condition Transaction.

"Lender" means each Person executing this Agreement as a Lender (including, without limitation, an Issuing Lender, and the Swingline Lender unless the context otherwise requires) set forth on the signature pages hereto and each Person that hereafter becomes a party to this Agreement as a Lender pursuant to Section 2.8, 2.9 or 13.9.

"Lender Party" means each Lender, the Swingline Lender and each Issuing Lender.

"Lender Addition and Acknowledgement Agreement" means each agreement, in form and substance satisfactory to the Administrative Agent, executed pursuant to Section 2.8 and/or Section 2.9 by the Company and any existing Lender or New Lender committing to provide an increase in the Revolving Credit Commitment and/or Incremental Term Loans and, in each case, acknowledged by the Administrative Agent and each Guarantor, (a) setting forth the terms and conditions of (i) any increase in the Revolving Credit Commitment pursuant to Section 2.8 and/or (ii) any Incremental Term Loans pursuant to Section 2.9 and (b) acknowledging that any New Lender shall be a party hereto and have the rights (including, without limitation, voting rights) and obligations of a Lender hereunder.

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"Lender Party" means each Lender, the Swingline Lender and each Issuing Lender.

"Lending Office" means, with respect to any Lender, the office of such Lender maintaining such Lender's Extensions of Credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable Issuing Lender.

"Letter of Credit Expiration Date" means the day that is seven (7) days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Report" means a certificate substantially the form of Exhibit L or any other form approved by the Administrative Agent.

"Letters of Credit" means any standby letter of credit issued hereunder. Letters of Credit may be issued in Dollars or in a Foreign Designated Currency and shall include the Existing Letters of Credit. Notwithstanding anything to the contrary contained herein, a letter of credit issued by an Issuing Lender other than Bank of America shall not be a "Letter of Credit" for purposes of the Loan Documents until such time as the Administrative Agent has been notified in writing of the issuance thereof by the applicable Issuing Lender.

"Leverage Ratio Increase Requirements" means, in connection with any request by the Company to increase the maximum Net Leverage Ratio under Section 9.1 by 0.50 for a four consecutive fiscal quarter period, the following:

- (i) the Company delivers such request in writing to the Administrative Agent at least three (3) Business Days (or such shorter period as may be agreed to by the Administrative Agent) prior to the date on which such request is to be given effect;

(ii) such request is delivered in connection with a Permitted Acquisition with an aggregate amount of cash consideration and any assumed debt, earn-outs (valued at an amount reasonably determined in good faith by the Company to be payable in connection with such earn-outs) and deferred payments of at least \$50,000,000;

(iii) such election is made no more than two times during the term of this Agreement;

(iv) such election is only given effect for the four consecutive fiscal quarter period following the date on which the applicable Permitted Acquisition is consummated (by way of example only, if the Permitted Acquisition is consummated on May 15, 2021, for the fiscal quarters ending June 30, 2021, September 30, 2021, December 31, 2021 and March 31, 2022);

(v) only one such election may be given effect during any four consecutive fiscal quarter period; and

(vi) the maximum Net Leverage Ratio under Section 9.1 shall revert to the then permitted Net Leverage Ratio (without giving effect to any such increase) for at least ~~two~~one fiscal ~~quarters~~quarter before another increase may be invoked.

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~~"LIBOR Quoted Currency" means Dollars and Pounds Sterling, in each case as long as there is a published LIBOR Rate with respect thereto.~~

~~"LIBOR Rate" shall have the meaning set forth in the definition of "Eurocurrency Rate".~~

"Lien" means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"Limited Condition Transaction" means any (a) Permitted Acquisition or other Investment whose consummation is not conditioned on the availability of, or on obtaining, third-party financing and (b) incurrence, redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, grant or creation of Liens, sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Credit Party and making of dividends or distributions, in each case requiring irrevocable notice in advance of such action and, in the case of each of clauses (a) and (b) is designated as a Limited Condition Transaction by the Company in writing to the Administrative Agent.

"Loan Documents" means, collectively, this Agreement, each Note, the Letter of Credit Applications, the Guaranty Agreement, the Security Documents, each Lender Addition and Acknowledgement Agreement (if any) and each other document, instrument, certificate and agreement executed and delivered by the Company or any Restricted Subsidiary thereof in connection with this Agreement or otherwise referred to herein or contemplated hereby (other than any agreement, document, certificate or instrument related to a Bank Product), all as may be amended, restated, supplemented or otherwise modified from time to time.

"Loan Notice" means a notice of (a) a request for an Extension of Credit, (b) a conversion of Loans from one Type to the other, or (c) a continuation of ~~Eurocurrency~~Designated Currency Term Rate Loans, pursuant to Section 2.2(a), which shall be substantially in the form of **Exhibit B** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

"Loans" means the collective reference to the Revolving Credit Loans, the Term Loan, the Swingline Loans, and the Incremental Term Loans, if any, and "Loan" means any of such Loans.

~~"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurocurrency market.~~

~~"Mandatory Cost" means any amount incurred periodically by any Lender during the term of this Agreement which constitutes fees, costs or charges imposed on lenders generally in the jurisdiction in which such Lender is domiciled, subject to regulation, or has its Lending Office by any Governmental Authority.~~

"Material Adverse Effect" means, with respect to the Company and its Restricted Subsidiaries, a material adverse effect on (a) the properties, business, results of operations or financial condition of the Company and its Restricted Subsidiaries, taken as a whole, (b) the ability of any such Person to perform its obligations under the Loan Documents to which it is a party, or (c) the legality, validity, binding effect or enforceability of any Loan Document.

**"Material Domestic Subsidiary"** means (a) any Domestic Subsidiary that is a Subsidiary Borrower or (b) any Domestic Subsidiary that is a Restricted Subsidiary of the Company that (i) individually (x) owns assets with a fair market value in excess of ten percent (10%) of the Consolidated assets of the Company and its Restricted Subsidiaries as of the most recent Fiscal Year end or (y) accounted for more than ten percent (10%) of EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Fiscal Year or (ii) collectively with all other Domestic Subsidiaries that are not Material Domestic Subsidiaries (x) owns assets with a fair market value in excess of fifteen percent (15%) of the Consolidated assets of the Company and its Restricted Subsidiaries as of the most recent Fiscal Year end or (y) accounted for more than fifteen percent (15%) of EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Fiscal Year.

**"Material Foreign Subsidiary"** means (a) any Foreign Subsidiary that is a Subsidiary Borrower or (b) any Foreign Subsidiary that is a Restricted Subsidiary of the Company that (i) individually (x) owns assets with a fair market value in excess of ten percent (10%) of the Consolidated assets of the Company and its Restricted Subsidiaries as of the most recent Fiscal Year end or (y) accounted for more than ten percent (10%) of EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Fiscal Year or (ii) collectively with all other Foreign Subsidiaries that are not Material Foreign Subsidiaries (x) owns assets with a fair market value in excess of fifteen percent (15%) of the Consolidated assets of the Company and its Restricted Subsidiaries as of the most recent Fiscal Year end or (y) accounted for more than fifteen percent (15%) of EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Fiscal Year.

**"Material Intellectual Property"** means trademarks, service marks, trade names, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses and other intellectual property rights that are material to the operation of the business of the Company and its Restricted Subsidiaries, taken as a whole.

**"Material Subsidiary"** means any Material Domestic Subsidiary or any Material Foreign Subsidiary.

**"Maturity Date"** means the earliest to occur of (a) ~~October~~ April 30, 2025~~2029~~, (b) the date of termination by the Company pursuant to Section 2.6, and (c) the date of termination by the Administrative Agent on behalf of the Lenders pursuant to Section 11.2(a).

**"Measurement Period"** means the period of the four fiscal quarters most recently ended for which the Borrower has delivered financial statements pursuant to Section 7.1(a) or (b).

**"Moody's"** means Moody's Investors Service, Inc. and any successor thereto.

**"Multiemployer Plan"** means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which the Company or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding six (6) years.

**"Net Income"** means, with respect to the Company and its Restricted Subsidiaries, for any period of determination, the net income (or loss) of the Company and its Restricted Subsidiaries for such period, determined on a Consolidated basis in accordance with GAAP; provided that there shall be excluded from Net Income (a) the net income (or loss) of any Person (other than a Restricted Subsidiary which shall be subject to clause (c) below), in which the Company or any of its Restricted Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid to the Company or any of its Restricted Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of such Person or is merged into or consolidated with such Person or any of its Restricted Subsidiaries or that Person's assets are acquired by

such Person or any of its Restricted Subsidiaries except to the extent included pursuant to the foregoing clause (a), (c) the net income (if positive) of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary to the Company or any of its Restricted Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute rule or governmental regulation applicable to such Restricted Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions.

**"Net Leverage Ratio"** has the meaning assigned thereto in Section 9.1.

**"Net Proceeds"** means, with respect to any Prepayment Event, (a) the cash proceeds received in respect of such event including any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, net of (b) the sum of (i) all reasonable fees

and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset (or a portion thereof) or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by the Company's chief financial officer, corporate controller, treasurer or assistant treasurer).

"**New Lender**" means any bank, financial institution or investment fund committing to make Extensions of Credit pursuant to [Section 2.8](#) or [Section 2.9](#) that was not a Lender as of the applicable Revolving Credit Increase Effective Date or Incremental Term Loan Effective Date relating to such Extensions of Credit.

"**New Zealand Dollar**" means the lawful currency of New Zealand.

"**Non-Consenting Lender**" means any Lender that does not approve any consent, waiver, amendment, modification or termination that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of [Section 13.2](#) and (ii) has been approved by the Required Lenders.

"**Non-Defaulting Lender**" means, at any time, each Lender that is not a Defaulting Lender at such time.

~~"Non LIBOR Quoted Currency" means any currency other than a LIBOR Quoted Currency.~~

"**Non-SOFR Successor Rate**" has the meaning specified in [Section 4.8\(c\)](#).

"**Notes**" means a Revolving Credit Note, Term Loan Note, Swingline Note, or Incremental Term Loan Note, if any.

"**Notice of Account Designation**" a notice substantially in the form of **Exhibit C** irrevocably authorizing the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to [Section 2.2](#) in Same Day Funds by crediting or wiring such proceeds to the deposit account(s) of the applicable Borrower identified in such notice.

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"**Notice of Prepayment**" means a notice of prepayment with respect to a Loan, which shall be substantially in the form of **Exhibit D** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

"**Obligations**" means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations, (c) all Bank Product Debt and (d) all other fees and commissions (including attorneys' fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Company or any of its Restricted Subsidiaries to the Lenders or the Administrative Agent, in each case under any Loan Document or otherwise, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note; provided, that "Obligations" of a Guarantor shall exclude any Excluded Hedging Obligations of such Guarantor.

"**OFAC**" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"**Officer's Compliance Certificate**" means a certificate of the chief financial officer, corporate controller, assistant treasurer or the treasurer of the Company substantially in the form of **Exhibit F**.

"**Operating Lease**" means, as to any Person as determined in accordance with GAAP, any lease of property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to [Section 4.12](#)).

"Outstanding Amount" means (a) with respect to Term Loans, Revolving Credit Loans and Swingline Loans on any date, the Dollar Amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

"Overnight Rate" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, an Issuing Lender, or the Swingline Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in a ~~Foreign~~ Designated Currency,

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an overnight rate determined by the Administrative Agent or an Issuing Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

"Participant" has the meaning assigned thereto in [Section 13.9\(d\)](#).

"Participant Register" has the meaning assigned thereto in [Section 13.9\(d\)](#).

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ~~ACT~~) Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"Payment Event of Default" means any Event of Default specified in [Section 11.1\(a\)](#) or (b).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, sponsored or contributed to by the Company or any ERISA Affiliates or (b) has at any time within the preceding six (6) years been maintained, sponsored or contributed to by the Company or any of its current or former ERISA Affiliates.

"Permitted Acquisitions" means, [subject to Section 1.3](#), the acquisitions permitted pursuant to [Section 10.3\(g\)](#).

"Permitted Liens" means the Liens permitted pursuant to [Section 10.2](#).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Platform" has the meaning assigned thereto in [Section 7.3](#).

"Pledge Agreement" means that certain amended and restated pledge agreement of even date herewith executed by the Credit Parties in favor of the Administrative Agent for the ratable benefit of itself and the Lenders, substantially in the form of **Exhibit I**, as amended, restated, supplemented or otherwise modified from time to time.

"Pounds Sterling" means the lawful currency of the United Kingdom.

~~"Pre-Adjustment Successor Rate" has the meaning assigned to such term in [Section 4.9\(c\)](#).~~

"Prepayment Event" means:

(a) any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Credit Party in excess of \$15,000,000 with respect to any individual sale, transfer or disposition, or \$20,000,000 in the aggregate with respect to all such sales, transfers and assignments, in each case during a Fiscal Year, other than dispositions described in [Section 10.5 \(a\)](#) through (b); or



(b) the incurrence by the Company or any Restricted Subsidiary of any Indebtedness for borrowed money, other than Indebtedness permitted under Section 10.1.

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"Pro Forma Adjustments" means adjustments to EBITDA reflecting any ~~non-recurring~~ non-recurring costs, any extraordinary expenses, any synergies, cost savings, operating expense reductions or other operating improvements in connection with ~~such Permitted Acquisitions~~ any Investment permitted by Section 10.3 and such other adjustments reasonably acceptable to the Administrative Agent in connection with any ~~Permitted Acquisitions~~ such Investment and any asset disposition permitted pursuant to Section 10.4 or Section 10.5 closed during such period that are reasonably identifiable and factually supportable and otherwise calculated on a basis consistent with GAAP and Regulation ~~S-X-S-X~~ of the Securities Exchange Act of 1934, as amended, or as approved by the Administrative Agent.

"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.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to such term in Section 13.26.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Rate Determination Date" means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, then "Rate Determination Date" means such other day as otherwise reasonably determined by the Administrative Agent).

"Ratio Incremental Revolving Amount" the meaning assigned thereto in Section 2.8(c)(v).

"Ratio Incremental Term Loan Amount" the meaning assigned thereto in Section 2.9(c)(v).

"Recipient" means the Administrative Agent, any Lender, any Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder.

"Register" has the meaning assigned thereto in Section 13.9(c).

"Reimbursement Obligation" means the obligation of the Borrowers to reimburse the Issuing Lenders pursuant to Section 2.3(c) for amounts drawn under Letters of Credit.

~~"Related Adjustment" means, in determining any Dollar LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such Dollar LIBOR Successor Rate:~~

~~(a) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or~~

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~~(b) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto);~~

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the directors, officers, employees, agents, consultants, service providers and advisors of such Person and of such Person's Affiliates.

~~"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;~~

"**Relevant Rate**" means with respect to any Extension of Credit denominated in (a) Dollars, SOFR, (b) Pounds Sterling, SONIA, (c) euros, EURIBOR, (d) Canadian Dollars, the Term CORRA Rate, (e) Australian Dollars, BBSY, (h) New Zealand Dollars, BKBM, as applicable.

"**Required Lenders**" means, at any date, any combination of Lenders who hold in the aggregate more than fifty percent (50%) of the sum of (a) the Commitments and (b) the aggregate outstanding Extensions of Credit under the Term Loan and the Incremental Term Loans, or, if the Credit Facility has been terminated pursuant to [Section 11.2](#), any combination of Lenders holding more than fifty percent (50%) of the aggregate Extensions of Credit; provided that the Commitment of, and the portion of the Extensions of Credit, as applicable, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Lenders.

"**Required Revolving Credit Lenders**" means, at any date, any combination of Lenders who hold in the aggregate more than fifty percent (50%) of the Revolving Credit Commitments, or, if the Credit Facility has been terminated pursuant to [Section 11.2](#), any combination of Lenders holding more than fifty percent (50%) of the aggregate Revolving Credit Loans; provided that the Revolving Credit Commitment of, and the portion of the Revolving Credit Loans, as applicable, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Revolving Credit Lenders.

"**Rescindable Amount**" has the meaning assigned thereto in [Section 4.4\(b\)\(ii\)](#).

"**Resignation Effective Date**" has the meaning assigned thereto in [Section 12.6\(a\)](#).

"**Resolution Authority**" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller, solely for purposes of the delivery of incumbency certificates pursuant to [Section 5.1](#), the secretary or any assistant secretary of a Credit Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Credit Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Credit Party designated in or pursuant to an agreement between the applicable Credit Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

"**Restricted Subsidiary**" means, at the date of any determination, any Subsidiary of the Company that is not an Unrestricted Subsidiary.

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"**Revolving Credit Commitment**" means the Dollar Tranche Revolving Credit Commitment and the Designated Currency Tranche Revolving Credit Commitment.

"**Revolving Credit Commitment Percentage**" means, as to any Revolving Credit Lender at any time, the ratio of (a) the amount of the Revolving Credit Commitment of such Revolving Credit Lender to (b) the Revolving Credit Commitments of all Revolving Credit Lenders.

"**Revolving Credit Facility**" means the Dollar Tranche Revolving Credit Facility and the Designated Currency Tranche Revolving Credit Facility.

"**Revolving Credit Increase Effective Date**" means the date, which shall be a Business Day, on or prior to the date that is three (3) months prior to the Maturity Date, but no earlier than thirty (30) days after any Revolving Credit Increase Notification Date (unless a shorter period is agreed to by all affected Increasing Revolving Lenders), on which each of the Increasing Revolving Lenders increase (or, in the case of New Lenders, provide) their respective Revolving Credit Commitments to the Borrowers pursuant to [Section 2.8](#).

"**Revolving Credit Increase Notification**" means the written notice by the Company of its desire to increase the Revolving Credit Commitment pursuant to [Section 2.8](#).

"Revolving Credit Increase Notification Date" means the date on which the Revolving Credit Increase Notification is received by the Administrative Agent.

"Revolving Credit Lender" means any Dollar Tranche Revolving Credit Lender or Designated Currency Tranche Revolving Credit Lender.

"Revolving Credit Loans" means any Dollar Tranche Revolving Credit Loans or Designated Currency Tranche Revolving Credit Loans, as the context requires.

"Revolving Credit Note" means a Dollar Tranche Revolving Credit Note or Designated Currency Tranche Revolving Credit Note, as applicable.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in a Foreign Designated Currency, same day or other funds as may be determined by the Administrative Agent or the applicable Issuing Lender, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Foreign Designated Currency.

"Sanction(s)" means any ~~sanction~~ economic or financial sanctions or trade embargoes imposed, administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the EU, ~~He~~His Majesty's Treasury or other relevant sanctions authority having jurisdiction over the Company and its Subsidiaries except to the extent contrary to Applicable Laws of the United States.

"Scheduled Unavailability Date" has the meaning assigned to such term in Section 4.8(c).

~~"Screen Rate" means the Applicable Reference Rate quote for an Applicable Currency on the applicable screen page the Administrative Agent designates to determine such Applicable Reference Rate~~

~~for such Applicable Currency (or such other commercially available source providing such quotations for such Applicable Currency as may be designated by the Administrative Agent from time to time);~~

"Security Documents" means the collective reference to the Guaranty Agreement, the Pledge Agreement and each other agreement or writing pursuant to which any Credit Party purports to pledge or grant a security interest in Capital Stock securing the Obligations or any such Person purports to guaranty the payment and/or performance of the Obligations, in each case, as amended, restated, supplemented or otherwise modified from time to time.

"Senior Officer" means the chief executive officer, president or chief financial officer of the Company.

~~"SOFR" with respect to any Business Day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body;~~

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

"SOFR Adjustment" means 0.10% (10 basis points).

"SOFR Scheduled Unavailability Date" has the meaning specified in Section 4.8(b).

"Solvent" means, with respect to any Person on a particular date, that any such Person (a) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage and is able to pay its debts as they mature, (b) has assets having a value, both at fair valuation and at present fair saleable value, greater than the amount required to pay its probable liabilities (including contingencies), and (c) does not believe that it will incur debts or liabilities beyond its ability to pay such debts or liabilities as they mature.

"SONIA" means, with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on the fifth (5<sup>th</sup>) Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); provided however that if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

"SONIA Adjustment" means, with respect to SONIA, 0.0326% per annum (3.26 basis points).

"Special Notice Currency" means at any time a Foreign Designated Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

"Specified Credit Party" shall mean each Credit Party that is, at the time on which the relevant Guaranty Agreement or grant of the relevant security interest under the Loan Documents by such Credit Party becomes effective with respect to a Hedging Obligation, a corporation, partnership, proprietorship, organization, trust or other entity that would not be an "eligible contract participant" under the Commodity Exchange Act at such time but for the effect of Section 2.12 of the Guaranty Agreement.

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"Specified Purchase Agreement Representations" means, with respect to any Permitted Acquisition or other Investment, such of the representations and warranties made by, or with respect to, the applicable entity to be acquired and its Subsidiaries (if any) in the applicable definitive agreement relating to such Permitted Acquisition or Investment as are material to the interests of the lenders providing the applicable Indebtedness, but only to the extent that the Borrowers (or their applicable Affiliates) have the right to terminate its (or their) obligations under such agreement, or to decline to consummate such transaction, as a result of a breach of any one or more of such representations and warranties in such agreement, in each case, without any liability to, and without resulting in the payment of any fees, liquidated damages or other amounts by, the Borrowers (or their Affiliates or Subsidiaries).

"Specified Representations" means the representations and warranties made in Sections 6.1(a)(i) (as to valid existence of the Credit Parties) and (a)(ii), Section 6.1(c), Section 6.1(d)(ii), Section 6.1(j), Section 6.1(k), Section 6.1(p) (as of the date of the applicable Incremental Term Loans immediately after giving effect to the incurrence thereof and to the consummation of the applicable Acquisition or other Investment and the incurrence of any Indebtedness, grant of any Liens or making of any dividend or distribution in connection therewith), Section 6.1(v), Section 6.1(w) and Section 6.1(z) (but only with respect to (i) assets with respect to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code, (ii) the pledge and perfection of security interests in equity interests of the Borrowers' material, wholly owned Domestic Subsidiaries (excluding delivery of stock certificates of any Person acquired pursuant to the applicable Permitted Acquisition or Investment to the extent not received from the seller under the definitive agreement relating to such Permitted Acquisition or Investment) and (iii) other assets a security interest in which can be provided and perfected after the Borrowers' use of commercially reasonable efforts to do so or without undue burden or expense).

"Subordinated Indebtedness" means the collective reference to any Indebtedness of the Company or any Restricted Subsidiary subordinated in right and time of payment to the Obligations on subordination terms reasonably satisfactory to the Administrative Agent.

"Subsidiary" means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by or the management is otherwise controlled by such Person (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified references to "Subsidiary" or "Subsidiaries" herein shall refer to those of the Company.

"Subsidiary Borrower" has the meaning set forth in Section 2.10.

~~"Successor Rate" means the Dollar LIBOR Successor Rate or any Foreign Currency Successor Rate, as applicable~~ has the meaning specified in Section 4.8(c).

~~"Successor Rate Conforming Changes" means, with respect to any proposed Successor Rate for an Applicable Currency, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice for such Applicable Currency (or, if the Administrative Agent determines that adoption of any portion of such market practice for such Applicable~~

~~Currency is not administratively feasible or that no market practice for the administration of such Successor Rate for such Applicable Currency exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).~~

"Supported QFC" has the meaning assigned to such term in Section 13.26.

"Sustainability Assurance Provider" means an independent sustainability assurance provider agreed between the Company and the Sustainability Coordinator (each acting reasonably).

"Sustainability Coordinator" means, collectively, (a) BAS, and (b) each other Lender (or Affiliate of a Lender) that is appointed as a sustainability coordinator by the Company and reasonably acceptable to BAS, in each case, its capacity as sustainability coordinator hereunder.

"Sustainability Linked Loan Principles" means the Sustainability Linked Loan Principles as published by the Loan Market Association, Asia Pacific Loan Market Association and Loan Syndications & Trading Association (and as updated from time to time).

"Swingline Commitment" means the lesser of (a) Fifty Million Dollars (\$50,000,000) and (b) the Dollar Tranche Revolving Credit Commitment.

"Swingline Facility" means the swingline facility established pursuant to Section 2.4.

"Swingline Lender" means Bank of America, through itself or through one of its designated Affiliates or branch offices, in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

"Swingline Loan" has the meaning set forth in Section 2.4.

"Swingline Loan Notice" means a notice of a request for Swingline Loans pursuant to Section 2.4(b), which shall be substantially in the form of Exhibit E or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Company.

"Swingline Note" means a promissory note made by the Company in favor of the Swingline Lender evidencing Swingline Loans made by the Swingline Lender, substantially in the form of Exhibit A-2 hereto, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

~~"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.~~

"T2" means the real time gross settlement system operated by the Eurosystem, or any successor system.

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~~"TARGET Day" means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, reasonably determined by the Administrative Agent to be a suitable replacement) T2 is open for the settlement of payments in euro.~~

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term CORRA Adjustment" means (a) 0.29547% (29.547 basis points) for an Interest Period of one-month's duration and (b) 0.32138% (32.138 basis points) for an Interest Period of three-months' duration.

“Term Loan” means the term loan made to the Company pursuant to Section 2.1(c).

“Term Loan Commitment” means (a) as to any Term Loan Lender, the obligation of such Term Loan Lender to make the Term Loan for the account of the Company hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Term Loan Lender’s name on Schedule 1.1(b), as such Term Loan Commitment may be reduced at any time or from time to time pursuant to the terms hereof, and (b) as to all Term Loan Lenders, the aggregate commitment of all Term Loan Lenders to make the Term Loan, as such amount may be reduced at any time or from time to time pursuant to the terms hereof.

“Term Loan Commitment Percentage” means, as to any Term Loan Lender at any time, the ratio of (a) the amount of the Term Loan Commitment of such Term Loan Lender to (b) the Term Loan Commitments of all Term Loan Lenders.

“Term Loan Credit Facility” means the term loan credit facility established pursuant to Article II, but excluding the Revolving Credit Facility, the Swingline Facility, and any Incremental Term Loan Facility.

“Term Loan Lender” means any Lender with a Term Loan Commitment.

“Term Loan Note” means a promissory note made by the Company in favor of a Term Loan Lender evidencing the portion of the Term Loan made by such Term Loan Lender, substantially in the form of **Exhibit A-3** hereto, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Term SOFR” means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to such date with a term of one month commencing that day; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S.

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Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such term;

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

“Term SOFR Loan” means Loan that bears interest at a rate based on clause (a) of the definition of Term SOFR.

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Termination Event” means except for any such event or condition that would not reasonably be expected to have a Material Adverse Effect: (a) with respect to a Pension Plan, a “Reportable Event” described in Section 4043 of ERISA for which the notice requirement has not been waived by the PBGC, or (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) with respect to a Credit Party, the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA, or (g) the partial or complete withdrawal of the Company or of any ERISA Affiliate from a Multiemployer Plan if there is any potential withdrawal liability would reasonably be expected to be asserted by such plan thereof, or (h) any event or condition which results in the ~~reorganization or~~ insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA, or (i) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA.

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

**"Term Loan"** means the term loan made to the Company pursuant to ~~Section 2.1(c)~~.

**"Term Loan Commitment"** means (a) as to any Term Loan Lender, the obligation of such Term Loan Lender to make the Term Loan for the account of the Company hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Term Loan Lender's name on ~~Schedule 1.1(b)~~, as such Term Loan Commitment may be reduced at any time or from time to time pursuant to the terms hereof, and (b) as to all Term Loan Lenders, the aggregate commitment of all Term Loan Lenders to make the Term Loan, as such amount may be reduced at any time or from time to time pursuant to the terms hereof.

**"Term Loan Commitment Percentage"** means, as to any Term Loan Lender at any time, the ratio of (a) the amount of the Term Loan Commitment of such Term Loan Lender to (b) the Term Loan Commitments of all Term Loan Lenders.

**"Term Loan Credit Facility"** means the term loan credit facility established pursuant to ~~Article II~~, but excluding the Revolving Credit Facility, the Swingline Facility, and any Incremental Term Loan Facility.

**"Term Loan Lender"** means any Lender with a Term Loan Commitment ~~Third Amendment Effective Date~~ means April 30, 2024.

**"Term Loan Note"** means a promissory note made by the Company in favor of a Term Loan Lender evidencing the portion of the Term Loan made by such Term Loan Lender, substantially in the form of ~~Exhibit A-3~~ hereto, and any amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

**"Term SOFR"** means the forward looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of "Interest Period" and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

**"Total Assets"** means the total assets of the Company and its Restricted Subsidiaries on a Consolidated basis.

**"Total Funded Net Indebtedness"** means, as of any date of determination with respect to the Company and its Restricted Subsidiaries on a Consolidated basis without duplication, the sum of all Indebtedness of the Company and its Restricted Subsidiaries ~~minus~~ (a) Indebtedness of the type described in clause (b) of the definition of Indebtedness, (b) Indebtedness of the type described in clause (d) of the definition of Indebtedness and (c) Cash on Hand, ~~provided, however, in no event shall the deduction pursuant to this clause (c) exceed \$100,000,000~~ 150,000,000.

**"Tranche"** means the Dollar Tranche or the Designated Currency Tranche, as applicable.

**"Transaction Costs"** means, without duplication, all transaction fees, charges and other amounts related to (1) this Agreement and the other Loan Documents, and (2) any Permitted Acquisition, which fees, charges and other amounts shall include, without limitation, (a) any financing fees, merger and acquisition fees (including consulting, advisory or brokerage fees), legal fees and expenses, due diligence fees or any other reasonably related fees and expenses during such period in connection therewith, (b) the aggregate amount of all payments funded from the earnings of the Company and its Restricted Subsidiaries and made during such period in connection with any Permitted Acquisition, including, without limitation, indemnity payments, working capital and purchase price adjustments, earn outs or other contingent payments, and (c) restructuring and business optimization expenses, including any cost savings and synergies projected by the Company in good faith to be realized as a result of any such Permitted Acquisition and any non-recurring restructuring and integration costs and expenses approved by the Administrative Agent in its sole discretion; ~~provided, however, that (i) all such Transaction Costs shall be included, if at all, in any determination of EBITDA during the four consecutive quarter period following the applicable acquisition (including, without limitation, the quarter in which such acquisition occurs), and (ii) with respect to any Permitted Acquisition subject hereto, the aggregate amount of cash Transaction Costs in respect of such Permitted Acquisition that may be added back to EBITDA shall not exceed 10%~~

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of pro forma Consolidated EBITDA for the Company and its Restricted Subsidiaries (giving effect to such Permitted Acquisition).

"Type" means, with respect to a Loan, its character as a Base Term SOFR Loan, a Daily SOFR Loan, a Base Rate Loan, a Designated Currency Daily Rate Loan or a Eurocurrency Designated Currency Term Rate Loan.

"UCC" means the Uniform Commercial Code as in effect in the State of New York or appropriate governing state, as amended or modified from time to time.

"UCP" means the Uniform Customs and Practice for Documentary Credits (1993 Revision), effective January, 1994 International Chamber of Commerce Publication No. 500.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"United States" means the United States of America.

"Unreimbursed Amount" has the meaning assigned thereto in Section 2.3(c).

"Unrestricted Subsidiary" means (a) any Subsidiary of the Company designated by the Company as an "Unrestricted Subsidiary" pursuant to Section 8.14 and (b) any direct or indirect Subsidiary of a Subsidiary described in the foregoing clause (a).

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) 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. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" has the meaning assigned to such term in Section 13.26.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 4.11(e).

"Wholly-Owned" means, with respect to a Subsidiary, that all of the shares of Capital Stock of such Subsidiary are, directly or indirectly, owned or controlled by the Company and/or one or more of its Wholly-Owned Subsidiaries (except for directors' qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Company).

"Withholding Agent" means any Credit Party and the Administrative Agent.

"~~Write-Down~~Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the ~~write-down~~write-down and conversion powers of such EEA Resolution Authority from time

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to time under the ~~Bail-In~~Bail-In Legislation for the applicable EEA Member Country, which ~~write-down~~write-down and conversion powers are described in the EU ~~Bail-In~~Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the ~~Bail-In~~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/Bail-In](#) Legislation that are related to or ancillary to any of those powers.

**SECTION 1.2 Other Definitions and Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document or unless the context requires otherwise: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (d) the word "will" shall be construed to have the same meaning and effect as the word "shall", (e) any definition of or reference to any agreement, instrument or other document (including the Loan Documents, any formation document or governing document of a Credit Party) herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, extended, restated, replaced, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (f) any reference herein to any Person shall be construed to include such Person's successors and assigns, (g) the words "hereto," "herein", "hereof" and "hereunder", and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (h) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (i) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (j) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, (k) 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", (l) section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document and (m) any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person, and any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

**SECTION 1.3 Accounting Terms; [Limited Condition Transactions](#).**

(a) **Accounting Terms.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared

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in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements required by [Section 7.1\(b\)](#), except as otherwise specifically prescribed herein. If the Company notifies the Administrative Agent that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP (including the adoption of IFRS) or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Company that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

(b) **Accounting Changes.** If at any time any change in GAAP or change in the Company's accounting practices under [Section 10.9](#) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or change in the Company's accounting practices under [Section 10.9](#) (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP and the Company's accounting practice prior to such change therein and (ii) the Company shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or change in the Company's accounting practices. 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 (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to



value any Indebtedness or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Board Staff Position APB 14-1 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.

(c) Limited Condition Transactions. Notwithstanding anything to the contrary herein, in connection with any Limited Condition Transaction and, if applicable, the availability of the Incremental Term Loans that are to be used to finance such Limited Condition Transaction in accordance with this Section, then the following provisions shall apply:

i. any condition to such Limited Condition Transaction or such Indebtedness that the Credit Parties be in compliance with the financial covenants set forth in Article IX immediately after giving effect to such Limited Condition Transaction and the incurrence of such Indebtedness on a pro forma basis recomputed as of the end of the Measurement Period shall be satisfied if the Credit Parties are in compliance with such financial covenants immediately after giving effect to such Limited Condition Transaction and the incurrence of any Indebtedness (other than revolving loans, Swingline Loans

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and Letters of Credit) on a pro forma basis recomputed as of the end of the Measurement Period immediately prior to the LCT Test Date;

ii. any condition to the borrowing of Incremental Term Loans that the Net Leverage Ratio not exceed a specified level immediately after giving effect to the incurrence of such Incremental Term Loan on a pro forma basis recomputed as of the end of the Measurement Period shall be satisfied if the Credit Parties are in compliance with such Net Leverage Ratio immediately after giving effect to the incurrence of such Incremental Term Loans on a pro forma basis recomputed as of the end of the Measurement Period immediately prior to the LCT Test Date;

iii. any condition to such Limited Condition Transaction or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Limited Condition Transaction or the incurrence of such Indebtedness shall be satisfied if (A) no Default or Event of Default (as applicable) shall have occurred and be continuing on the LCT Test Date and (B) no Event of Default under Section 11.1(a), 11.1(b), 11.1(j) or 11.1(k) shall have occurred and be continuing on the date of the consummation of such Limited Condition Transaction and the incurrence of such Indebtedness; and

iv. any condition to such Limited Condition Transaction or such Indebtedness that the representations and warranties in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct at the time of such Limited Condition Transaction or the incurrence of such Indebtedness shall be satisfied if (A) the representations and warranties in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct as of the LCT Test Date and (B) the Specified Representations and the Specified Purchase Agreement Representations shall be true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, in all respects) on and as of the date of the consummation of such Limited Condition Transaction and the incurrence of such Indebtedness.

**SECTION 1.4 UCC Terms.** Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

**SECTION 1.5 Rounding.** Any financial ratios required to be maintained by the Company pursuant to this Agreement shall be calculated by dividing the appropriate component by the other

component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**SECTION 1.6 [Intentionally Omitted]:**

**SECTION 1.1 Interest Rates.** ~~The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.~~

**SECTION 1.2 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Amount of the stated amount of such Letter of Credit in effect at such time; ~~provided, however,~~ that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Amount of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**SECTION 1.3 Exchange Rates; Currency Equivalents.**

(a) ~~(a)~~ The Administrative Agent or the applicable Issuing Lender, as applicable, shall determine the Exchange Rates as of each Computation Date to be used for calculating Dollar Amounts of Extensions of Credit and Outstanding Amounts denominated in ~~Foreign~~ Designated Currencies. Such Exchange Rates shall become effective as of such Computation Date and shall be the Exchange Rates employed in converting any amounts between the applicable currencies until the next Computation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Amount as so determined by the Administrative Agent or the applicable Issuing Lender, as applicable.

(b) ~~(b)~~ Wherever in this Agreement in connection with an Extension of Credit, conversion, continuation or prepayment of a ~~Eurocurrency~~ Designated Currency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Extension of Credit, ~~Eurocurrency~~ Designated

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Currency Rate Loan or Letter of Credit is denominated in a ~~Foreign~~ Designated Currency, such amount shall be the relevant Equivalent Amount of such Dollar amount (rounded to the nearest unit of such ~~Foreign~~ Designated Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable Issuing Lender, as the case may be.

~~(e) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rates (including, without limitation, any Successor Rate) or the effect of any of the foregoing, or of any Successor Rate Conforming Changes.~~

(c) [Reserved].

(d) For purposes of determining compliance with any dollar basket contained herein, the Dollar Amount of such item shall be calculated at the time of incurrence or issuance thereof, unless otherwise agreed to by both the Company and the Administrative Agent.

#### SECTION 1.4 Additional ~~Foreign~~ Designated Currencies

(a) The Company may from time to time request that ~~Eurocurrency~~ Designated Currency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "~~Foreign~~ Designated Currency"; ~~provided that (i) such requested currency complies with the proviso in the definition of "Foreign Currency" and (ii) such requested currency shall only be treated as a "LIBOR Quoted Currency" to the extent that there is published LIBOR rate for such currency~~ Designated Currency". In the case of any such request with respect to the making of ~~Eurocurrency~~ Designated Currency Rate Loans, such request shall be subject to the approval of the Administrative Agent and each Lender with a Commitment under which such currency is requested to be made available; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable Issuing Lender.

(b) Any such request shall be made to the Administrative Agent not later than ~~11:00 a.m.~~ 11:00 a.m., ten (10) Business Days prior to the date of the desired Extension of Credit (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable Issuing Lender, in its or their sole discretion). In the case of any such request pertaining to ~~Eurocurrency~~ Designated Currency Rate Loans, the Administrative Agent shall promptly notify each Appropriate Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the applicable Issuing Lender thereof. Each Appropriate Lender (in the case of any such request pertaining to ~~Eurocurrency~~ Designated Currency Rate Loans) or the applicable Issuing Lender (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than ~~11:00 a.m.~~ 11:00 a.m., five (5) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of ~~Eurocurrency~~ Designated Currency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or an Issuing Lender, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or such Issuing Lender, as the case may be, to permit ~~Eurocurrency~~ Designated Currency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Appropriate Lenders consent to making

~~Eurocurrency~~ Designated Currency Rate Loans in such requested currency and the Administrative Agent and such Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Company and (i) the Administrative Agent and such Lenders may amend the definition of ~~Eurocurrency Rate for any Non-LIBOR Quoted~~ Designated Currency Daily Rate or Designated Currency Term Rate to the extent necessary to add the applicable ~~Eurocurrency Rate~~ rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of ~~Eurocurrency Rate reflects the appropriate interest rate for such currency or~~ Designated Currency Daily Rate or Designated Currency Term Rate, as applicable, has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be a ~~Foreign~~ Designated Currency for purposes of any Extensions of Credit of ~~Eurocurrency~~ Designated Currency Rate Loans. If the Administrative Agent and the applicable Issuing Lender consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Company and (A) the Administrative Agent and the applicable Issuing Lender may amend the definition of ~~Eurocurrency Rate for any Non-LIBOR Quoted~~ Designated Currency Daily Rate or Designated Currency Term Rate, as applicable, to the extent necessary to add the applicable ~~Eurocurrency Rate~~ rate for such currency and any applicable adjustment for such rate and (B) to the extent the definition of ~~Eurocurrency Rate~~ Designated Currency Daily Rate or Designated Currency Term Rate, applicable, reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be a ~~Foreign~~ Designated Currency, for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.9, the Administrative Agent shall promptly so notify the Company. Any specified currency of an Existing Letter of Credit that is neither Dollars nor one of the ~~Foreign~~ Designated Currencies specifically listed in the definition of "~~Foreign~~ Designated Currency" shall be deemed an Agreed Currency with respect to such Existing Letter of Credit only.

#### SECTION 1.5 Change of Currency.

(a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the EU that adopts the euro as its lawful currency after the ~~date hereof~~ Third Amendment Effective Date shall be redenominated into euro at the time of such adoption. If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the ~~London~~ interbank market for the basis of accrual of interest in respect of the euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the euro as its lawful currency; ~~provided that if any Extension of Credit in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Extension of Credit, at the end of the then current Interest Period.~~

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the euro by any member state of the EU and any relevant market conventions or practices relating to the euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

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**SECTION 1.6 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**SECTION 1.7 Pro Forma Calculations.** For the purpose of calculating the Net Leverage Ratio and the financial covenant set forth in Section 9.2 (and each other section of this Agreement in which pro forma compliance with the financial covenant set forth in Section 9.2 is tested) for any period, if during such period the Company or any Restricted Subsidiary shall have made a material acquisition or material disposition (with materiality calculated in accordance with Article 11 of Regulation ~~S-X~~ under the Securities Act of 1933), each of the Net Leverage Ratio and the financial covenant set forth in Section 9.2 (and each other section of this Agreement in which pro forma compliance with the financial covenant set forth in Section 9.2 is tested) shall be calculated giving pro forma effect (in accordance with Article 11 of Regulation ~~S-X~~ under the Securities Act of 1933) thereto as if such material acquisition or disposition occurred on the first day of such period; provided that the only pro forma adjustments to EBITDA shall be the Pro Forma Adjustments.

## ARTICLE II

### CREDIT FACILITIES

#### SECTION 2.1 Loans.

(a) Dollar Tranche Revolving Credit Loans. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties set forth herein, each Dollar Tranche Revolving Credit Lender severally agrees to make Dollar Tranche Revolving Credit Loans to the Borrowers in Dollars from time to time during the Availability Period as requested by the applicable Borrower in accordance with the terms of Section 2.2; provided, that, (a) the aggregate principal amount of all outstanding Dollar Tranche Revolving Credit Loans (after giving effect to any amount requested) shall not exceed the Dollar Tranche Revolving Credit Commitment less the sum of all outstanding Swingline Loans and L/C Obligations, (b) the principal amount of outstanding Dollar Tranche Revolving Credit Loans from any Dollar Tranche Revolving Credit Lender to the Borrowers shall not at any time exceed such Dollar Tranche Revolving Credit Lender's Dollar Tranche Revolving Credit Commitment less such Dollar Tranche Revolving Credit Lender's Dollar Tranche Revolving Credit Commitment Percentage of outstanding L/C Obligations and outstanding Swingline Loans, (c) the aggregate principal amount of all outstanding Revolving Credit Loans (after giving effect to any amount requested) shall not exceed the Revolving Credit Commitment less the sum of all outstanding Swingline Loans and L/C Obligations, and (d) the principal amount of outstanding Revolving Credit Loans from any Revolving Credit Lender to the Borrowers shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment less such Revolving Credit Lender's Revolving Credit Commitment Percentage of outstanding L/C Obligations and outstanding Swingline Loans. Each Dollar Tranche Revolving Credit Loan by a Dollar Tranche Revolving Credit Lender shall be in a principal amount equal to such Dollar Tranche Revolving Credit Lender's Dollar Tranche Revolving Credit Commitment Percentage of the aggregate principal amount of Dollar Tranche Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrowers may borrow, repay and reborrow Dollar Tranche Revolving Credit Loans hereunder until the Maturity Date.

(b) Designated Currency Tranche Revolving Credit Loans. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties set forth herein, each Designated Currency Tranche Revolving Credit Lender severally agrees to make Designated Currency Tranche Revolving Credit Loans to the Borrowers in Agreed Currencies from

time to time during the Availability Period as requested by the applicable Borrower in accordance with the terms of Section 2.2; provided, that, (a) the aggregate principal amount of all outstanding Designated Currency Tranche Revolving Credit Loans (after giving effect to any amount requested) shall not exceed the Designated Currency Tranche Revolving Credit Commitment, (b) the principal amount of outstanding Designated Currency Tranche Revolving Credit Loans from any Designated Currency Tranche Revolving Credit Lender to the Borrowers shall not at any time exceed such Designated Currency Tranche Revolving Credit Lender's Designated Currency Tranche Revolving Credit Commitment, (c) the aggregate principal amount of all outstanding Revolving Credit Loans (after giving effect to any amount requested) shall not exceed the Revolving Credit Commitment less the sum of all outstanding Swingline Loans and L/C Obligations, and (d) the principal amount of outstanding Revolving Credit Loans from any Revolving Credit Lender to the Borrowers shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment less such Revolving Credit Lender's Revolving Credit Commitment Percentage of outstanding L/C Obligations and outstanding Swingline Loans. Each Designated Currency Tranche Revolving Credit Loan by a Designated Currency Tranche Revolving Credit Lender shall be in a principal amount equal to such Designated Currency Tranche Revolving Credit Lender's Designated Currency Tranche Revolving Credit Commitment Percentage of the aggregate principal amount of Designated Currency Tranche Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrowers may borrow, repay and reborrow Designated Currency Tranche Revolving Credit Loans hereunder until the Maturity Date. The Administrative Agent will determine the Dollar Amount of each borrowing of Designated Currency Tranche Revolving Credit Loans as of the date two (2) Business Days prior to the date of such borrowing or, if applicable, the date of continuation or conversion of any such borrowing, and all Designated Currency Tranche Revolving Credit Loans on and as of the last Business Day of each calendar quarter and, during the continuation of an Event of Default, on any other Business Day elected by the Administrative Agent in its discretion or upon the instruction of the Required Lenders or a majority (based on Commitments, and if Commitments have been terminated, by outstandings) of the Designated Currency Tranche Revolving Credit Lenders (excluding Defaulting Lenders). Each day upon or as of which the Administrative Agent determines Dollar Amounts as described in this paragraph is herein described as a "Computation Date" with respect to each Designated Currency Tranche Revolving Credit Loan (including payments of interest and fees thereon and in connection therewith) for which a Dollar Amount is determined on or as of such day.

(c) **Term Loan.** Subject to the terms and conditions of this Agreement (including, without limitation, Section 5.1 hereof) and in reliance upon the representations and warranties set forth herein, each Term Loan Lender severally agrees to make a Term Loan to the Company in Dollars on the ~~Closing~~Third Amendment Effective Date as requested by the Company in accordance with the terms of Section 2.2; provided, that (a) the aggregate principal amount of the outstanding Term Loan shall not exceed the Term Loan Commitment and (b) the principal amount of the outstanding Term Loan from any Term Loan Lender to the Company shall not at any time exceed such Term Loan Lender's Term Loan Commitment. The Term Loan made by a Term Loan Lender shall be in a principal amount equal to such Term Loan Lender's Term Loan Commitment Percentage of the aggregate principal amount of the Term Loan. The Term Loan may not be repaid and subsequently reborrowed. The aggregate Term Loan Commitment shall be permanently reduced by the principal amount of any Term Loan extended hereunder.

## **SECTION 2.2 Borrowings, Conversions and Continuations of Loans.**

(a) **Notice of Borrowing.** Each Extension of Credit, each conversion of Loans from one Type to the other, and each continuation of ~~Eurocurrency~~Term SOFR Loans or Designated

Currency Term Rate Loans shall be made upon the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by: (A) telephone or (B) a Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than ~~11:00 a.m. (i) three (3)~~(i) in the case of Term SOFR Loans, 11:00 a.m. two Business Days prior to the requested date of any ~~Extension of Credit~~borrowing of, conversion to or continuation of ~~Eurocurrency Rate~~Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans or Daily SOFR Loans, (ii) in the case of Daily SOFR Loans, 11:00 a.m. on the first Business Day immediately prior to the requested date of any borrowing of or conversion to Daily SOFR Loans denominated in Dollars or of any conversion of ~~Eurocurrency Rate~~Daily SOFR Loans denominated in Dollars to Base Rate Loans, (iii) four (4) ~~(i) four (4)~~ in the case of Designated Currency Rate Loans, 11:00 a.m. three (3) Business Days (or five (5) Business Days in the case of a Special Notice Currency) prior to the requested date of any ~~Extension of Credit or continuation of Eurocurrency~~borrowing or, in the case of Designated Currency Term Rate Loans ~~denominated in Foreign Currencies, any continuation, and (iii) iv~~ on the requested date of any Extension of Credit of Base Rate Loans. Each Extension of Credit of, or conversion to Daily SOFR Loans and each Extension of Credit of, conversion to or continuation of ~~Eurocurrency~~Term SOFR Loans or Designated Currency Rate Loans shall be in a principal amount of the Dollar Amount of \$2,500,000 or a whole multiple of the Dollar Amount of \$100,000 in excess thereof (or, in connection with any conversion or continuation of a Term Loan, if less, the entire principal thereof then outstanding). Except as provided in Sections 2.3(c) and 2.4(c), each Extension of Credit of or conversion to Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any

conversion or continuation of a Term Loan, if less, the entire principal thereof then outstanding). Each Loan Notice and each telephonic notice shall specify (A) the applicable Facility and whether the applicable Borrower is requesting an Extension of Credit, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (B) the requested date of the Extension of Credit, conversion or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Loans to be borrowed, converted or continued, (D) the Type of Loans to be borrowed or to which existing Loans are to be converted, (E) if applicable, the duration of the Interest Period with respect thereto, (F) the currency of the Loans to be borrowed, and (G) if applicable, the Subsidiary Borrower. If the applicable Borrower fails to specify a currency in a Loan Notice requesting an Extension of Credit, then the Loans so requested shall be made in Dollars. If the applicable Borrower fails to specify a Type of Loan in a Loan Notice or if the applicable Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that in the case of a failure to timely request a continuation of Designated Currency Term Rate Loans ~~denominated in a Foreign Currency~~, such Loans shall be continued as ~~Eurocurrency~~Designated Currency Term Rate Loans in their original currency with an Interest Period of one (1) month. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable ~~Eurocurrency Rate Term~~ SOFR Loans. If the applicable Borrower requests an Extension of Credit of, conversion to, or continuation of ~~Eurocurrency~~Designated Currency Term Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a ~~Eurocurrency Rate Term~~ SOFR Loan, Daily SOFR Loan or a Designated Currency Loan. Except as provided pursuant to Section 2.2(c), no Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be repaid in the original currency of such Loan and reborrowed in the other currency.

(b) Advances. Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount and currency of its

Commitment Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans or continuation of ~~Loans denominated in a currency other than Dollars~~Designated Currency Term Rate Loans, in each case as described in Section 2.2(a). In the case of an Extension of Credit, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan denominated in a Foreign~~Designated~~ Currency, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.2 (and, if such Extension of Credit is the initial Extension of Credit, Section 5.1), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the applicable Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the applicable Borrower; provided, however, that if, on the date a Loan Notice with respect to a borrowing of Revolving Credit Loans denominated in Dollars is given by a Borrower, there are L/C Borrowings outstanding, then the proceeds of such borrowing of Revolving Credit Loans, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the applicable Borrower as provided above.

(c) ~~Eurocurrency Term SOFR Loans, Daily SOFR Loans and Designated Currency Term Rate Loans~~. Except as otherwise provided herein, a ~~Eurocurrency Term SOFR Loans and a Designated Currency Term~~ Rate Loan may be continued or converted only on the last day of an Interest Period for such ~~Eurocurrency Term SOFR Loan or Designated Currency Term~~ Rate Loan, as applicable. During the existence of an Event of Default, at the written request of the Required Lenders, no Loans may be requested as, or converted to, Daily SOFR Loans or Designated Currency Daily Rate Loans or requested as, or converted to or continued as ~~Eurocurrency, Term SOFR Loans or Designated Currency Term~~ Rate Loans.

(d) Interest Rates. Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error.

(e) Interest Periods. After giving effect to all borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than 12 Interest Periods in effect.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Company, the Administrative Agent and such Lender.

(g) Conforming Changes. With respect to any Designated Currency Daily Rate, Designated Currency Term Rate, Term SOFR, Daily SOFR or SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in



any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment

effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

### **SECTION 2.3 Letters of Credit**

#### **(a) The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) each Issuing Lender agrees, in reliance upon the agreements of the Dollar Tranche Revolving Credit Lenders set forth in this Section, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Company or any of its Restricted Subsidiaries organized under the laws of the United States or any state thereof or any country in which a Borrower is organized or, in each Issuing Lender's sole and absolute discretion, any of the Company's other Foreign Subsidiaries that are Restricted Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.3(b), and (2) to honor drawings under the Letters of Credit; and (B) the Dollar Tranche Revolving Credit Lenders severally agree to participate in Letters of Credit issued under such Tranche for the account of the Company or its Restricted Subsidiaries and any drawings thereunder; provided no Issuing Lender shall be obligated to issue a Letter of Credit if, after giving effect to any Letter of Credit, (w) the L/C Obligations would exceed the L/C Commitment, (x) the aggregate principal amount of outstanding Revolving Credit Loans, plus the aggregate principal amount of outstanding Swingline Loans, plus the aggregate amount of L/C Obligations would exceed the Revolving Credit Commitment and (y) the aggregate principal amount of outstanding Dollar Tranche Revolving Credit Loans, plus the aggregate principal amount of outstanding Swingline Loans plus the aggregate amount of L/C Obligations would exceed the Dollar Tranche Revolving Credit Commitment. Each request by a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the Letter of Credit so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto and deemed L/C Obligations, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No Issuing Lender shall issue any Letter of Credit if:

(A) subject to Section 2.3(b)(iv), the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Revolving Credit Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date.

(iii) No Issuing Lender shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing the Letter of Credit, or any law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Lender is not otherwise compensated

hereunder) not in effect on the ~~Closing~~[Third Amendment Effective](#) Date, or shall impose upon such Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the ~~Closing~~[Third Amendment Effective](#) Date and which such Issuing Lender in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such Issuing Lender applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such Issuing Lender, the Letter of Credit is in an initial stated amount less than \$25,000;

(D) except as otherwise agreed by the Administrative Agent and the applicable Issuing Lender, the Letter of Credit is to be denominated in a currency other than Dollars or a ~~Foreign~~[Designated](#) Currency;

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless the applicable Issuing Lender has entered into arrangements, including the delivery of Cash Collateral, reasonably satisfactory to such Issuing Lender with the Company or such Revolving Credit Lender to eliminate the Issuing Lender's actual or potential Fronting Exposure (after giving effect to [Section 4.14\(a\)\(iv\)](#)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) the applicable Issuing Lender does not as of the issuance date of the requested Letter of Credit issue Letters of Credit in the requested currency.

(iv) No Issuing Lender shall amend any Letter of Credit if such Issuing Lender would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) No Issuing Lender shall be under any obligation to amend any Letter of Credit if (A) such Issuing Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each Issuing Lender shall act on behalf of the Dollar Tranche Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Lender shall have all of the benefits and immunities (A) provided to the Administrative Agent in [Article XII](#) with respect to any acts taken or omissions suffered by such Issuing Lender in connection with Letters of Credit issued by

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it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in [Article XII](#) included such Issuing Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Lender.

(b) Procedures for Issuance and Amendment of Letters of Credit; ~~Auto-Extension~~[Auto-Extension](#) Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Borrower delivered to the applicable Issuing Lender (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower and/or such Restricted Subsidiary, as required by such Issuing Lender. Such Letter of Credit Application may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the applicable Issuing Lender, by personal delivery or by any other means acceptable to such Issuing Lender. Such Letter of Credit Application must be received by the applicable Issuing Lender and the Administrative Agent not later than ~~11:00 a.m.~~[11:00 a.m.](#) at least three (3) Business Days (or such earlier date and time as the Administrative Agent and such Issuing Lender may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable Issuing Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof and in the absence of specification of currency shall be deemed a request for a Letter of Credit denominated in Dollars; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the applicable Issuing Lender may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable Issuing Lender (1) the Letter of Credit to be amended; (2)



the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as such Issuing Lender may reasonably require. Additionally, the applicable Borrower shall furnish to the applicable Issuing Lender and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as such Issuing Lender or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, such Issuing Lender will provide the Administrative Agent with a copy thereof. Unless the applicable Issuing Lender has received written notice from any Revolving Credit Lender, the Administrative Agent or any Credit Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in [Article V](#) shall not then be satisfied, then, subject to the terms and conditions hereof, such Issuing Lender shall, on the requested date, issue a Letter of Credit for the

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account of the applicable Borrower (or the applicable Restricted Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Lender's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable Issuing Lender a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Lender will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(iv) If the applicable Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Lender may, in its sole discretion, agree to issue a standby Letter of Credit that has automatic extension provisions (each, an "~~Auto-Extension~~~~Auto-Extension~~ Letter of Credit"); provided that any such ~~Auto-Extension~~~~Auto-Extension~~ Letter of Credit must permit the applicable Issuing Lender to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "~~Non-Extension~~~~Non-Extension~~ Notice Date") in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Lender, the applicable Borrower shall not be required to make a specific request to such Issuing Lender for any such extension. Once an ~~Auto-Extension~~~~Auto-Extension~~ Letter of Credit has been issued, the Dollar Tranche Revolving Credit Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Lender to permit the L/C Credit Extension at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that such Issuing Lender shall not permit any such extension if (A) such Issuing Lender has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of [Section 2.3\(a\)](#) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the ~~Non-Extension~~~~Non-Extension~~ Notice Date (1) from the Administrative Agent that the Required Revolving Credit Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or any Borrower that one or more of the applicable conditions specified in [Section 5.2](#) is not then satisfied, and in each such case directing such Issuing Lender not to permit such extension.

(v) If the applicable Borrower so requests in any applicable Letter of Credit Application, the applicable Issuing Lender may, in its sole discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an "~~Auto-Reinstatement~~~~Auto-Reinstatement~~ Letter of Credit"). Unless otherwise directed by the applicable Issuing Lender, the applicable Borrower shall not be required to make a specific request to such Issuing Lender to permit such reinstatement. Once an ~~Auto-Reinstatement~~~~Auto-Reinstatement~~ Letter of Credit has been issued, except as provided in the following sentence, the Dollar Tranche Revolving Credit Lenders shall be deemed to have authorized (but may not require) such Issuing Lender to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if

such ~~Auto-Reinstatement~~~~Auto-Reinstatement~~ Letter of Credit permits the applicable Issuing Lender to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such ~~non-reinstatement~~~~non-reinstatement~~ within a specified number of days after such drawing (the "~~Non-Reinstatement~~~~Non-Reinstatement~~ Deadline"), such Issuing Lender shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the ~~Non-Reinstatement~~~~Non-Reinstatement~~ Deadline (A) from the Administrative Agent that the Required Revolving Credit Lenders have elected not to permit such reinstatement or (B) from the Administrative Agent, any Revolving Credit Lender or any Borrower that one or more of the applicable conditions specified in Section 5.2 is not then satisfied (treating such reinstatement as a Letter of Credit for purposes of this clause) and, in each case, directing the applicable Issuing Lender not to permit such reinstatement.

(vi) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Lender will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Lender shall notify the applicable Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in a ~~Foreign Designated~~ Currency, the applicable Borrower shall reimburse the applicable Issuing Lender in such ~~Foreign Designated~~ Currency, unless (A) such Issuing Lender (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, such Borrower shall have notified the applicable Issuing Lender promptly following receipt of the notice of drawing that such Borrower will reimburse the applicable Issuing Lender in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in a ~~Foreign Designated~~ Currency, the applicable Issuing Lender shall notify the applicable Borrower of the Dollar Amount of the drawing promptly following the determination thereof. Not later than ~~11:00 a.m.~~~~11:00 a.m.~~ on the first Business Day after the date of any payment by the applicable Issuing Lender under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by an Issuing Lender under a Letter of Credit to be reimbursed in a ~~Foreign Designated~~ Currency (each such date, an "Honor Date"), the applicable Borrower shall reimburse the applicable Issuing Lender through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. In the event that (A) a drawing denominated in a ~~Foreign Designated~~ Currency is to be reimbursed in Dollars pursuant to the second sentence in this Section 2.3(c)(i) and (B) the Dollar amount paid by the applicable Borrower, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the ~~Foreign Designated~~ Currency equal to the drawing, the Company agrees, as a separate and independent obligation, to indemnify the applicable Issuing Lender for the loss resulting from its inability on that date to purchase the ~~Foreign Designated~~ Currency in the full amount of the drawing. If the applicable Borrower fails to so reimburse the applicable Issuing Lender by such time, the Administrative Agent shall promptly notify each Dollar Tranche Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in the Dollar Amount thereof in the case

of a Letter of Credit denominated in a ~~Foreign Designated~~ Currency)(the "Unreimbursed Amount"), and the amount of such Dollar Tranche Revolving Credit Lender's Applicable Percentage thereof. In such event, the applicable Borrower shall be deemed to have requested a borrowing of Dollar Tranche Revolving Credit Loans that are Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.2 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Dollar Tranche Revolving Credit Commitments and the conditions set forth in Section 5.2 (other than the delivery of a Loan Notice). Any notice given by the applicable Issuing Lender or the Administrative Agent pursuant to this Section 2.3(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Dollar Tranche Revolving Credit Lender shall upon any notice pursuant to Section 2.3(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable Issuing Lender, in Dollars, at the Administrative Agent's Office for ~~Dollar-denominated~~~~Dollar-denominated~~ payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than ~~1:00 p.m.~~~~1:00 p.m.~~ on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.3(c)(iii), each Dollar Tranche Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable Issuing Lender in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a borrowing of Dollar Tranche Revolving Credit Loans that are Base Rate Loans because the conditions set forth in [Section 5.2](#) cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the applicable Issuing Lender an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest until paid or refinanced at the Default Rate. In such event, each Dollar Tranche Revolving Credit Lender's payment to the Administrative Agent for the account of the applicable Issuing Lender pursuant to [Section 2.3\(c\)\(ii\)](#) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section.

(iv) Until each Dollar Tranche Revolving Credit Lender funds its Dollar Tranche Revolving Credit Loan or L/C Advance pursuant to this [Section 2.3\(c\)](#) to reimburse the applicable Issuing Lender for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of such Issuing Lender.

(v) Each Dollar Tranche Revolving Credit Lender's obligation to make Dollar Tranche Revolving Credit Loans or L/C Advances to reimburse the applicable Issuing Lender for amounts drawn under Letters of Credit, as contemplated by this [Section 2.3\(c\)](#), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the applicable Issuing Lender, the applicable Borrower, any Restricted Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or

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not similar to any of the foregoing; provided, however, that each Dollar Tranche Revolving Credit Lender's obligation to make Dollar Tranche Revolving Credit Loans pursuant to this [Section 2.3\(c\)](#) is subject to the conditions set forth in [Section 5.2](#) (other than delivery by the applicable Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the applicable Issuing Lender for the amount of any payment made by such Issuing Lender under any Letter of Credit, together with interest as provided herein.

(vi) If any Dollar Tranche Revolving Credit Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this [Section 2.3\(c\)](#) by the time specified in [Section 2.3\(c\)\(ii\)](#), then, without limiting the other provisions of this Agreement, the applicable Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by such Issuing Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Dollar Tranche Revolving Credit Loan included in the relevant borrowing of Dollar Tranche Revolving Credit Loans or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable Issuing Lender submitted to any Dollar Tranche Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this [Section 2.3\(c\)\(vi\)](#) shall be conclusive absent manifest error.

**(d) Repayment of Participations.**

(i) At any time after the applicable Issuing Lender has made a payment under any Letter of Credit and has received from any Dollar Tranche Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with [Section 2.3\(c\)](#), if the Administrative Agent receives for the account of such Issuing Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable Issuing Lender pursuant to [Section 2.3\(c\)\(i\)](#) is required to be returned under any of the circumstances described in [Section 13.5](#) (including pursuant to any settlement entered into by such Issuing Lender in its discretion), each Dollar Tranche Revolving Credit Lender shall pay to the Administrative Agent for the account of such Issuing Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of each Borrower to reimburse the applicable Issuing Lender for each drawing under each Letter of Credit and to repay each L/C

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Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Restricted Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Lender or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) waiver by the applicable Issuing Lender of any requirement that exists for the Issuing Lender's protection and not the protection of any Borrowers or any waiver by the applicable Issuing Lender which does not in fact materially prejudice any Borrower;
- (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by any Issuing Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;
- (vii) any payment by any Issuing Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by such Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, ~~debtor-in-possession~~ debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;
- (viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any Restricted Subsidiary; or
- (ix) any adverse change in the relevant exchange rates or in the availability of the relevant ~~Foreign~~ Designated Currency to any Borrower or any Restricted Subsidiary or in the relevant currency markets generally.

The applicable Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the

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applicable Issuing Lender. The applicable Borrower shall be conclusively deemed to have waived any such claim against the applicable Issuing Lender and its correspondents unless such notice is given as aforesaid.

(f) Role of Issuing Lender. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, no Issuing Lender shall have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit) or to

ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of any Issuing Lender, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders, Required Revolving Credit Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude such Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of any Issuing Lender, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any Issuing Lender shall be liable or responsible for any of the matters described in Section 2.3(e); provided, however, that anything in such clauses to the contrary notwithstanding, a Borrower may have a claim against an Issuing Lender, and an Issuing Lender may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves, as determined by a final nonappealable judgment of a court of competent jurisdiction, were caused by such Issuing Lender's bad faith, willful misconduct or gross negligence or such Issuing Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight or time draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no Issuing Lender shall be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Each Issuing Lender may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP; Limitation of Liability. Unless otherwise expressly agreed by the applicable Issuing Lender and the applicable Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, no Issuing Lender shall be responsible to the applicable Borrower for, and each Issuing Lender's rights and remedies against such Borrower shall not be impaired by, any action or inaction of such Issuing Lender required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including Applicable Law or any order of a jurisdiction where such Issuing Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services

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Association (~~BAFT-IFSA~~BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The Company shall pay to the Administrative Agent for the account of each Dollar Tranche Revolving Credit Lender in accordance, subject to Section 4.14, with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Margin for ~~Eurocurrency~~Designated Currency Rate Loans times the Dollar Amount of the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (1) due and payable on the last Business Day of each fiscal quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (2) computed on a quarterly basis in arrears. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect.

(i) Fronting Fee and Documentary and Processing Charges Payable to Issuing Lender. The Company shall pay directly to each Issuing Lender for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum specified in a writing between the Company and the applicable Issuing Lender, computed on the Dollar Amount of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the date that is ten (10) Business Days following each fiscal quarter end, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.7. In addition, the Company shall pay directly to each Issuing Lender for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Lender relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Additional Issuing Lenders. Any Lender hereunder may become an Issuing Lender upon receipt by the Administrative Agent of a fully executed notice which shall be signed by the Company, the Administrative Agent and each Issuing Lender.

(l) Letters of Credit Issued for Restricted Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Restricted Subsidiary, the Company shall be obligated to reimburse the applicable Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledges that the issuance of Letters of Credit for the account of Restricted Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Restricted Subsidiaries.

(m) Letter of Credit Reports. Unless otherwise agreed by the Administrative Agent, each Issuing Lender shall, in addition to its notification obligations set forth elsewhere in this Section, provide the Administrative Agent a Letter of Credit Report, as set forth below:

(i) reasonably prior to the time that such Issuing Lender issues, amends, renews, increases or extends a Letter of Credit, the date of such issuance, amendment, renewal, increase or extension and the stated amount of the applicable Letters of Credit after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed);

(ii) on each Business Day on which such Issuing Lender makes a payment pursuant to a Letter of Credit;

(iii) on any Business Day on which any Borrower fails to reimburse a payment made pursuant to a Letter of Credit required to be reimbursed to such Issuing Lender on such day, the date of such failure and the amount of such payment;

(iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Lender; and

(v) for so long as any Letter of Credit issued by an Issuing Lender is outstanding, such Issuing Lender shall deliver to the Administrative Agent (A) on the last Business Day of each calendar month, (B) at all other times a Letter of Credit Report is required to be delivered pursuant to this Agreement, and (C) on each date that (1) an L/C Credit Extension occurs or (2) there is any expiration, cancellation and/or disbursement, in each case, with respect to any such Letter of Credit, a Letter of Credit Report appropriately completed with the information for every outstanding Letter of Credit issued by such Issuing Lender.

#### **SECTION 2.4 Swingline Loans**

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Dollar Tranche Revolving Credit Lenders set forth in this Section, may in its sole discretion make loans to the Company (each such loan, a "Swingline Loan"). Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Company, in Dollars, from time to time on any Business Day. During the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Commitment, notwithstanding the fact that such Swingline Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swingline Lender, may exceed the amount of such Lender's Revolving Credit Commitment; provided, however, that (i) after giving effect to any Swingline Loan, the aggregate principal amount of all outstanding Swingline Loans, shall not exceed the lesser of (A) the Dollar Tranche Revolving Credit Commitment less the sum of all outstanding Dollar Tranche Revolving Credit Loans and the L/C Obligations and (B) the Swingline Commitment, (ii) the Company shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Extension of Credit may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may borrow under this Section, prepay under Section 2.5, and reborrow under this Section. Each Swingline Loan shall bear interest only at a rate based on the Base Rate plus the Applicable Margin. Immediately upon the making of a Swingline Loan, each Dollar Tranche Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an



amount equal to the product of such Dollar Tranche Revolving Credit Lender's Applicable Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures. Each borrowing of Swingline Loans shall be made upon the Company's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by: (A) telephone or (B) a Swingline Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than ~~2:00 p.m.~~2:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested date of the Swingline Loan (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Dollar Tranche Revolving Credit Lender) prior to ~~3:00 p.m.~~3:00 p.m. on the date of the proposed borrowing of Swingline Loans (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.4(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than ~~3:00 p.m.~~3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of its Swingline Loan available to the Company at its office by crediting the account of the Company on the books of the Swingline Lender in Same Day Funds.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Dollar Tranche Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.2, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 5.2. The Swingline Lender shall furnish the Company with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Dollar Tranche Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's Office for ~~Dollar-denominated~~Dollar-denominated payments not later than ~~1:00 p.m.~~1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.4(c)(ii), each Dollar Tranche Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a borrowing of Revolving Credit Loans in accordance with Section 2.4(c)(i), the request for

Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Dollar Tranche Revolving Credit Lenders fund its risk participation in the relevant Swingline Loan and each Dollar Tranche Revolving Credit Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.4(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Dollar Tranche Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.4(c) by the time specified in Section 2.4(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount

so paid shall constitute such Lender's Revolving Credit Loan included in the relevant borrowing of Revolving Credit Loans or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Dollar Tranche Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.4(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided however, that each Dollar Tranche Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.4(c) is subject to the conditions set forth in Section 5.2 (other than delivery by the Company of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Dollar Tranche Revolving Credit Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Dollar Tranche Revolving Credit Lender its Applicable Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 13.5 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Dollar Tranche Revolving Credit Lender shall pay to the Swingline Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight

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Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Company for interest on the Swingline Loans. Until each Dollar Tranche Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section to refinance such Dollar Tranche Revolving Credit Lender's Applicable Percentage of any Swingline Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Company shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

**SECTION 2.5 Prepayments.**

(a) Mandatory.

(i) If (x) at any time, the outstanding principal amount of all Revolving Credit Loans plus the sum of all outstanding Swingline Loans and L/C Obligations exceeds the Revolving Credit Commitment, (y) at any time, the outstanding principal amount of all Dollar Tranche Revolving Credit Loans plus the sum of all outstanding Swingline Loans and L/C Obligations exceeds the Dollar Tranche Revolving Credit Commitment or (z) on any Computation Date, the outstanding principal amount of all Designated Currency Tranche Revolving Credit Loans exceeds 105% of the Designated Currency Tranche Revolving Credit Commitment, the Borrowers agree to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first to the principal amount of outstanding Swingline Loans, second to the principal amount of all outstanding Loans and third, with respect to any Letters of Credit then outstanding, a payment of cash collateral into a cash collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders in an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit (such cash collateral to be applied in accordance with Section 11.2(b), and such cash collateral to be shared ratably between Letters of Credit issued and outstanding under the Dollar Tranche and the Designated Currency Tranche).



(ii) In the event and on each occasion that any Net Proceeds are received by or on behalf of the Company or any Restricted Subsidiary in respect of any Prepayment Event, the Company, subject to [Section 2.10\(b\)](#), shall, promptly, and in any event within five (5) Business Days after such Net Proceeds are received by the Company or such Restricted Subsidiary, prepay the Term Loan and any Incremental Term Loans as set forth below in an aggregate amount equal to 100% of such Net Proceeds; provided that, in the case of any event described in clause (a) of the definition of the term "Prepayment Event", if a Responsible Officer of the Company shall deliver to the Administrative Agent a certificate to the effect that the Company or the applicable Restricted Subsidiary, as the case may be, intends to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 360 days after receipt of such Net Proceeds, to acquire real property, equipment or other assets (excluding inventory) to be used or useful in the business of the Company or the applicable Restricted Subsidiary, as the case may be, or to consummate a Permitted Acquisition, then no prepayment shall be required pursuant to this

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paragraph in respect of the Net Proceeds specified in such certificate; provided, further, that to the extent any such Net Proceeds have not been so applied by the end of such 360-day period, then a prepayment shall be required at the end of such period in an amount equal to such Net Proceeds that have not been so applied. All prepayments under this clause (ii) shall be applied pro rata to prepay the Term Loan and any Incremental Term Loan (in each case, to be applied to installments thereof pro rata). No prepayments shall be required under this clause (ii) subsequent to the termination or expiry of the Term Loan Commitments and the full repayment of the outstanding Term Loan.

(iii) Notwithstanding any other provisions of this [Section 2.5\(a\)](#) to the contrary, (i) to the extent that any Net Proceeds in respect of any Prepayment Event by a Foreign Subsidiary is prohibited or delayed by Applicable Law from being repatriated to the United States, the portion of such Net Proceeds so affected will not be required to be applied to repay the Term Loan at the times provided above but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the Applicable Law will not permit repatriation to the United States (the Company hereby agreeing to cause the applicable Foreign Subsidiary to promptly use commercially reasonable efforts to take all actions reasonably required by the Applicable Law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds is permitted under the Applicable Law, such repatriation will be effected and such repatriated Net Proceeds will be promptly applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Term Loan pursuant to [Section 2.5\(a\)\(ii\)](#), to the extent provided herein and (ii) to the extent that the Company has determined in good faith that repatriation of any or all of such Net Proceeds would have a material adverse tax consequence, the Net Proceeds so affected may be retained by the applicable Foreign Subsidiary.

(b) Optional. Any Borrower may at any time and from time to time prepay, without premium or penalty but including any amount required to be paid pursuant to [Section 4.9](#) hereof, Revolving Credit Loans, the Term Loan, Incremental Term Loans and Swingline Loans, in whole or in part, with irrevocable prior written notice to the Administrative Agent substantially in the form attached hereto as **Exhibit D** (a "Notice of Prepayment") given not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan, (ii) at least two (2) Business Days (or such shorter period as agreed to by the Administrative Agent) prior to the date of prepayment before each Term SOFR Loan, (iii) at least three (3) Business Days (or such shorter period as agreed to by the Administrative Agent) before each ~~Eurocurrency Rate~~ Daily SOFR Loan ~~under the Dollar Tranche~~, and (iii) at least four (4) Business Days (or five (5) such shorter period as agreed to by the Administrative Agent) (or five (5) (or such shorter period as agreed to by the Administrative Agent), in the case of prepayment of Loans denominated in Special Notice Currencies) before each Loan under the Designated Currency Tranche (or, in each case of clause (i) through clause (iii), such shorter time as agreed to by the Administrative Agent), specifying the date and amount of prepayment and whether the prepayment is of Dollar Tranche Revolving Credit Loans, Designated Currency Tranche Revolving Credit Loans, Term Loan, Incremental Term Loan, Swingline Loans, ~~Eurocurrency Rate~~ Term SOFR Loans, Daily SOFR Loans, Base Rate Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each. Upon receipt of such notice, the Administrative Agent shall promptly notify each Dollar Tranche Revolving Credit Lender, each Designated Currency Tranche Revolving Credit Lender, Term Loan Lender, Incremental Term Lender or Swingline Lender, as applicable. In the absence of direction otherwise in such Notice of Prepayment, any optional prepayment of Term Loans or Incremental Term Loans under this [Section 2.5\(b\)](#) shall be applied to the remaining installments in order of maturity. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate Dollar

Amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof ~~except~~ with respect to ~~Base Rate Loans (other than Swingline Loans) and Eurocurrency Rate Loans and, which shall be in an aggregate Dollar Amount of \$100,000 or a whole multiple of \$100,000 in excess thereof with respect to Swingline Loans.~~ A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 4.9 hereof. Notwithstanding the foregoing, the applicable Borrower may rescind or postpone any Notice of Prepayment if such prepayment would have resulted from a refinancing of a Credit Facility, which refinancing shall not be consummated or otherwise shall be delayed; provided, that such Borrower shall pay all amounts required pursuant to Section 4.9 as a result of the rescission or postponement of such notice.

(c) Limitation on Prepayment of Eurocurrency Term SOFR Loans and Designated Currency Rate Loans. No Borrower may prepay any ~~Eurocurrency Term SOFR Loan or Designated Currency~~ Rate Loan on any day other than on the last day of the Interest Period or payment period applicable thereto unless such prepayment is accompanied by any amount required to be paid pursuant to Section 4.9 hereof.

(d) Bank Product Obligations Unaffected. Any repayment or prepayment made pursuant to this Section shall not affect the Borrowers' obligation to continue to make payments under any Bank Product, which shall remain in full force and effect notwithstanding such repayment or prepayment, subject to the terms of such Bank Product.

#### **SECTION 2.6 Termination or Reduction of Commitments.**

(a) Voluntary Reduction. The Company shall have the right at any time and from time to time, upon at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice to the Administrative Agent, to permanently reduce, without premium or penalty, but including any amount required to be paid pursuant to Section 4.9 hereof, (i) the entire Revolving Credit Commitment under both Tranches (with a corresponding permanent reduction of the Swingline Commitment and the L/C Commitment) at any time or (ii) portions of the Dollar Tranche Revolving Credit Commitment or the Designated Currency Tranche Revolving Credit Commitment, from time to time, in each case in an aggregate principal Dollar Amount of not less than \$2,500,000 or any whole multiple of \$1,000,000 in excess thereof. Any reduction of the Dollar Tranche Revolving Credit Commitment or the Designated Currency Tranche Revolving Credit Commitment, as applicable, shall be applied to the Dollar Tranche Revolving Credit Commitment or the Designated Currency Tranche Revolving Credit Commitment of each Dollar Tranche Revolving Credit Lender or Designated Currency Tranche Revolving Credit Lender according to its Dollar Tranche Revolving Credit Commitment Percentage or Designated Currency Tranche Revolving Credit Commitment Percentage, as applicable. All commitment fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination.

(b) Corresponding Payment. Each permanent reduction permitted or required pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans, and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment (and, if applicable, the Swingline Commitment), as so reduced, and if the Revolving Credit Commitment as so reduced is less than the aggregate amount of all outstanding Letters of Credit, the Borrowers shall be required to deposit cash collateral in a cash collateral account opened by the Administrative Agent in an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Such cash collateral shall be applied in accordance with Section 11.2(b). If only one Tranche is being

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reduced, such cash collateral shall be applied toward the Letters of Credit issued under such Tranche. Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of cash collateral satisfactory to the Administrative Agent for all L/C Obligations) and shall result in the termination of the Revolving Credit Commitments and the Revolving Credit Facility. Such cash collateral shall be applied in accordance with Section 11.2(b). If the reduction of the Revolving Credit Commitment requires the repayment of any ~~Eurocurrency Term SOFR Loans or Designated Currency~~ Rate Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 4.9 hereof.

#### **SECTION 2.7 Repayment of Loans.** In each case, subject to Section 2.10(b):

(a) Term Loans. On the last Business Day of each calendar quarter during the term of this Agreement, commencing on ~~March 31~~ September 30, 2024, the Company shall repay to the Term Loan Lenders a portion of the aggregate principal amount of all Term Loans then outstanding in an amount equal to ~~\$2,500,000~~ \$5,000,000 (which amount shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.5), unless accelerated sooner pursuant to Section 11.2(a); provided, however, that ~~(i)~~ the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date for the Term Loan Credit Facility and in any event shall be in an amount equal to the aggregate principal amount of all

~~Term Loans outstanding on such date and (ii) (A) if any principal repayment installment to be made by the Company (other than principal repayment installments on Eurocurrency Rate Loans) shall come due on a day other than a Business Day, such principal repayment installment shall be due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be and (B) if any principal repayment installment to be made by the Company on a Eurocurrency Rate Loan shall come due on a day other than a Business Day, such principal repayment installment shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such principal repayment installment into another calendar month, in which event such principal repayment installment shall be due on the immediately preceding Business Day.~~

(b) Revolving Credit Loans. The Borrowers shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(c) Swingline Loans. The Company shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

## **SECTION 2.8 Increase of Revolving Credit Commitment.**

(a) As an alternative to, or in addition to, Section 2.9 below, subject to the conditions set forth below, at any time prior to the Maturity Date, the Company shall have the right upon not less than thirty (30) days' (or such shorter period as may be agreed to by the Administrative Agent) prior written notice to the Administrative Agent pursuant to a Revolving Credit Increase Notification, to request an increase in the Revolving Credit Commitment in an aggregate principal amount as may be specified by the Company. Such Revolving Credit Increase Notification shall specify the applicable Revolving Credit Increase Effective Date and shall also specify the Tranche subject to increase; provided, that if the Company seeks to increase both Tranches, it shall indicate how such increase is to be allocated between the Tranches.

(b) Increases in the Revolving Credit Commitment shall be obtained from existing Revolving Credit Lenders or New Lenders that qualify as Eligible Assignees (each such New Lender, collectively with the existing Revolving Credit Lenders providing increased Revolving Credit Commitments, the "Increasing Revolving Lenders"), in each case in accordance with this Section 2.8; provided that no Revolving Credit Lender shall have any obligation to provide any portion of such increase, and a Revolving Credit Lender may agree to only increase its Commitment under a single Tranche.

(c) The following terms and conditions shall apply to each increase in the Revolving Credit Commitment:

(i) such increase in the Revolving Credit Commitment pursuant to this Section 2.8 (and any Extensions of Credit made thereunder) shall constitute Obligations of the Borrowers and shall be guaranteed and, if applicable, secured with the other Extensions of Credit on a pari passu basis;

(ii) the Administrative Agent shall have received from the Company an Officer's Compliance Certificate, in each case in form and substance reasonably satisfactory to the Administrative Agent, demonstrating that, as of the Revolving Credit Increase Effective Date and after giving effect to any such increase in the Revolving Credit Commitment (and, if applicable, any simultaneous Incremental Term Loan made pursuant to Section 2.9), and any Extensions of Credit made or to be made in connection therewith, the Company will be in pro forma compliance with the financial covenants set forth in Section 9.1 and Section 9.2;

(iii) no Default or Event of Default shall have occurred and be continuing as of the applicable Revolving Credit Increase Effective Date and immediately after giving effect to such increase in the Revolving Credit Commitment pursuant to this Section 2.8 (and, if applicable, any simultaneous Incremental Term Loan made pursuant to Section 2.9) and any Extensions of Credit made in connection therewith;

(iv) the representations and warranties made by each Credit Party in this Agreement and the other Loan Documents shall be true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, in all respects) on and as of the Revolving Credit Increase Effective Date with the same effect as if made on and as of such date (other than those representations and warranties that by their terms speak as of a particular date, which representations and warranties shall be true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, in all respects) as of such particular date);

(v) in no event shall the aggregate amount of all increases in the Revolving Credit Commitment pursuant to this Section 2.8 after the First Third Amendment Effective Date exceed the sum of (i) (x) the greater of (A) \$250,000,000 360,000,000 and (B) 100% of EBITDA determined as of the most recently ended fiscal quarter for which financial statements have been delivered to the Administrative Agent (the "Fixed Incremental Revolving Amount") less (y) the sum of (A) the aggregate principal amount of all simultaneous or prior Incremental Term Loans made pursuant to

Section 2.9(c)(v)(i), after the FirstThird Amendment Effective Date and (B) the aggregate principal amount of all prior increases to the Revolving Credit Commitment made pursuant to this Section 2.8(c)(v)(i) after the FirstThird Amendment Effective Date plus (ii) at the Borrower's option, up to an amount of increased Revolving Credit Commitments such that

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the Net Leverage Ratio (calculated on a pro forma basis after giving effect to such increases (assuming the borrowing of the maximum credit thereunder) and the application of the proceeds therefrom) shall be no greater than ~~3.25~~ 3.50 to 1.00 (the "Ratio Incremental Revolving Amount");

(vi) the amount of such increase in the Revolving Credit Commitment pursuant to this Section 2.8 shall not be less than a minimum principal amount of \$10,000,000, or, if less, the remaining amount permitted pursuant to clause (v) above;

(vii) unless previously provided, the Administrative Agent shall have received a resolution duly adopted by the board of directors of each Credit Party authorizing such increase in the Revolving Credit Commitment;

(viii) the Borrowers and each Increasing Revolving Lender shall execute and deliver a Lender Addition and Acknowledgement Agreement to the Administrative Agent, for its acceptance and recording in the Register;

(ix) the Administrative Agent shall have received any documents or information, including any joinder agreement and opinions of counsel, in connection with such increase in the Revolving Credit Commitment as it may request in its reasonable discretion; and

(x) the outstanding Revolving Credit Loans and Revolving Credit Commitment Percentages of L/C Obligations under the applicable Tranche will be reallocated by the Administrative Agent on the applicable Revolving Credit Increase Effective Date among the Revolving Credit Lenders subject to such Tranche in accordance with their revised Revolving Credit Commitment Percentages in respect of such Tranche (and the Revolving Credit Lenders under such Tranche agree to make all payments and adjustments necessary to effect such reallocation and the Borrowers shall pay any and all costs required pursuant to Section 4.9 in connection with such reallocation as if such reallocation were a repayment).

(d) Notwithstanding the provisions of Section 13.2 to the contrary, the Administrative Agent is hereby authorized to execute and deliver amendment documentation evidencing any amendments necessary to effectuate the proposed increase in the Revolving Credit Commitment pursuant to this Section 2.8 on behalf of the Revolving Credit Lenders; provided that such amendment shall not modify this Agreement or any other Loan Document in any manner materially adverse to any Lender without the consent of such Lenders materially adversely affected thereby in accordance with Section 13.2 hereof.

(e) Upon the execution, delivery, acceptance and recording of the applicable Lender Addition and Acknowledgement Agreement, from and after the applicable Revolving Credit Increase Effective Date, (i) each Increasing Revolving Lender shall have a Revolving Credit Commitment as set forth in the Register and all the rights and obligations of a Revolving Credit Lender with a Revolving Credit Commitment hereunder and (ii) all Revolving Credit Loans made on account of the increased portion of the Revolving Credit Commitment pursuant to this Section 2.8 shall bear interest at the rate as determined and agreed to at the time of such increase by the Borrowers and each Increasing Revolving Lender.

(f) The Administrative Agent shall maintain a copy of each Lender Addition and Acknowledgement Agreement delivered to it in accordance with Section 2.8(c).

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(g) The Applicable Margin and pricing grid for the additional Revolving Credit Commitments (and corresponding Loans) shall be the same as the Applicable Margin and pricing grid for the Revolving Credit Commitments (and corresponding Loans) in effect prior to the increase thereof unless the Applicable Margin and pricing grid for the Revolving Credit Commitment (and corresponding Loan) as in effect prior to the increase thereof are increased to

an amount that is equal to the Applicable Margin and pricing grid for such additional Revolving Credit Commitments (and corresponding Loans), it being agreed that the consent of any Lender that is not an Increasing Revolving Lender shall not be required for any amendment required to effect the foregoing.

For the avoidance of doubt, if the Borrowers incur increased Revolving Credit Commitments in reliance on the Fixed Incremental Revolving Amount and/or any Incremental Term Loan in reliance on the Fixed Incremental Term Loan Amount on the same date that it incurs increased Revolving Credit Commitments in reliance on the Ratio Incremental Revolving Amount, then unless such Borrower elects otherwise, each increased Revolving Credit Commitment will be deemed incurred first in reliance on the Ratio Incremental Revolving Amount to the extent permitted (without including in the applicable financial calculation the amount of any Indebtedness being incurred in reliance upon the Fixed Incremental Revolving Amount or the Fixed Incremental Term Loan Amount) and if all or any portion of any increased Revolving Credit Commitment was previously incurred in reliance on the Fixed Incremental Revolving Amount and, at any later time of determination, such amount could have been incurred instead in reliance on the Ratio Incremental Revolving Amount, then the Borrowers may, upon written notice to the Administrative Agent, elect that such Indebtedness be reclassified at such later time of determination as having been incurred pursuant to the Ratio Incremental Revolving amount and thereafter such Indebtedness shall not count as a utilization of the Fixed Incremental Revolving Amount.

## **SECTION 2.9 Optional Incremental Term Loans.**

(a) As an alternative to, or in addition to, Section 2.8 above, subject to the conditions set forth below, at any time prior to the Maturity Date, the Company shall have the right upon not less than thirty (30) days' (or such shorter period as may be agreed to by the Administrative Agent) prior written notice to the Administrative Agent pursuant to an Incremental Term Loan Notification, to request term loans in an aggregate principal amount as may be specified by the Company (such term loans, the "Incremental Term Loans"). Such Incremental Term Loan Notification shall specify the applicable Incremental Term Loan Effective Date, and on or prior to such date, the applicable Borrower shall deliver a Loan Notice with respect to such Incremental Term Loan.

(b) Each Incremental Term Loan shall be obtained from existing Lenders or from New Lenders that qualify as Eligible Assignees (each such New Lender, collectively with the existing Lenders providing Incremental Term Loans, the "Incremental Term Lenders"), in each case in accordance with this Section 2.9; provided that no Lender shall have any obligation to provide any portion of such Incremental Term Loans.

(c) ~~The~~Subject to Section 1.3, the following terms and conditions shall apply to each Incremental Term Loan:

(i) such Incremental Term Loan made pursuant to this Section 2.9 shall constitute an Obligation of the applicable Borrower and shall be guaranteed and, if applicable, secured with the other Extensions of Credit on a pari passu basis;

(ii) the Administrative Agent shall have received from the Company an Officer's Compliance Certificate, in each case in form and substance reasonably satisfactory to the Administrative Agent, demonstrating that, as of the Incremental Term Loan Effective Date and after giving effect to any such Incremental Term Loan (and, if applicable, any simultaneous increase in the Revolving Credit Commitment pursuant to Section 2.8), the Company will be in pro forma compliance with the financial covenants set forth in Section 9.1 and Section 9.2;

(iii) no Default or Event of Default shall have occurred and be continuing as of the applicable Incremental Term Loan Effective Date and immediately after giving effect to the making of any such Incremental Term Loans (and, if applicable, any simultaneous increase in the Revolving Credit Commitment pursuant to Section 2.8);

(iv) the representations and warranties made by each Credit Party in this Agreement and in the other Loan Documents shall be true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, in all respects) on and as of the Incremental Term Loan Effective Date with the same effect as if made on and as of such date (other than those representations and warranties that by their terms speak as of a particular date, which representations and warranties shall be true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, in all respects) as of such particular date);

(v) in no event shall the aggregate principal amount of all Incremental Term Loans made pursuant to this Section 2.9 after the ~~First~~Third Amendment Effective Date exceed the sum of (i) (x) the greater of (A) \$250,000,000/360,000,000 and (B) 100% of EBITDA determined as of the most recently ended fiscal quarter for which financial statements have been delivered to the Administrative Agent (the "Fixed Incremental Term Loan Amount") less (y) the sum of (A) the aggregate principal amount of all prior or simultaneous increases in the Revolving Credit Commitment made pursuant to Section 2.8(c)(v)(i) after the ~~First~~Third Amendment Effective Date and (B) the aggregate principal amount of all prior Incremental Term

Loans made pursuant to Section 2.9(c)(v)(i) after the FirstThird Amendment Effective Date plus (ii) at the Borrower's option, up to an amount of Incremental Term Loans such that the Net Leverage Ratio (calculated on a pro forma basis after giving effect to such increases (assuming the borrowing of the maximum credit thereunder) and the application of the proceeds therefrom) shall be no greater than ~~3.25~~3.50 to 1.00 (the "Ratio Incremental Term Loan Amount");

(vi) the amount of such Incremental Term Loan obtained hereunder shall not be less than a minimum principal amount of \$10,000,000, or, if less, the remaining amount permitted pursuant to clause (v) above;

(vii) any Incremental Term Loan shall: (A) have a maturity date that is no earlier than the then latest Maturity Date; (B) have a weighted average life to maturity that is no shorter than the weighted average life to maturity of the existing Term Loans (it being understood that, subject to the foregoing, the amortization schedule applicable to such Incremental Term Loan shall be determined by the applicable Borrower and the Lenders of such Incremental Term Loan); and (C) otherwise have terms and conditions, subject to the conditions set forth in the preceding clauses (A) and (B), as are determined by the applicable Borrower and the Lenders of such Incremental Term Loan; provided, however, the negative covenants and events of default relating to such Incremental Term Loan, if not consistent with the terms of the existing Credit Facility, shall not be, as determined by the

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Company its reasonable business judgment, materially more restrictive, taken as a whole, to the Company and its Restricted Subsidiaries than the existing Credit Facility (except to the extent permitted above or below with respect to the maturity date, amortization, mandatory prepayments and interest rate and except for such other terms which (x) the existing Lenders receive the benefit of such more restrictive terms of or (y) are applicable only after the latest Maturity Date then in effect);

(viii) unless previously provided, the Administrative Agent shall have received a resolution duly adopted by the board of directors of each Credit Party authorizing such Incremental Term Loan;

(ix) each Incremental Term Loan shall be made on the applicable Incremental Term Loan Effective Date specified in the Incremental Term Loan Notification and will mature and amortize in a manner reasonably acceptable to the Administrative Agent, the Incremental Term Lenders making such Incremental Term Loan and the Company, but such Incremental Term Loan will not in any event have a maturity date earlier than the Maturity Date;

(x) the Borrowers and each Incremental Term Lender shall execute and deliver a Lender Addition and Acknowledgement Agreement to the Administrative Agent, for its acceptance and recording in the Register; and

(xi) the Administrative Agent shall have received any documents or information, including any joinder agreements and opinions of counsel, in connection with such Incremental Term Loan as it may request in its reasonable discretion.

(d) Notwithstanding the provisions of Section 13.2 to the contrary, the Administrative Agent is hereby authorized to execute and deliver amendment documentation evidencing any amendments necessary to effectuate the Incremental Term Loan pursuant to this Section 2.9 on behalf of the Lenders; provided that such amendment shall not modify this Agreement or any other Loan Document in any manner materially adverse to any Lender without the consent of such Lenders adversely affected thereby in accordance with Section 13.2 hereof.

(e) Upon the execution, delivery, acceptance and recording of the applicable Lender Addition and Acknowledgement Agreement, from and after the applicable Incremental Term Loan Effective Date, each Incremental Term Lender shall have an Incremental Term Loan Commitment as set forth in the Register and all the rights and obligations of a Lender with such an Incremental Term Loan Commitment hereunder. The applicable Incremental Term Lenders shall make the Incremental Term Loans to the applicable Borrower on the applicable Incremental Term Loan Effective Date in an amount equal to the Incremental Term Loan Commitment of each Incremental Term Lender with respect to such Incremental Term Loan as agreed upon pursuant to subsection (b) above.

(f) The Administrative Agent shall maintain a copy of each Lender Addition and Acknowledgement Agreement delivered to it in accordance with Section 2.9(c).

(g) The Applicable Margin and pricing grid, if applicable, for the Incremental Term Loans shall be determined on the applicable Incremental Term Loan Effective Date; provided, however, that the Applicable Margin and pricing grid, if any, for any Incremental Term Loan shall not exceed the Applicable Margin and pricing grid for the



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Term Loans and the Revolving Credit Commitment by more than 50 basis points unless the Applicable Margin and pricing grid for the Term Loans and the Revolving Credit Commitment are increased to an amount that is no more than 50 basis points less than the Applicable Margin and pricing grid for the applicable Incremental Term Loan.

For the avoidance of doubt, if the Borrowers incur increased Incremental Term Loan Commitments in reliance on the Fixed Incremental Term Loan Amount and/or any increased Revolving Credit Commitments in reliance on the Fixed Incremental Revolving Amount on the same date that it incurs increased Incremental Term Loan Commitments in reliance on the Ratio Incremental Term Loan Amount, then unless such Borrower elects otherwise, each increased Incremental Term Loan Commitment will be deemed incurred first in reliance on the Ratio Incremental Term Loan Amount to the extent permitted (without including in the applicable financial calculation the amount of any Indebtedness being incurred in reliance upon the Fixed Incremental Term Loan Amount or the Fixed Incremental Revolving Amount) and if all or any portion of any increased Incremental Term Loan Commitment was previously incurred in reliance on the Fixed Incremental Term Loan Amount and, at any later time of determination, such amount could have been incurred instead in reliance on the Ratio Incremental Term Loan Amount, then the Borrowers may, upon written notice to the Administrative Agent, elect that such Indebtedness be reclassified at such later time of determination as having been incurred pursuant to the Ratio Incremental Term Loan Amount and thereafter such Indebtedness shall not count as a utilization of the Fixed Incremental Term Loan Amount.

#### **SECTION 2.10 Additional Borrowers.**

(a) Subsidiary Borrowers. The Company may from time to time request that a Restricted Subsidiary be added to this Agreement and the other Loan Documents as an additional Borrower with the ability to request and receive Extensions of Credit from the Lenders (each, a “Subsidiary Borrower”). No more than five (5) requests shall be delivered during the term of this Agreement. Each such request shall be delivered in writing to the Administrative Agent and the Lenders and shall specify the name of such Subsidiary, such Subsidiary's jurisdiction of organization, the Tranche under which such Subsidiary would be able to request and receive Extensions of Credit from the Lenders, and the Business Day on which the Company would like such joinder to be given effect. Such request shall be delivered at least thirty (30) days (or such shorter period as may be agreed by the Administrative Agent in its sole discretion) prior to the date on which the Company wishes to join such Subsidiary Borrower hereto. The Administrative Agent and the Lenders, subsequent to their receipt of such request, may ask the Company for additional information related to the proposed Subsidiary Borrower in their respective reasonable discretion. Taxes resulting from payments to any Lender by any such Subsidiary Borrower shall not be treated as Indemnified Taxes to the extent that Taxes resulting from such payment would have been Excluded Taxes if such payments had been made by the Company. In addition, no Lender shall be required to make Extensions of Credit to such Subsidiary Borrower if such Lender shall have given notice to the Administrative Agent and the Company within fifteen (15) Business Days after its receipt of the request to join such Subsidiary Borrower hereto that such Lender has determined in good faith that it would be subject, in making Extensions of Credit to such Subsidiary Borrower, to (i) regulatory or legal limitations or restrictions, (ii) material internal operations burdens or (iii) material financial disadvantage arising out of or attributable to the location or jurisdiction of organization of such Subsidiary Borrower or the nature of its activities. If all of the Lenders under the applicable Tranche inform the Administrative Agent and the Company that they are subject to such regulatory, legal or other burdens or limitations and restrictions or are otherwise disadvantaged as described above, then such Subsidiary Borrower shall not be joined hereto. If only a subset of the Lenders are unable to make Extensions of Credit to such Subsidiary Borrower as a result of the foregoing, then the Administrative Agent shall have the right to adjust (including, without limitation, further tranching hereof) the provisions of Article II and the other terms and

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conditions of this Agreement as it may reasonably determine to enable the Lenders that are able to make Extensions of Credit to such Subsidiary Borrower without becoming subject to any such regulatory or any legal restriction or limitation or such burden or financial disadvantage, and without causing the Company or any Subsidiary Borrower to incur any such disadvantages of its own (including any such disadvantage in the form of being required to indemnify Lenders for withholding payments including Taxes), to make Extensions of Credit available to such Subsidiary Borrower on a non-pro rata basis with Lenders that are not so able, with such adjustments to be made in a manner that, to the extent practicable, are reasonably equitable to all the Lenders. In order to join a Subsidiary Borrower hereto, the Company shall cause the delivery of the following to the Administrative Agent and the Lenders at least five (5) Business Days prior to the date on which the Company has requested that such joinder be given effect: (i) a joinder agreement executed by the Company, the

applicable Subsidiary Borrower and the Administrative Agent, in form and substance reasonably acceptable to each of them, pursuant to which such Subsidiary Borrower shall agree to be bound by the terms and conditions hereof and shall be entitled to request and receive Extensions of Credit hereunder; (ii) appropriate Notes made by such Subsidiary Borrower in favor of the applicable Lenders; (iii) organizational documents, resolutions, incumbency certificates and other similar corporate documents in respect of such Subsidiary Borrower, each in form and substance reasonably acceptable to the Administrative Agent, (iv) opinions of counsel for the Subsidiary Borrower in form and substance reasonably acceptable to the Administrative Agent; (v) documentation and other information reasonably requested by the Lenders or the Administrative Agent at least ten (10) Business Days prior to the date on which the Company has requested that such joinder be given effect that is required under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation; (vi) no-default certificates, borrowing requests and other similar deliverables as required for the Company under Sections 5.1 and 5.2; and (vii) such other agreements, documents and instruments reasonably requested by the Administrative Agent (it being agreed that the forms of agreements and deliverables delivered by the Company on the ~~Closing~~ Third Amendment Effective Date are acceptable for purposes of any Domestic Subsidiary being added as a Subsidiary Borrower). Upon satisfaction of the requirements set forth in this Section 2.10, the applicable Subsidiary Borrower shall for all purposes of this Agreement be a party to this Agreement. The Company and the Administrative Agent may enter into an amendment hereto, in form and substance reasonably acceptable to each of them, to give further effect to the addition of such Subsidiary Borrower hereto, and the Lenders authorize the Administrative Agent to enter into such an amendment; provided, however, that such amendment shall be technical and ministerial in nature and shall be focused solely on appropriately inserting the Subsidiary Borrower into this Agreement and the other Loan Documents. The Company shall guarantee the Obligations of each Subsidiary Borrower on terms and conditions reasonably acceptable to the Administrative Agent.

(b) Obligations. The Obligations of the Company and each of the Subsidiary Borrowers that are Domestic Subsidiaries shall be joint and several in nature regardless of which such Person actually receives Extensions of Credit hereunder or the amount of such Extensions of Credit received or the manner in which the Administrative Agent, any Issuing Lender or any Lender accounts for such Extensions of Credit on its books and records. Notwithstanding anything contained to the contrary herein or in any Loan Document (including any Subsidiary Borrower joinder agreement), (A) no Subsidiary Borrower that is a Foreign Subsidiary shall be obligated with respect to any Obligations of the Company or of any Domestic Subsidiary and, for the avoidance of doubt, no Subsidiary Borrower that is a Foreign Subsidiary shall be obligated to make any payment with respect to any Obligation of the Company or any Domestic Subsidiary hereunder or under any other Loan Document, (B) the Obligations owed by a Subsidiary Borrower that is a Foreign Subsidiary shall be several and not joint with the Obligations of the Company or of any

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Subsidiary Borrower that is a Domestic Subsidiary and (C) no Subsidiary Borrower that is a Foreign Subsidiary shall be obligated as a Guarantor under the Guaranty Agreement with respect to the Obligations of the Company or any Domestic Subsidiary.

(c) Appointment. Each Subsidiary of the Company that is or becomes a “Subsidiary Borrower” pursuant to this Section 2.10 hereby irrevocably appoints the Company to act as its agent for all purposes of this Agreement and the other Loan Documents and agrees that (i) the Company may execute such documents on behalf of such Subsidiary Borrower as the Company deems appropriate in its sole discretion and each Subsidiary Borrower shall be obligated by all of the terms of any such document executed on its behalf, (ii) any notice or communication delivered by the Administrative Agent or the Lender to the Company shall be deemed delivered to each Subsidiary Borrower and (iii) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Company on behalf of each of the Credit Parties.

(d) Termination. The Company may from time to time, upon not less than 15 Business Days’ notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent), terminate a Subsidiary Borrower’s status as such, provided that there are no outstanding Loans payable by such Subsidiary Borrower, or other amounts payable by such Subsidiary Borrower on account of any Loans made to it, as of the effective date of such termination.

## SECTION 2.11 Sustainability Adjustments.

a. ESG Amendment. On or prior to the date which is twelve (12) months following the Third Amendment Effective Date, the Borrowers, in consultation with the Sustainability Coordinator, shall be entitled to establish specified Key Performance Indicators (“KPI’s”) with respect to certain Environmental, Social and Governance (“ESG”) targets of the Borrowers and their Restricted Subsidiaries. The Sustainability Coordinator, the Company and the Administrative Agent may amend this Agreement (such amendment, the “ESG Amendment”) solely for the purpose of incorporating the KPI’s and other related provisions (the “ESG Pricing Provisions”) into this Agreement, and any such amendment (including provisions with respect to the reporting and validation of the measurement of the proposed KPI’s) shall become effective with the written consent of the Required Lenders, the Company, the Administrative Agent and the Sustainability Coordinator. Upon effectiveness of any such ESG Amendment, based on the Borrowers’ performance against the KPI’s, certain adjustments (increase, decrease or no adjustment) to the otherwise applicable Commitment Fee, Applicable



Margin for Base Rate Loans and Applicable Margin for Term SOFR Loans, Daily SOFR Loans and Designated Currency Rate Loans; provided that the amount of such adjustments shall not exceed (x) a 0.020% increase and/or decrease in the otherwise applicable Commitment Fee and (y) a 0.075% increase and/or decrease in the otherwise applicable Applicable Margin for Base Rate Loans and Applicable Margin for Term SOFR Loans, Daily SOFR Loans and Designated Currency Rate Loans, and the adjustments to the Applicable Margin for Base Rate Loans shall be the same as the adjustments to the Applicable Margin for Term SOFR Loans, Daily

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SOFR Loans and Designated Currency Rate Loans; provided further that (i) in no event shall the applicable Commitment Fee, Applicable Margin for Base Rate Loans and Applicable Margin for Term SOFR Loans, Daily SOFR Loans and Designated Currency Rate Loans be less than zero and (ii) such adjustments shall be made on a per annum basis, and shall not be cumulative from year to year. The pricing adjustments pursuant to the KPI's will require, among other things, reporting and validation of the measurement of the KPI's in a manner that is aligned with the Sustainability Linked Loan Principles and is to be agreed between the Company and the Sustainability Coordinator (each acting reasonably), including the appointment of a Sustainability Assurance Provider. Following the effectiveness of the ESG Amendment, any modification to the ESG Pricing Provisions shall be subject only to the consent of the Company and the Required Lenders if such modification does not have the effect of reducing the applicable Commitment Fee or applicable Applicable Margin for Base Rate Loans and Applicable Margin for Term SOFR Loans, Daily SOFR Loans and Designated Currency Rate Loans to a level not otherwise permitted by this paragraph (it being understood that any such modification having the effect of reducing the applicable Commitment Fee, Applicable Margin for Base Rate Loans or Applicable Margin for Term SOFR Loans, Daily SOFR Loans and Designated Currency Rate Loans to a level not otherwise permitted by this paragraph would require approval by all affected Lenders in accordance with Section 13.2).

b. Sustainability Coordinator. The Sustainability Coordinator will (i) assist the Company in determining the ESG Pricing Provisions in connection with the ESG Amendment and (ii) assist the Company in preparing informational materials focused on ESG to be used in connection with the ESG Amendment.

c. Conflicting Provisions. This Section shall supersede any provisions in Section 13.2 to the contrary.

### ARTICLE III

[INTENTIONALLY OMITTED]

### ARTICLE IV

### GENERAL LOAN PROVISIONS

#### SECTION 4.1 Interest and Default Rate

(a) Interest. Subject to the provisions of Section 4.1(b), (i) each Eurocurrency Designated Currency Term Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the Eurocurrency Designated Currency Term Rate for such Interest Period plus the Applicable Margin for such Facility; (ii) each Designated Currency Daily Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to Designated Currency Daily Rate plus the Applicable Margin for such Facility; (iii) each Daily SOFR Loan under a Facility shall bear interest on the

outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to Daily SOFR plus the Applicable Margin for such Facility; (iv) each Term SOFR Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the sum of Term SOFR for such Interest Period plus the Applicable Margin for such Facility; (v) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for such Facility; and (vi) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin for the Revolving Credit Facility. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

(b) **Default Rate.**

(i) Upon the occurrence and during the continuance of a Payment Event of Default, such overdue amount shall thereafter bear interest at a fluctuating interest rate per annum equal to the Default Rate until paid in full to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists (including a Payment Event of Default), all outstanding Obligations (including Letter of Credit Fees) may accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) **Interest Payments.** Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) **Maximum Rate.** In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Company (or the applicable Borrower) any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations on a pro rata basis. It is the intent hereof that no Borrower pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by a Borrower under Applicable Law.

**SECTION 4.2 Computation of Interest and Fees.**

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate SOFR) shall be made on the basis of a year of

365 or 366 days, as the case may be, and actual days elapsed. All computations of interest for Designated Currency Rate Loans shall be made on a basis of a year as set forth in Schedule 4.2 for such Designated Currency Rate Loans and actual days elapsed. All other computations of fees and interest (including those with respect to Term SOFR Loans and Daily SOFR Loans) shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year), or, in the case of interest in respect of Loans denominated in Foreign Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 4.4(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Notwithstanding the foregoing, in the event that any financial statement or Officer's Compliance Certificate delivered pursuant to Section 7.1 or Section 7.2 is shown to be inaccurate (regardless of whether (A) this Agreement is in effect, (B) the Revolving Credit Commitments, Swingline Commitments, or Term Loan Commitments are in effect, or (C) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Officer's Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of (i) a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, and only in such case, then (1) the Company shall promptly deliver to the Administrative Agent a corrected Officer's Compliance Certificate for such Applicable Period, (2) the Applicable Margin for such

Applicable Period shall be determined as if the Net Leverage Ratio in the corrected Officer's Compliance Certificate were applicable for such Applicable Period and (3) the Company shall promptly pay to the Administrative Agent the accrued additional interest and fees, as applicable, owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 4.4 and (ii) a lower Applicable Margin for such Applicable Period, the Lenders shall have no obligation to repay any interest or fees to the Company; provided that if, as a result of any restatement or other event, a proper calculation of the Net Leverage Ratio would have resulted in higher pricing for one or more periods and lower pricing for one or more other periods (due to the shifting of income or expenses from one period to another period or any similar reason), then the amount payable by the Company pursuant to clause (i) above shall be based upon the excess, if any, of the amount of interest and fees that should have been paid for all Applicable Periods over the amount of interest and fees paid for all such Applicable Periods. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Section 4.1(b) and Section 11.2.

#### **SECTION 4.3 Fees.**

In addition to certain fees described in subsections (h) and (i) of Section 2.3:

(a) Commitment Fee (Revolving Credit Facility). Commencing on the Closing Date, the Company shall pay to the Administrative Agent, for the account of the Lenders (other than any Defaulting Lenders), a non-refundable commitment fee (the "Commitment Fee"), at a rate per annum equal to the Applicable Margin times (i) for Lenders under the Dollar Tranche, the actual daily unused portion of the Revolving Credit Commitment for such Tranche (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment under such Tranche for the purpose of calculating such commitment fee; and (ii) for Lenders under the Designated Currency Tranche, the

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actual daily unused portion of the Revolving Credit Commitment for such Tranche (other than the Defaulting Lenders, if any). The commitment fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing ~~December 31, 2020~~ June 30, 2024, and on the last day of the Availability Period. Such commitment fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) under a Tranche pro rata in accordance with the Revolving Credit Lenders' respective Revolving Credit Commitment Percentages under such Tranche.

(b) Administrative Agent's Fees. In order to compensate the Administrative Agent for structuring and syndicating the Loans and for its obligations hereunder, the Company agrees to pay to the Administrative Agent and its Affiliates, for their own account, the fees set forth in the Administrative Agent Fee Letter.

(c) Other Fees. The Company shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified (including any fees agreed in writing with the Sustainability Coordinator). Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

#### **SECTION 4.4 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by any Borrower, subject to Section 4.11(a), shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in a Foreign Designated Currency all payments by a Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than ~~2:00 p.m.~~ 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Company and the Subsidiary Borrowers hereunder with respect to principal and interest on Loans denominated in a Foreign Designated Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Foreign Designated Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any of the Company or a Subsidiary Borrower is prohibited by any Applicable Law from making any required payment hereunder in a Foreign Designated Currency, the Company or such Subsidiary Borrower shall make such payment in Dollars in the Dollar Amount of the Foreign Designated Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Commitment Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after ~~2:00 p.m.~~ 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent, in the case of payments in a Foreign Designated Currency, shall in each case be deemed received on the next succeeding Business Day and any

applicable interest or fee shall continue to accrue. Subject to [Section 2.7\(a\)](#) and as otherwise specifically provided for in this Agreement, if any payment to be made by a Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

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(b) (i) [Funding by Lenders; Presumption by Administrative Agent](#). Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Extension of Credit of [Eurocurrency Designated Currency](#) Rate Loans (or, in the case of any Extension of Credit of Base Rate Loans, prior to 12:00 noon on the date of such Extension of Credit) that such Lender will not make available to the Administrative Agent such Lender's share of such Extension of Credit, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with [Section 2.2](#) (or, in the case of an Extension of Credit of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by [Section 2.2](#)) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Extension of Credit available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans or in the case of [Foreign Designated](#) Currencies in accordance with such market practice, in each case, as applicable. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Extension of Credit to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Extension of Credit. Any payment by any Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

ii. [Payments by Borrower; Presumptions by Administrative Agent](#). Unless the Administrative Agent shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lenders hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the Issuing Lenders, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuing Lender hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "[Rescindable Amount](#)"): (1) the applicable Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the applicable Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Appropriate Lenders or the Issuing Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuing Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

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A notice of the Administrative Agent to any Lender or any Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Agreement, and such funds are not made available to the applicable Borrower by the Administrative Agent because the conditions to the applicable Extension of Credit set forth in Article V are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 13.4(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 13.4(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 13.4(c).

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) **Pro Rata Treatment.** Except to the extent otherwise provided herein: (i) each Extension of Credit (other than borrowings of Swingline Loans) shall be made from the Appropriate Lenders, each payment of fees under Section 4.3 and Section 2.3(h) and (i) shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Commitments shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (ii) each Extension of Credit shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Revolving Credit Loans) or their respective Loans that are to be included in such Extension of Credit (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrowers shall be made for account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrowers shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

#### **SECTION 4.5 Evidence of Debt.**

(a) **Extensions of Credit.** The Extensions of Credit made by each Lender shall be evidenced by one or more accounts or records ~~(including the Register maintained pursuant to Section 13.9(c))~~ maintained by such Lender ~~and by the Administrative Agent~~ in the ordinary course of business. The ~~accounts or records (including~~Administrative Agent shall maintain the Register ~~maintained pursuant to~~in accordance withSection 13.9(c)). ~~The accounts or records~~ maintained by ~~the Administrative Agent and~~ each Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the ~~accounts and records of the Administrative Agent in respect of such matters,~~

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~~the accounts and records of the Administrative Agent (including~~Register, the Register ~~maintained pursuant to Section 13.9(c))~~ shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, a Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note, Term Loan Note, Swingline Note, and/or Incremental Term Loan Note, as applicable, which shall evidence such Lender's Revolving Credit Loans, Term Loan, Swingline Loans and/or Incremental Term Loans, as applicable, in addition to such accounts or records.

(b) **Participations.** In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records (including the Participant Register maintained pursuant to Section 13.9(d)) evidencing the purchases and sales by such Revolving Credit Lender of participations in L/C Obligations and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent (including the Participant Register maintained pursuant to Section 13.9(d)) shall control in the absence of manifest error.

#### **SECTION 4.6 Adjustments.**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the

Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(I) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(II) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in [Section 4.13](#), or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Credit Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under ~~applicable~~[Applicable](#) Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

#### **SECTION 4.7 Illegality.**

(a) If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund or charge interest with respect to any Extension of Credit or to determine or charge interest rates based upon ~~the Eurocurrency~~[a Relevant](#) Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any ~~Foreign~~[Designated](#) Currency in the applicable interbank market, then, on notice thereof by such Lender to the Company through the Administrative Agent, (i) any obligation of such Lender to make, maintain or continue ~~Eurocurrency~~[Designated Currency](#) Rate Loans in the affected currency or currencies or, in the case of ~~Eurocurrency-Rate~~ Loans denominated in Dollars, to make, continue or maintain Term SOFR Loans or Daily SOFR Loans or convert Base Rate Loans to ~~Eurocurrency-Rate~~[Term SOFR Loans or Daily SOFR](#) Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~Eurocurrency Rate~~[Term SOFR](#) component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurocurrency-Rate~~[Term SOFR](#) component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (A) the Borrowers shall, subject to [Section 2.10\(b\)](#), upon demand from such Lender (with a copy to the Administrative Agent), prepay all Designated Currency Rate Loans, Term SOFR Loans or Daily SOFR Loans, or, if applicable and such Loans are denominated in Dollars, convert all ~~Eurocurrency Rate~~[Term SOFR Loans or Daily SOFR](#) Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurocurrency-Rate~~[Term SOFR](#) component of the Base Rate), in the case of Daily SOFR Loans and Designated Currency Daily Rate Loans, immediately, and, in the case of Term SOFR Loans and Designated Currency Term Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such ~~Eurocurrency~~[Term SOFR Loans or Designated Currency Term](#) Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such ~~Eurocurrency Rate~~[Loans](#)[Term SOFR Loans or Designated Currency Term Rate Loans](#) (provided, that, such conversion of Loans into Dollars shall not require satisfaction of the



conditions set forth in Section 5.2(a) and (b), and the Loan Notice provided in connection with any such conversion of Loans into Dollars shall not be deemed to be a representation and warranty by such Borrower that the conditions specified in Sections 5.2(a) and (b) have been satisfied on and as of the date of such conversion) and (B) if such notice asserts the illegality of such Lender determining or charging interest rates based upon ~~the Eurocurrency Rate Term SOFR~~, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the ~~Eurocurrency Rate Term SOFR~~ component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~the Eurocurrency Rate Term SOFR~~. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 4.10.

(b) If, in any applicable jurisdiction, the Administrative Agent, any Issuing Lender or any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, any Issuing Lender or any Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund, hold a commitment or maintain its participation in any Loan or Letter of Credit or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Extension of Credit to any Subsidiary Borrower who is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia such Person shall promptly notify the Administrative Agent, then, upon the Administrative Agent notifying the Company, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Extension of Credit shall be suspended, and to the extent required by ~~applicable~~ Applicable Law, cancelled. Upon receipt of such notice, the Credit Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Company or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by ~~applicable~~ Applicable Law), (B) to the extent applicable to an Issuing Lender, Cash Collateralize that portion of applicable L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized and (C) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

#### SECTION 4.8 **Inability to Determine Rates.**

(a) If in connection with any request for a ~~Eurocurrency Term SOFR Loan, a Daily SOFR Loan, Designated Currency Rate Loan or a conversion to~~ ~~or of Base Rate Loans to Term SOFR Loans or a Daily SOFR Loans or a~~ continuation thereof of any of Term SOFR Loans or Designated Currency Term Rate Loans, as applicable, (i) the Administrative Agent determines ~~that (A) deposits (whether in Dollars or a Foreign Currency) are not being offered to banks in the applicable offshore interbank eurocurrency market for such currency (which determination shall be conclusive absent manifest error) that (A) no~~ Successor Rate for the Relevant Rate for the applicable ~~amount and Interest Period of such Eurocurrency Rate Loan~~ Agreed Currency has been determined in accordance with Section 4.8(b) or Section 4.8(c) and the circumstances under clause (i) of Section 4.8(b) or of Section 4.8(c) or the Scheduled Unavailability Date, or the SOFR Scheduled Unavailability Date, has occurred with respect to such Relevant Rate (as applicable), or (B) adequate and reasonable means do not ~~otherwise~~ exist for determining the ~~Eurocurrency Relevant~~ Rate for ~~any~~ the applicable Agreed Currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed ~~Eurocurrency Term SOFR Loan, Daily SOFR Loan or a Designated Currency Rate Loan (whether denominated in Dollars or a Foreign Currency)~~ or in connection with an existing or proposed Base Rate Loan ~~(in each case~~

~~with respect to clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason Eurocurrency Rate that~~ the Relevant Rate with respect to a proposed Loan denominated in an Agreed Currency for any requested Interest Period ~~with respect to a proposed Eurocurrency Rate Loan, as applicable, or determination date(s)~~ does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Company and each Lender.

~~(a) Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies, as applicable, or to convert Base Rate Loans to Term SOFR Loans or Daily SOFR Loans, shall be suspended (, in each case, to the extent of the affected Eurocurrency Rate Loans or Interest Periods) Period or determination date(s), as applicable, and (y) in the event of a determination~~

described in the preceding sentence with respect to the ~~Eurocurrency Rate~~ Term SOFR component of the Base Rate, the utilization of the ~~Eurocurrency Rate~~ Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (~~upon the or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 4.8(a), until the Administrative Agent upon~~ instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the ~~applicable Borrower~~ Borrowers may revoke any pending request for ~~an Extension of Credit of, conversion to or a borrowing of,~~ continuation of ~~Eurocurrency~~ or conversion to Term SOFR Loans, Daily SOFR Loans, or Designated Currency Rate Loans ~~in the affected currency or currencies~~ (to the extent of the affected ~~Eurocurrency Rate~~ Loans or Interest Periods) ~~Period or determination date(s), as applicable~~ or, failing that, will be deemed to have converted such request into a request for ~~an Extension of Credit~~ a borrowing of Base Rate Loans ~~denominated~~ in Dollars in ~~the Dollar Amount of~~ the amount specified therein, and (ii) (A) any outstanding Daily SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately, (B) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period and (C) any outstanding affected Designated Currency Rate Loans, at the Company's election, shall either (1) be converted into a borrowing of Base Rate Loans denominated in Dollars in the Dollar Amount of the amount of such outstanding Designated Currency Rate Loan immediately, in the case of a Designated Currency Daily Rate Loan or at the end of the applicable Interest Period, in the case of a Designated Currency Term Rate Loan or (2) be prepaid in full immediately, in the case of a Designated Currency Daily Rate Loan, or at the end of the applicable Interest Period, in the case of a Designated Currency Term Rate Loan; provided that if no election is made by the Company (x) in the case of a Designated Currency Daily Rate Loan, by the date that is three Business Days after receipt by the Company of such notice or (y) in the case of a Designated Currency Term Rate Loan, by the last day of the current Interest Period for the applicable Designated Currency Term Rate Loan, the Company shall be deemed to have elected clause (1) above.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this Section, the Administrative Agent in consultation with the Company and the Required Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans

~~under clause (a)(i) of this Section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Company that such alternative interest rate does not adequately and fairly reflect the cost to the Lenders of funding the Impacted Loans, or (3) any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Company written notice thereof.~~

(b) ~~Replacement of Daily SOFR, Term SOFR or SOFR Successor Rate.~~ Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining ~~the Applicable Reference Rate for an Applicable Currency for any Interest Period hereunder or any other tenors of the Applicable Reference Rate for an Applicable Currency~~ SOFR and/or one month, three month and six month interest periods of Term SOFR, including, ~~without limitation~~ in each case, because the Term SOFR Screen Rate or SOFR, as applicable, is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the ~~administrator of the Screen Rate for an Applicable Currency or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator~~ has made a public statement identifying a specific date after which ~~the Applicable Reference Rate for an Applicable Currency or the SOFR and/or one month, three month and six month interest periods of Term SOFR or the Term SOFR~~ Screen Rate for an Applicable Currency shall or will no longer be ~~representative or~~ made available, or ~~permitted to be~~ used for determining the interest rate of syndicated loans denominated in ~~such Applicable Currency~~ Dollars, or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide ~~the Applicable Reference Rate for such Applicable Currency after such specific date (such specific date, the "SOFR or such interest periods of Term SOFR, in each case, on a representative~~



basis (the date on which SOFR and/or one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate is no longer representative or available permanently or indefinitely, the "SOFR Scheduled Unavailability Date"); ~~or~~

~~(iii) the administrator of the Screen Rate for an Applicable Currency or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of the Applicable Reference Rate for an Applicable Currency are no longer representative; or~~

~~(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 4.8, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Applicable Reference Rate for an Applicable Currency;~~

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~~then, with respect to Dollars in the case of clauses (i) (iii) above, on a date and time determined by the Administrative Agent (any such date, the "Applicable Reference Rate Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and shall occur reasonably promptly upon the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under any Loan Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Dollar LIBOR Successor Rate"; and any such rate before giving effect to the Related Adjustment, the "Pre-Adjustment Successor Rate");~~

~~(x) Term SOFR plus the Related Adjustment; and~~

~~(y) SOFR plus the Related Adjustment;~~

~~and or if the events or circumstances of the type described in Section 4.8(b)(i) or (ii) have occurred with respect to Dollars in the case of clause (iv) above, the Company and the SOFR Successor Rate then in effect, then, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing LIBOR with respect to Dollars under this Agreement and under any other Loan Document SOFR and/or Term SOFR or any then current SOFR Successor Rate in accordance with the definition of "Dollar LIBOR" this Section 4.8 with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such benchmarks (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a "SOFR Successor Rate"), and any such amendment will/shall become effective at 5:00 p.m., on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have notified/posted such proposed amendment to all Lenders and the Company of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a Dollar LIBOR Successor Rate pursuant to such clause; such amendment.~~

~~provided that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the Dollar LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Company and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the Dollar LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment;~~

~~(c) Replacement of Relevant Rate or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the~~

Company or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Company) that the Company or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the Relevant Rate (other than SOFR) for an Agreed Currency (other than Dollars) because none of the tenors of such Relevant Rate (other than SOFR) under this Agreement is available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) the Applicable Authority has made a public statement identifying a specific date after which all tenors of the Relevant Rate (other than SOFR) for an Agreed Currency (other than Dollars) under this Agreement shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of syndicated loans denominated in such Agreed Currency (other than Dollars), or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative tenor(s) of the Relevant Rate (other than SOFR) for such Agreed Currency (other than Dollars) (the latest date on which all tenors of the Relevant Rate for such Agreed Currency (other than Dollars) under this Agreement are no longer representative or available permanently or indefinitely, the "Scheduled Unavailability Date");

~~then, with respect to any Foreign Currency, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable~~ or if the events or circumstances of the type described in Section 4.8(c)(i) or (ii) have occurred with respect to the Non-SOFR Successor Rate then in effect, then, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing the ~~Applicable Reference~~ Relevant Rate for ~~the Applicable~~ an Agreed Currency or any then current Non-SOFR Successor Rate for an Agreed Currency in accordance with this Section 4.8 with ~~another alternate~~ an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar ~~syndicated~~ credit facilities syndicated and agented in the U.S. and denominated in ~~the Applicable~~ such Agreed Currency for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar ~~syndicated~~ credit facilities syndicated and agented in the U.S. and denominated in ~~the Applicable~~ such Agreed Currency for such benchmarks, ~~each of which adjustments or methods for calculating such adjustments shall be published on one or more information services as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated (each, an "Adjustment,"~~ (and any such proposed rate, ~~a "Foreign Currency" including for the avoidance of doubt, any adjustment thereto, a "Non-SOFR Successor Rate", and collectively with the SOFR Successor Rate, each a "Successor Rate")~~, and any such amendment shall become effective at 5:00 p.m. on the fifth ~~(5<sup>th</sup>)~~ Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

(d) Successor Rate. The Administrative Agent will promptly (in one or more notices) notify the Company and each Lender of ~~(x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) an Applicable Reference Rate Replacement Date and (z) the~~ the implementation of any Successor Rate.

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

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than ~~0~~ zero%, the Successor Rate will be deemed to be ~~0~~ zero% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate ~~for any currency,~~ the Administrative Agent will have the right to make ~~Successor Rate-Conforming Changes with respect to such currency~~ from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Successor Rate-Conforming Changes~~ will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such

amendment implementing such ~~Successor Rate~~ Conforming Changes ~~for the Applicable Currency~~ to the Company and the Lenders reasonably promptly after such amendment becomes effective.

(e) For purposes of this Section 4.8, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in the relevant Agreed Currency shall be excluded from any determination of Required Lenders.

~~If the events or circumstances of the type described in Section 4.8(c)(i) to (iii) have occurred with respect to the Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of "Dollar LIBOR Successor Rate" or "Foreign Currency Successor Rate," as applicable.~~

~~(d) Notwithstanding anything to the contrary herein, in the case of Dollars (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 4.8(c)(i) to (iii), as applicable, if the Administrative Agent determines that none of the Dollar LIBOR Successor Rates are available on or prior to the Applicable Reference Rate Replacement Date, (ii) if the events or circumstances described in Section 4.8(c)(iv) have occurred but none of the Dollar LIBOR Successor Rates are available, or (iii) if the events or circumstances of the type described in Section 4.8(c)(i) to (iii) have occurred with respect to the Dollar LIBOR Successor Rate then in effect and the Administrative Agent determines that none of the Dollar LIBOR Successor Rates are available, then in each case, the Administrative Agent and the Company may amend this Agreement solely for the purpose of replacing LIBOR or any then current Dollar LIBOR Successor Rate in accordance with this Section 4.8 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar syndicated credit facilities syndicated in the U.S. and denominated in Dollars for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving~~

~~due consideration to any evolving or then existing convention for similar syndicated credit facilities syndicated in the U.S. and denominated in Dollars for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a Dollar LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.~~

~~(e) If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no Successor Rate for an Applicable Currency has been determined in accordance with clauses (c) or (d) of this Section 4.8 and the circumstances under clauses (c)(i) or (c)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Company and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in each such Applicable Currency shall be suspended, (to the extent of the affected Eurocurrency Rate Loans, Interest Periods, interest payment dates or payment periods), and (y) in the case of LIBOR, the Eurocurrency Rate component shall no longer be utilized in determining the Base Rate, until the applicable Successor Rate has been determined in accordance with clauses (c) or (d). Upon receipt of such notice, the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of Eurocurrency Rate Loans in each such affected Applicable Currency (to the extent of the affected Eurocurrency Rate Loans, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted each such request into a request for a borrowing of Base Rate Loans denominated in Dollars in the Dollar Amount of the amount specified therein and (ii) (A) any outstanding affected Eurocurrency Rate Loans denominated in Dollars will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period and (B) any outstanding affected Eurocurrency Rate Loans denominated in a Foreign Currency, at the Company's election, shall either (1) be converted into a borrowing of Base Rate Loans denominated in Dollars in the Dollar Amount of the amount of such outstanding Eurocurrency Rate Loan at the end of the applicable Interest Period or (2) be prepaid at the end of the applicable Interest Period in full; provided that if no election is made by the Company by the earlier of (x) the date that is three Business Days after receipt by the Company of such notice and (y) the last day of the current Interest Period for the applicable Eurocurrency Rate Loan, the Company shall be deemed to have elected clause (1) above.~~

**SECTION 4.9 Indemnity.** Each Borrower hereby indemnifies, subject to Section 2.10(b), each of the Lenders against any actual loss or expense which may arise or be attributable to each Lender's obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any Loan (a) as a consequence of any failure by such Borrower to make any payment when due of any amount due hereunder in connection with a Eurocurrency Loan other than a Base Rate Loan, (b) due to any failure of such Borrower to borrow, continue or convert on a date specified therefor in a Loan Notice or (c) due to any payment, prepayment or conversion of any Eurocurrency Loan other than a Base Rate Loan on a date other than the last day of the Interest Period therefor. The amount of such loss or expense shall be determined, in the applicable Lender's sole discretion, based upon the assumption that such Lender funded its Commitment Percentage of the Eurocurrency Designated Currency Rate Loans in the London offshore interbank market ~~(or other applicable market for Foreign Currencies) for~~

such currency and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to

compensate such Lender shall be forwarded to the applicable Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error.

#### SECTION 4.10 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender ~~(except any reserve requirement reflected in the LIBOR Rate)~~ or any Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations with respect to this Agreement, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Lender or the London applicable interbank market ~~(or other applicable market for Foreign Currencies)~~ any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurocurrency~~ Designated Currency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) (including, in all cases, the Lenders under the Designated Currency Tranche being required to convert a Loan from one Agreed Currency to another Agreed Currency), then, upon request of such Lender, such Issuing Lender or other Recipient, the Company will pay (or will cause the applicable Subsidiary Borrower to pay) to such Lender, such Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Lender determines that any Change in Law affecting such Lender or such Issuing Lender or any lending office of such Lender or such Lender's or such Issuing Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy and liquidity), then from time to time upon the written request of such Lender, the Company shall promptly pay (or shall cause the applicable Subsidiary Borrower to promptly pay) to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate

such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

~~(c) Mandatory Costs. If any Lender or any Issuing Lender incurs any Mandatory Costs attributable to the Obligations, then from time to time the Company will pay (or cause the applicable Subsidiary Borrower to pay) to such Lender or such Issuing Lender, as the case may be, such Mandatory Costs.~~

~~Such amount shall be expressed as a percentage rate per annum and shall be payable on the full amount of the applicable Obligations.~~ [\[Reserved\]](#).

(d) Certificates for Reimbursement. A certificate of a Lender or an Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or such Issuing Lender or its holding company, as the case may be, as specified in paragraph (a), (b) or (c) of this Section and delivered to the Company shall be conclusive absent manifest error. The Company shall pay (or shall cause the applicable Subsidiary Borrower to pay) such Lender or such Issuing Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(e) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or an Issuing Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such Issuing Lender, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

#### **SECTION 4.11 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Laws. If any Applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Withholding Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding ~~taxes~~ Taxes, from any payment, then (A) such Withholding Agent shall withhold or make such deductions as are determined by such Withholding Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Withholding Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party, subject to Section 2.10(b), shall be increased as necessary so that after any required withholding or the making of all required

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deductions (including deductions applicable to additional sums payable under this Section 4.11) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Withholding Agent shall be required by any Applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Withholding Agent, as required by such Applicable Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Withholding Agent, to the extent required by such Applicable Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Applicable Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Credit Party, subject to Section 2.10(b), shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 4.11) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Credit Parties. Without limiting the provisions of subsection (a) above, the Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Subject to Section 2.10(b), each of the Credit Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 4.11) payable or paid by such Recipient or required to be

withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by a Lender or an Issuing Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Lender, shall be conclusive absent manifest error. Each of the Credit Parties shall also, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or an Issuing Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to [Section 4.11\(c\)\(ii\)](#) below.

(ii) Each Lender and each Issuing Lender shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender or such Issuing Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (B) the Administrative Agent and the Credit Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of [Section 13.9\(d\)](#) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Credit Parties, as applicable, against any

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Excluded Taxes attributable to such Lender or such Issuing Lender, in each case, that are payable or paid by the Administrative Agent or a Credit Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each Issuing Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such Issuing Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) [Evidence of Payments](#). As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority, as provided in this [Section 4.11](#), the Company shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) [Status of Lenders; Tax Documentation](#).

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Company and the Administrative Agent, at the time or times reasonably requested by the Company or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Company or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Company or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Company or the Administrative Agent as will enable the Company or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in [Section 4.11\(e\)\(ii\)\(A\)](#), [\(ii\)\(B\)](#) and [\(ii\)\(D\)](#) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Company and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time



thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-~~8BEN-E~~ 8BEN-E (or Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-~~8BEN-E~~ 8BEN-E (or Form W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-~~8ECI~~;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit K-~~4-1~~** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of such Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-~~8BEN-E~~ 8BEN-E (or Form W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-~~8IMY~~, accompanied by IRS Form W-~~8ECI~~, IRS Form W-~~8BEN-E~~ 8BEN-E (or Form W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit K-~~2-2~~** or **Exhibit K-~~3-3~~**, IRS Form W-~~9-9~~, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit K-~~4-4~~** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed copies (or originals, as required) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Company or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Company or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 4.11 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by Applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an Issuing Lender, or have any obligation to pay to any Lender or any Issuing Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such Issuing Lender, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Credit Party or with respect to which any Credit Party has paid additional amounts pursuant to this Section 4.11, it shall pay to such Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under this Section 4.11 with respect to the Taxes giving rise to such refund), net of all ~~out-of-pocket~~out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Credit Party, upon the request of the Recipient, agrees to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to such Credit Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net ~~after-Tax~~after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Credit Party or any other Person.

(g) Survival. Each party's obligations under this Section 4.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or an Issuing Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

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(h) Defined Term. For purposes of this Section 4.11, the term "Applicable Law" includes FATCA.

#### **SECTION 4.12 Mitigation Obligations; Replacement of Lenders**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 4.10, or requires any Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.11, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 4.10 or Section 4.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Company hereby agrees to pay (or to cause the applicable Subsidiary Borrower to pay) all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 4.10, or if any Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.11 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with clause (a) above, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, or if any other circumstance exists hereunder that gives the Company the right to replace a Lender as a party hereto, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.9), all of its interests, rights (other than its existing rights to payments pursuant to Sections 4.10 and 4.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Company shall have paid (or caused a Subsidiary Borrower to pay) to the Administrative Agent the assignment fee (if any) specified in Section 13.9(b);

(ii) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company or applicable Subsidiary Borrower (in the case of all other amounts);



(iii) in the case of any such assignment resulting from a claim for compensation under Section 4.10 or payments required to be made pursuant to Section 4.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with ~~applicable~~ Applicable Laws; and

(v) in the case of an assignment resulting from a Lender becoming a ~~Non-Consenting~~ Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

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A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 4.12 may be effected pursuant to an Assignment and Assumption executed by the Company, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 4.12 to the contrary, (i) any Lender that acts as an Issuing Lender may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such Issuing Lender or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Lender) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 12.6.

#### **SECTION 4.13 Cash Collateral.**

(a) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent, any Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Company shall (or shall cause the applicable Subsidiary Borrower to) Cash Collateralize all Fronting Exposure of the Issuing Lenders and the Swingline Lender with respect to such Defaulting Lender (determined after giving effect to Section 4.14(b) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lenders and the Lenders (including the Swingline Lender), and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligations to which such Cash Collateral may be applied pursuant to clause (c) below. If at any time the Administrative Agent, an Issuing Lender, or Swingline Lender determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, the Company will, promptly upon demand by the Administrative Agent, any Issuing Lender, or Swingline Lender pay or provide (or cause the applicable Subsidiary Borrower to pay or provide) to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

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(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section or [Section 4.14](#) in respect of Letters of Credit, or Swingline Loans, shall be held and applied to the satisfaction of the specific L/C Obligations, Swingline Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) **Termination of Requirement.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall no longer be required to be held as Cash Collateral pursuant to this [Section 4.13](#) following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, each Issuing Lender, and the Swingline Lender that there exists excess Cash Collateral; **provided** that, subject to [Section 4.14](#), the Person providing Cash Collateral and each applicable Issuing Lender, and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

#### **SECTION 4.14 Defaulting Lenders.**

(a) **Defaulting Lender Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and [Section 13.2](#).

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to [Article XI](#) or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to [Section 13.5](#) shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Lender, or the Swingline Lender hereunder; *third*, to Cash Collateralize each Issuing Lender's or Swingline Lender's Fronting Exposure with respect to such Defaulting Lender in accordance with [Section 4.13](#); *fourth*, as the Company may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Company, to be held in a non-interest bearing deposit account and released *prorata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize each Issuing Lender's, and the Swingline Lender's future Fronting Exposure with respect to such Defaulting Lender in accordance with [Section 4.13](#); *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders, or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lenders, the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the

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payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; **provided** that if (A) such payment is a payment of the principal amount of any Loans or L/C Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in [Section 5.2](#) were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations, and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Credit Facility and applicable

Tranche without giving effect to [Section 4.14\(a\)\(iv\)](#). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this [Section 4.14\(a\)\(ii\)](#) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) [Certain Fees](#).

(A) [Commitment Fees](#). No Defaulting Lender shall be entitled to receive any commitment fee for any period during which that Lender is a Defaulting Lender (and the Company shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) [Letter of Credit Fees](#). Each Defaulting Lender shall be entitled to receive letter of credit fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage under the applicable Tranche of the stated amount of Letters of Credit under the applicable Tranche for which it has provided Cash Collateral pursuant to [Section 4.13](#).

(C) [Reallocation of Fees](#). With respect to any letter of credit fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Company shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Lender the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) [Reallocation of Participations to Reduce Fronting Exposure](#). All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages under the applicable Tranche (calculated without regard to such Defaulting Lender's Revolving Credit Commitment in respect of such Tranche) but only to the extent that (x) the conditions set forth in [Section 5.2](#) are satisfied at the time of such reallocation (and, unless the Company shall have otherwise notified the Administrative Agent at such time, the Company shall be deemed to have represented and warranted that

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such conditions are satisfied at such time) and (y) such reallocation does not cause the aggregate principal amount of outstanding Revolving Credit Loans and participations in L/C Obligations and Swingline Loans any Non-Defaulting Lender at such time under the applicable Tranche to exceed such Non-Defaulting Lender's Revolving Credit Commitment in respect of such Tranche. Subject to [Section 13.25](#), 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.

(v) [Cash Collateral and Repayment of Swingline Loans](#). If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Company shall, without prejudice to any right or remedy available to it hereunder or under law, (x) *first*, ratably prepay Swingline Loans in an amount equal to the Swingline Lender's respective Fronting Exposure and (y) *second*, Cash Collateralize each Issuing Lender's Fronting Exposure in accordance with the procedures set forth in [Section 4.13](#).

(b) [Defaulting Lender Cure](#). If the Company, the Administrative Agent and the Swingline Lender, and each Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages in respect of the applicable Tranche (without giving effect to [Section 4.14\(a\)\(iv\)](#)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) [New Swingline Loans/Letters of Credit](#). So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) no Issuing Lender shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

## ARTICLE V

### CLOSING; CONDITIONS OF CLOSING AND BORROWING

**SECTION 5.1 Conditions to Closing and Initial Extensions of Credit.** The obligation of the Lenders to close this Agreement and to make the initial Loan or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction of each of the following conditions:

(a) **Executed Loan Documents.** This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Term Loan Note in favor of each Term Loan Lender requesting a Term Loan Note, a Swingline Note in favor of the Swingline Lender (if requested thereby), the applicable Security Documents, together with any other

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applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, shall be in full force and effect and no Default or Event of Default shall exist hereunder or thereunder.

(b) **Closing Certificates; Etc.** The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) **Officer's Certificate of the Company.** A certificate from a Responsible Officer of the Company certifying that the conditions set forth in Section 5.1(f), 5.2(a) and 5.2(b) are satisfied as of the Closing Date.

(ii) **Certificate of Secretary of each Credit Party.** A certificate of a Responsible Officer of each Credit Party certifying as to the incumbency and genuineness of the signature of each officer of such Credit Party executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation of such Credit Party and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation or formation, (B) the bylaws or other governing document of such Credit Party as in effect on the Closing Date, (C) resolutions duly adopted by the board of directors or other governing body of such Credit Party authorizing the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) each certificate required to be delivered pursuant to Section 5.1(b)(iii).

(iii) **Certificates of Good Standing.** Certificates as of a recent date of the good standing of each Credit Party under the laws of its jurisdiction of organization.

(iv) **Opinions of Counsel.** Favorable opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders with respect to the Credit Parties, the Loan Documents and such other matters as the Lenders shall request, each in form and substance reasonably satisfactory to the Administrative Agent.

(c) **No Litigation.** The absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Credit Parties, threatened in any court or before any arbitrator or Governmental Authority that would reasonably be expected to have a Material Adverse Effect.

(d) **Financial Matters.**

(i) **Financial Statements.** The Administrative Agent shall have received (x) the audited Consolidated financial statements of the Company and its Subsidiaries for Fiscal Years 2017, 2018 and 2019, (y) the unaudited Consolidated financial statements of the Company and its Subsidiaries for the fiscal quarter ended June 30, 2020 and (z) the Consolidated forecasted balance sheet, statements of income and cash flows of the Company and its Restricted Subsidiaries for the Fiscal Years 2020, 2021, 2022, 2023, 2024 and 2025, all in form and substance reasonably satisfactory to the Administrative Agent and prepared in accordance with GAAP.

(ii) **Financial Condition Certificate.** The Company shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by a Responsible Officer of the Company, that (A) after giving effect to the transactions contemplated hereby on the Closing Date,

the Company and each of its Restricted Subsidiaries, taken as a whole are Solvent, (B) after giving effect to the transactions contemplated hereby on the Closing Date, the Company is in proforma compliance with the covenants contained in Section 9.1 and Section 9.2 hereof, and (C) the financial projections previously delivered to the Administrative Agent represent the good faith estimates (utilizing reasonable assumptions) of the financial condition and operations of the Company and its Restricted Subsidiaries, taken as a whole, in all material respects.

(iii) Payment at Closing; Fee Letters. The Company shall have paid to the Administrative Agent and the Lenders the fees set forth or referenced in Section 4.3 to the extent payable on the Closing Date and any other accrued and unpaid fees or commissions due hereunder (including, without limitation, reasonable and documented out-of-pocket legal fees and expenses) and to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents, in each case to the extent invoiced at least one day prior to the Closing Date.

(iv) Existing Credit Agreement. The Credit Parties shall have (A) paid all accrued and unpaid interest on the term loan outstanding under the Existing Credit Agreement to the Closing Date, (B) paid all accrued and unpaid interest on the dollar tranche revolving credit loans outstanding under the Existing Credit Agreement to the Closing Date, (C) paid all accrued and unpaid interest on the designated currency tranche revolving credit loans outstanding under the Existing Credit Agreement to the Closing Date, (D) to the extent necessary, repaid any term loans in excess of the Term Loan Commitments of the Lenders hereunder as of the Closing Date, (E) prepaid any dollar tranche revolving credit loans outstanding under the Existing Credit Agreement to the extent necessary to keep the outstanding Dollar Tranche Revolving Credit Loans ratable with the revised Dollar Tranche Revolving Credit Commitments as of the Closing Date, (F) prepaid any designated currency tranche revolving credit loans outstanding under the Existing Credit Agreement to the extent necessary to keep the outstanding Designated Currency Tranche Revolving Credit Loans ratable with the revised Designated Currency Tranche Revolving Credit Commitments as of the Closing Date and (G) paid all accrued fees owing to the lenders under the Existing Credit Agreement to the Closing Date.

(e) Collateral.

(i) Filings and Recordings. The Administrative Agent shall have received all filings and recordings that are necessary to perfect the security interests of the Administrative Agent, on behalf of itself and the Lenders, in the Collateral, and the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that upon such filings and recordings such security interests constitute valid and perfected first priority Liens thereon; provided, however, that no pledge documentation governed by the local laws of a Foreign Subsidiary's jurisdiction of organization shall be required as of the Closing Date.

(ii) Pledged Collateral. To the extent applicable, the Administrative Agent shall have received original stock certificates or other certificates evidencing the Capital Stock pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof.

(iii) Lien Search. The Administrative Agent shall have received the results of a Lien search (including a search as to judgments, pending litigation and tax matters), in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordings under the Uniform Commercial Code should be made to evidence or perfect security interests in substantially all of the assets of such Credit Party, indicating among other things that its assets are free and clear of any Lien except for Permitted Liens.

(f) Consents. The Administrative Agent shall have received evidence that all boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(g) Miscellaneous.

(i) Loan Notice. The Administrative Agent shall have received a Loan Notice from the applicable Borrower in accordance with Section 2.2 (if a Loan is to be made or a Letter of Credit issued) and a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(ii) Anti-Money Laundering~~Anti-Money Laundering~~. Beneficial Ownership. To the extent reasonably requested by any Lender at least ten (10) days prior to the Closing Date, each Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and ~~anti-money laundering~~anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, and any Credit Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Credit Party.

(iii) Other Documents. All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be in form and substance reasonably satisfactory to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement.

Without limiting the generality of the provisions of Section 12.3(c), for purposes of determining compliance with the conditions specified in this Section 5.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**SECTION 5.2 Conditions to All Extensions of Credit**. The obligations of the Lenders to make any Extensions of Credit (including the initial Extension of Credit), and/or any Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, issuance or extension date, in each case, for a Borrowing of Incremental Term Loans, subject to Section 1.3:

(a) Continuation of Representations and Warranties. The representations and warranties contained in Article VI shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Extension of Credit and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date, except for any representation and warranty made as of an earlier date, shall (x) with respect to representations and warranties that contain a materiality qualification, be true and correct as of such earlier date and (y) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 5.2(a), the representations and warranties contained in Section 6.1(g) shall be deemed to refer to the most recent statements furnished pursuant to Section 7.1(b).

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Notices. The Administrative Agent, and, if applicable, the applicable Issuing Lender or the Swingline Lender shall have received a Loan Notice in accordance with the requirements hereof.

(d) Subsidiary Borrower. If the applicable Borrower is a Subsidiary Borrower, the conditions of Section 2.10 to the designation of such Borrower as a Subsidiary Borrower shall have been satisfied.

(e) Foreign Designated Currency. In the case of an Extension of Credit to be denominated in a Foreign Designated Currency, such currency remains an Agreed Currency.

(f) Legal Impediment. In the case of an Extension of Credit to a Subsidiary Borrower that is a Foreign Subsidiary, there shall be no impediment, restriction, limitation or prohibition imposed under Applicable Law or by any Governmental Authority, as to the proposed financing under this Agreement or the repayment thereof or as to rights created under any Loan Document or as to application of the proceeds of the realization of any such rights.

Each Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of [Eurocurrency Term SOFR Loans or Designated Currency Term](#) Rate Loans) submitted by a Borrower shall be deemed to be a representation and warranty by such Borrower that the conditions specified in [Sections 5.2\(a\)](#) and [\(b\)](#) have been satisfied on and as of the date of the applicable Extension of Credit.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

**SECTION 6.1 Representations and Warranties.** To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Borrowers hereby represent and warrant to the Administrative Agent and Lenders both before and after giving effect to the transactions contemplated hereunder that:

(a) [Organization; Power; Qualification](#). Each of the Company and its Material Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (ii) has the power and authority to own its properties and to carry on its business as now being and hereafter proposed to be conducted and is duly qualified and (iii) is authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect. The jurisdictions in which the Company and its Restricted Subsidiaries are organized as of the [ClosingThird Amendment Effective](#) Date are described on [Schedule 6.1\(a\)](#).

(b) [Ownership](#). Each Subsidiary of the Company as of the [ClosingThird Amendment Effective](#) Date is listed on [Schedule 6.1\(b\)](#) and each Unrestricted Subsidiary is identified on [Schedule 6.1\(b\)](#). As of the [ClosingThird Amendment Effective](#) Date, the capitalization of the Company and its Subsidiaries consists of the number of shares or other ownership interests, authorized, issued and outstanding, of such classes and series, with or without par value, described on [Schedule 6.1\(b\)](#). All outstanding shares or other ownership interests have been duly authorized and validly issued and are fully paid and nonassessable (to the extent such concept is applicable), with no personal liability attaching to the ownership thereof, and not subject to any preemptive or similar rights. The shareholders (or members, partners or other owners, as applicable) of the Subsidiaries of the Company and the number of shares or other ownership interests owned by each as of the [ClosingThird Amendment Effective](#) Date are described on [Schedule 6.1\(b\)](#). As of the [ClosingThird Amendment Effective](#) Date, there are no outstanding stock purchase warrants, subscriptions, options, securities, instruments or other rights of any type or nature whatsoever, which are convertible into, exchangeable for or otherwise provide for or permit the issuance of Capital Stock of the Company or its Subsidiaries, except as described on [Schedule 6.1\(b\)](#).

(c) [Authorization of Agreement, Loan Documents and Borrowing](#). Each of the Credit Parties has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents has been duly executed and delivered by the duly authorized officers of each Credit Party party thereto, and each such document constitutes the legal, valid and binding obligation of each Credit Party party thereto, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal ~~debtor-relief laws~~ [Debtor Relief Laws](#) from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

(d) [Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc.](#) The execution, delivery and performance by each Credit Party of the Loan Documents to which each such Person is a party, in accordance with their respective terms, the Extensions of Credit hereunder and the transactions contemplated hereby do not and will not, by the passage of time, the giving of notice or otherwise, (i) require any material Governmental Approval except any approvals previously or concurrently received or violate any material Applicable Law, in each case relating to the Company or any of its Restricted Subsidiaries, (ii) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other organizational documents of such Credit Party, (iii) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument in an aggregate principal amount of at least \$40,000,000 or under which amounts payable or receivable are at least \$40,000,000 to which the Company or any of its Restricted Subsidiaries is a party or by which any of its properties may be bound, (iv) result in or require the creation or imposition of any Lien upon or with respect to any property now



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owned or hereafter acquired by such Person other than Liens arising under the Loan Documents or (v) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, other than (A) consents, authorizations, filings or other acts or consents obtained or for which the failure to obtain or make could not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (B) consents or filings, if any, under the UCC.

(e) **Compliance with Law; Governmental Approvals.** Except where the failure to do so, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, each of the Company and its Restricted Subsidiaries (i) has all Governmental Approvals required by any Applicable Law for it to conduct its business, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to the knowledge of the Company, threatened attack by direct or collateral proceeding, (ii) is in compliance with each Governmental Approval applicable to it and in compliance with all other Applicable Laws relating to it or any of its respective properties and (iii) has timely filed all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law.

(f) **Tax Returns and Payments.** The Company and its Restricted Subsidiaries have timely filed or caused to be filed or received an extension of the time to file all federal and other material tax returns and reports required to have been filed, and has paid, or caused to be paid, all federal and other material Taxes, assessments and governmental charges or levies upon it and its property, income, profits and assets which are due and payable except any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person. No Governmental Authority has asserted any Lien or other claim against the Company or any Restricted Subsidiary thereof with respect to unpaid taxes which has not been discharged or resolved other than (i) any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person or (ii) Permitted Liens.

(g) **Intellectual Property Matters.** Each of the Company and its Material Subsidiaries owns or possesses rights to use all material and franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and rights with respect to the foregoing which are required to conduct its business. To the Borrowers' knowledge, no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, and to the Borrowers' knowledge, no Borrower nor any Restricted Subsidiary thereof is liable to any Person for infringement under Applicable Law with respect to any such rights as a result of its business operations, except as would not reasonably be expected to have a Material Adverse Effect.

(h) **Environmental Matters.** Except as would not reasonably be expected to have a Material Adverse Effect:

(i) the properties owned, leased or operated by the Company and its Restricted Subsidiaries do not contain any Hazardous Materials in amounts or concentrations which (A) constitute or constituted a violation of applicable Environmental Laws or (B) could give rise to liability under applicable Environmental Laws;

(ii) the Company, each Restricted Subsidiary and properties owned, leased or operated by the Company and its Restricted Subsidiaries and all operations conducted by the Company or its Restricted Subsidiaries in connection therewith are in compliance, and have been for the past five years in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about such properties or such operations which could interfere with the continued operation of such properties or impair the fair saleable value thereof;

(iii) neither the Company nor any Restricted Subsidiary thereof has received any unresolved notice of violation, alleged violation, non-compliance, liability or potential liability regarding Environmental Claims, Hazardous Materials, or compliance with Environmental Laws, nor does the Company or any Restricted Subsidiary thereof have knowledge that any such notice will be received or is being threatened;



(iv) neither the Company nor any Restricted Subsidiary thereof has received notice that any Hazardous Materials have been transported or disposed of to or from the properties owned, leased or operated by the Company and its Restricted Subsidiaries in violation of, or in a manner or to a location which would reasonably be expected to give rise to a liability under, Environmental Laws;

(v) no judicial proceedings or governmental or administrative action is pending, or, to the knowledge of the Company, threatened, against the Company or any of its Restricted Subsidiaries under any Environmental Law with respect to such properties or operations conducted in connection therewith, nor are there any administrative or judicial consent decrees, other decrees, consent orders or other orders outstanding under any Environmental Law with respect to the Company, any Restricted Subsidiary or such properties or such operations; and

(vi) there has been no release, or to the Company's knowledge, threat of release, of Hazardous Materials at or from properties owned, leased or operated by the Company or any Restricted Subsidiary, now or, to the Company's knowledge, in the past, in violation of or in amounts or in a manner that would reasonably be expected to give rise to a material liability under Environmental Laws.

(i) ERISA.

(i) The Company represents and warrants as of the ~~Closing~~Third Amendment Effective Date that the Company does not and will not hold "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans;

(ii) The Company and each ERISA Affiliate is in material compliance with all applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans and the terms therefor except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a failure to so comply would not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code either has obtained a favorable determination letter as to its qualified status under the Code or is in a prototype or volume submitter plan document that has been pre-approved by the IRS as is evidenced by a letter from the IRS. No liability has been incurred by the Company or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any

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Employee Benefit Plan or any Multiemployer Plan except for a liability that would not reasonably be expected to have a Material Adverse Effect;

(iii) As of the Closing Date, no Pension Plan has been terminated, nor has any Pension Plan failed to satisfy the minimum funding standard within the meaning of such sections of the Code or ERISA, and no Pension Plan has applied for or received a waiver of the minimum funding standard or an extension of any amortization period within the meaning of Section 412 of the Code or Section 302, 303 or 304 of ERISA, nor has the Company or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Section 412 of the Code, Section 302 of ERISA or the terms of any Pension Plan or Multiemployer Plan prior to the due dates of such contributions under Section 412 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(iv) Except where the failure of any of the following representations to be correct in all material respects would not reasonably be expected to have a Material Adverse Effect, neither the Company nor any ERISA Affiliate has: (A) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (B) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (C) failed to make a required contribution or payment to a Multiemployer Plan, or (D) failed to make a required installment or other required payment under Section 412 of the Code;

(v) No Termination Event has occurred; and

(vi) Except where the failure of any of the following representations to be correct in all material respects would not reasonably be expected to have a Material Adverse Effect, no proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to the knowledge of the Company, threatened concerning or involving any (A) employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by the Company or any ERISA Affiliate, (B) Pension Plan or (C) Multiemployer Plan.

(j) Margin Stock. Neither the Company nor any Restricted Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System). No part of the proceeds of any of the Loans or Letters of Credit will be used for purchasing or carrying margin stock in contravention of Regulation T, U or X of such Board of Governors, or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of such Board of Governors.

(k) Government Regulation. Neither the Company nor any Restricted Subsidiary thereof is an “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act of 1940, as amended).

(l) Subsidiaries. Each Subsidiary of the Company that is a Material Domestic Subsidiary as of the ~~Closing~~Third Amendment Effective Date is listed on Schedule 6.1(l) hereto.

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(m) Employee Relations. Neither the Company nor any Restricted Subsidiary thereof is, as of the ~~Closing~~Third Amendment Effective Date, party to any collective bargaining agreement or has any labor union been recognized as the representative of the employees of the Company or any Restricted Subsidiary thereof except as set forth on Schedule 6.1(m). The Company knows of no pending, threatened or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

(n) Financial Statements. The audited Consolidated balance sheet of the Company and its Restricted Subsidiaries as of December 31, ~~2019~~2023 and the related audited statements of income and retained earnings and cash flows for the Fiscal Year then ended, copies of which have been furnished to the Administrative Agent and each Lender, are complete and correct and fairly present in all material respects on a Consolidated basis the assets, liabilities and financial position of the Company and its Restricted Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP (but, in the case of any such financial statements, schedules and notes which are unaudited, only to the extent GAAP is applicable to interim unaudited reports).

(o) No Material Adverse Change. Since December 31, ~~2019~~2023, no event has occurred or condition arisen that has had or would reasonably be expected to have a Material Adverse Effect.

(p) Solvency. As of the ~~Closing~~Third Amendment Effective Date and after giving effect to each Extension of Credit made hereunder, the Company and each of its Restricted Subsidiaries, taken as a whole, will be Solvent.

(q) Titles to Properties. Each of the Company and its Material Subsidiaries has such title to the real property owned or leased by it as is necessary to the conduct of its business.

(r) Liens. None of the properties and assets of the Company or any Restricted Subsidiary thereof is subject to any Lien, except Permitted Liens.

(s) Litigation. Except for matters that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, there are no actions, suits or proceedings pending nor, to the knowledge of the Company, threatened in writing against or in any other way relating adversely to or affecting the Company or any Restricted Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority.

(t) Absence of Defaults. No event has occurred or is continuing which constitutes a Default or an Event of Default.

(u) Senior Indebtedness Status. The Obligations of the Company and each other Credit Party under this Agreement and each of the other Loan Documents rank and shall continue to rank at least senior in priority of payment to all Subordinated Indebtedness of each such Person and is designated as “Senior Indebtedness” or otherwise treated as senior debt under all instruments and documents, now or in the future, relating to all Subordinated Indebtedness of such Person.

(v) Sanctions Concerns. No Credit Party, nor any Subsidiary, nor, to the knowledge of the Credit Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject ~~or target of any of applicable~~ Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, ~~Her~~His Majesty's Treasury's Consolidated List of Financial Sanctions Targets and the Investment Ban List, ~~(or any similar list enforced by any other relevant sanctions authority to which the Company or its Subsidiaries are subject maintained by the European Union)~~ or (iii) located, organized or resident in a Designated Jurisdiction.

(w) Anti-Corruption~~Anti-Corruption~~ Laws. The Credit Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar ~~anti-corruption~~anti-corruption legislation in other jurisdictions applicable to the Company and its Subsidiaries, and have instituted and maintained policies and procedures that, in the Company's reasonable business judgment, are designed to promote ~~and achieve~~ compliance with such laws.

(x) No Affected Financial Institutions. No Credit Party is an Affected Financial Institution.

(y) Disclosure. No financial statement, material report, material certificate or other material information furnished in writing (taken as a whole) by or on behalf of any of the Credit Parties to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, the Company represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time; provided, further, that such forecasted statements are being made as to future events and are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of any Credit Party, that no assurance can be given that any particular item contained in such forecasted statements will be realized and that the actual results during the period or periods covered by any such business plan and operating and capital budget may differ significantly from the projected results or other forward looking information, and such differences may be material. The information included in each Beneficial Ownership Certification, if applicable, is true and correct in all respects.

(z) Security Documents. The Security Documents create valid and enforceable security interests in, and Liens on, the Collateral purported to be covered thereby. Except as set forth in the Security Documents, such security interests and Liens are currently (or will be, upon (i) the filing of appropriate financing statements with the Secretary of State of the state of incorporation or organization for each Credit Party in favor of the Administrative Agent, on behalf of the Lenders, and (ii) the Administrative Agent obtaining control or possession over those items of Collateral in which a security interest is perfected through control or possession) perfected security interests and Liens in favor of the Administrative Agent, for the benefit of the Lenders, prior to all other Liens other than Permitted Liens.

(aa) Representations as to Foreign Subsidiaries.

(i) Such Foreign Obligor is subject to civil and commercial Applicable Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to such Foreign Obligor, the "Applicable Foreign Obligor Documents"), and the execution, delivery and performance by such Foreign Obligor of the Applicable Foreign Obligor Documents constitute and will constitute private and commercial acts and not public or governmental acts. Neither such Foreign Obligor nor any of its property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such Foreign Obligor is organized and existing in respect of its obligations under the Applicable Foreign Obligor Documents.

(ii) The Applicable Foreign Obligor Documents are in proper legal form under the Applicable Laws of the jurisdiction in which such Foreign Obligor is organized and existing for the enforcement thereof against such Foreign Obligor under the Applicable Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Obligor Documents that the Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Obligor Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not

required to be made until the Applicable Foreign Obligor Document or any other document is sought to be enforced and (ii) any charge or tax as has been timely paid.

(iii) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which such Foreign Obligor is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents or (ii) on any payment to be made by such Foreign Obligor pursuant to the Applicable Foreign Obligor Documents, except as has been disclosed to the Administrative Agent.

(iv) The execution, delivery and performance of the Applicable Foreign Obligor Documents executed by such Foreign Obligor are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Obligor is organized and existing, not subject to any notification or authorization except (x) such as have been made or obtained or (y) such as cannot be made or obtained until a later date (provided that any notification or authorization described in clause (y) shall be made or obtained as soon as is reasonably practicable).

**SECTION 6.2 Survival of Representations and Warranties, Etc.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Extension of Credit, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

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## ARTICLE VII

### FINANCIAL INFORMATION AND NOTICES

Until all of the Obligations (other than contingent ~~indemnification~~ obligations not yet due for which no claim has been asserted and Bank Product Debt) have been paid in full (or, in the case of Letters of Credit, cash collateralized) and the Commitments terminated, unless consent has been obtained in the manner set forth in Section 13.2, the Company will furnish or cause to be furnished to the Administrative Agent at the Administrative Agent's Office at the address set forth in Section 13.1 and to the Lenders at their respective addresses as set forth on the Register, or such other office as may be designated by the Administrative Agent and Lenders from time to time:

#### SECTION 7.1 Financial Statements and Projections.

(a) Quarterly Financial Statements. As soon as practicable and in any event within forty-five (45) days (or, if earlier, on the date of any required public filing thereof) after the end of each of the first three fiscal quarters of each Fiscal Year, an unaudited Consolidated balance sheet of the Company and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated statements of income, retained earnings and cash flows for the fiscal quarter then ended and that portion of the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Company in accordance with GAAP (to the extent GAAP is applicable to interim unaudited reports) and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by a Responsible Officer of the Company to present fairly in all material respects the financial condition of the Company and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Company and its Subsidiaries for the respective periods then ended, subject to normal ~~year-end~~year-end adjustments. Delivery by the Company to the Administrative Agent and the Lenders of the Company's quarterly report to the SEC on Form 10-Q with respect to any fiscal quarter, or the availability of such report on EDGAR Online, within the period specified above shall be deemed to be compliance by the Company with this Section 7.1(a).

(b) Annual Financial Statements. As soon as practicable and in any event within ninety (90) days (or, if earlier, on the date of any required public filing thereof) after the end of each Fiscal Year, an audited Consolidated balance sheet of the Company and its Subsidiaries as of the close of such Fiscal Year and audited Consolidated statements of income, retained earnings and cash flows for the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of

accounting principles and practices during the year. Such annual financial statements shall be audited by an independent certified public accounting firm of national standing or otherwise acceptable to the Administrative Agent (it being agreed that ~~PRICEWATERHOUSECOOPERS~~Ernst & Young LLP is acceptable), and accompanied by a report thereon by such certified public accountants that is not qualified with respect to scope limitations imposed by the Company or any of its Subsidiaries or with respect to accounting principles followed by the Company or any of its Subsidiaries not in accordance with GAAP. Delivery by the Company to the Administrative Agent and the Lenders of the Company's annual report to the SEC on Form 10-K with respect to any Fiscal Year, or the

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availability of such report on EDGAR Online, within the period specified above shall be deemed to be compliance by the Company with this Section 7.1(b).

(c) Annual Budget. As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year commencing with Fiscal Year 2020, an annual operating and capital budget of the Company and its Restricted Subsidiaries, in a form and with calculations to be made in a manner reasonably satisfactory to the Administrative Agent.

(d) Unrestricted Subsidiaries. For any period in which there exist any Unrestricted Subsidiaries, unaudited consolidating financial statements reflecting adjustments necessary to eliminate the assets, accounts and operations of such Unrestricted Subsidiaries from such financial statements delivered pursuant to Sections 7.1(a) or (b), all in reasonable detail and certified by the chief financial officer or treasurer of the Company as fairly presenting in all material respects the financial condition and results of operations of the Company and its Restricted Subsidiaries in accordance with GAAP, subject only to normal ~~year-end~~year-end audit adjustments and the absence of footnotes.

**SECTION 7.2 Officer's Compliance Certificate**. At each time financial statements are delivered pursuant to Sections 7.1(a) or (b), an Officer's Compliance Certificate.

**SECTION 7.3 Borrower Materials**. Each Borrower hereby acknowledges that (A) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the Issuing Lenders materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "Platform") and (B) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material ~~non-public~~non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other ~~market-related~~market-related activities with respect to such Persons' securities. The Company hereby agrees that, upon the request of the Administrative Agent, it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (1) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (2) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arranger, the Issuing Lenders and the Lenders to treat such Borrower Materials as not containing any material ~~non-public~~non-public information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 13.10); (3) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (4) the Administrative Agent and any Affiliate thereof and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

**SECTION 7.4 Other Reports**.

(a) Promptly upon receipt thereof, copies of material reports, if any, submitted to the Company or its Board of Directors by its independent public accountants in connection with the condition of the Company's financial controls, including, without limitation, any management report and any management responses thereto;

(b) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender ~~for purposes of compliance with~~ as required (as reasonably determined by the Administrative Agent or such Lender) under applicable "know your customer" and ~~anti-money-laundering~~ anti-money-laundering rules and regulations, including, without limitation, the Patriot Act;

(c) to the extent any Credit Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Credit Party that would result in a change to the list of beneficial owners identified in such certification; and

(d) such other information regarding the operations, business affairs and financial condition of the Company or any of its Restricted Subsidiaries as the Administrative Agent or any Lender may reasonably request.

**SECTION 7.5 Notice of Litigation and Other Matters.** Promptly (but in no event later than ten (10) days after a Senior Officer of the Company obtains knowledge thereof) telephonic and written notice of:

(a) any event that could reasonably be expected to have a Material Adverse Effect;

(b) any notice of any material violation received by the Company or any Restricted Subsidiary thereof from any Governmental Authority including, without limitation, any notice of material violation of Environmental Laws;

(c) any attachment, judgment, lien, levy or order exceeding \$15,000,000 that may be assessed against or threatened against the Company or any Restricted Subsidiary thereof; and

(d) any Default or Event of Default.

**SECTION 7.6 Accuracy of Information.** All written information, reports, statements and other papers and data furnished by or on behalf of the Company to the Administrative Agent or any Lender whether pursuant to this Article VII or any other provision of this Agreement or any of the Loan Documents, shall, at the time the same is so furnished, comply with the representations and warranties set forth in Sections 6.1(y).

## ARTICLE VIII

### AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent ~~indemnification~~ obligations not yet due for which no claim has been asserted and Bank Product Debt) have been paid in full (or, in the case of Letters of Credit, cash collateralized) and the Commitments terminated, unless consent has been obtained in the manner provided for in Section 13.2, the Borrowers will, and will cause each of their Restricted Subsidiaries (and each of their Subsidiaries in the case of Section 8.15) to:

**SECTION 8.1 Preservation of Existence and Related Matters.** Except as permitted by Section 10.4, (a) preserve and maintain its separate corporate, limited liability company, partnership or other entity existence and all rights, franchises, licenses and privileges necessary to the conduct of its business, and (b) except where the failure to qualify or remain qualified as a foreign corporation would not

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reasonably be expected to have a Material Adverse Effect, qualify and remain qualified as a foreign corporation and authorized to do business in each jurisdiction where the nature and scope of its activities require it to so qualify under Applicable Law.

**SECTION 8.2 Maintenance of Property.** Protect and preserve all material properties necessary to its business; maintain in good working order and condition, ordinary wear and tear excepted, all material properties (real and personal) necessary to its business; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such material property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**SECTION 8.3 Insurance.** Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law.



**SECTION 8.4 Accounting Methods and Financial Records.** Maintain a system of accounting, and keep such books, records and accounts (which shall be true and complete in all material respects) as may be required or as may be necessary to permit the preparation of financial statements in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its properties.

**SECTION 8.5 Payment and Performance of Obligations.** Pay and perform all Obligations under this Agreement and the other Loan Documents, and pay or perform (a) all material Taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its property, and (b) all other material obligations and liabilities in accordance with customary trade practices; provided, that the Company or such Restricted Subsidiary may contest any item described in clauses (a) or (b) of this Section in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP.

**SECTION 8.6 Compliance ~~With~~ Laws and Approvals.** Observe and remain in compliance with all Applicable Laws and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**SECTION 8.7 Environmental Laws.** In addition to and without limiting the generality of Section 8.6, except, in the case of clauses (a) and (b) below, as would not reasonably be expected to have a Material Adverse Effect, (a) comply with, and ensure such compliance by all tenants and subtenants with all applicable Environmental Laws and obtain and comply with and maintain, and ensure that all tenants and subtenants, if any, obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws, and (c) defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective parents, Subsidiaries, Affiliates, employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of the Company or any such Restricted Subsidiary, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent

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that any of the foregoing are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of the party seeking indemnification therefor.

**SECTION 8.8 Compliance with ERISA.** In addition to and without limiting the generality of Section 8.6, except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) comply with all material applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans and all Multiemployer Plans, (b) not take any action or fail to take action the result of which could be a liability to the IRS or to the PBGC or to a Multiemployer Plan, (c) not participate in any non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) that could result in any penalty or Tax under ERISA or the Code and (d) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code.

**SECTION 8.9 [Intentionally Omitted].**

**SECTION 8.10 Visits and Inspections.** Permit representatives of the Administrative Agent or any Lender, from time to time (no more frequently than once for the Administrative Agent and the Lenders during any calendar year unless an Event of Default shall have occurred and be continuing), upon reasonable notice and during normal business hours, to visit and inspect its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects.

**SECTION 8.11 Additional Subsidiaries.**

(a) **Additional Domestic Subsidiaries.** Subject to Section 8.11(d), notify the Administrative Agent of the creation or acquisition of any Material Domestic Subsidiary, the designation of any Subsidiary as a Material Domestic Subsidiary or any Material Domestic Subsidiary ceasing to be an Unrestricted Subsidiary and promptly thereafter (and in any event within thirty (30) days or such later date as may be approved by the Administrative Agent in its sole discretion), cause such Material Domestic Subsidiary to (i) become a Guarantor by delivering to the Administrative Agent, if such Person is the initial Material Domestic Subsidiary, a duly executed Guaranty Agreement and thereafter, for any other Material Domestic Subsidiary, a supplement to such Guaranty Agreement, (ii) pledge a security interest in all Collateral, subject to Section 8.11(c), owned by such Material Domestic Subsidiary by delivering to the Administrative Agent a duly executed supplement to each Security Document or such other document as the Administrative Agent shall deem appropriate for such purpose and comply with the terms of each Security Document, (iii) deliver to the Administrative Agent such documents and certificates referred to in

Sections 5.1 (a), (b), (e) and (g)(ii) as may be reasonably requested by the Administrative Agent (including, without limitation, charter documents and opinions of counsel), (iv) deliver to the Administrative Agent such original Capital Stock or other certificates and stock or other transfer powers evidencing the Capital Stock of such Material Domestic Subsidiary to the extent constituting Collateral, (v) deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Material Domestic Subsidiary, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) **Additional Foreign Subsidiaries.** Notify the Administrative Agent at the time that any Person becomes a first tier Material Foreign Subsidiary of the Company or of any Material

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Domestic Subsidiary, and, promptly thereafter (and in any event within forty-five (45) days after such request (or such later date as may be approved by the Administrative Agent in its sole discretion)), cause (i) the applicable Domestic Credit Party to deliver to the Administrative Agent Security Documents governed by New York law (or, if requested by the Administrative Agent, the local laws of the jurisdiction of organization of such Material Foreign Subsidiary) pledging sixty-five percent (65%) of the total outstanding voting Capital Stock, and 100% of the total outstanding nonvoting Capital Stock, of such Material Foreign Subsidiary and a consent thereto executed by such new Material Foreign Subsidiary (including, without limitation, if applicable, original stock certificates (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Capital Stock of such Material Foreign Subsidiary, together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof), (ii) the applicable Domestic Credit Party to deliver to the Administrative Agent such documents and certificates referred to in Sections 5.1 (a), (b), (e), and (g) (ii) as may be reasonably requested by the Administrative Agent (including, without limitation, charter documents and opinions of counsel with respect to local laws, each in form and substance reasonably acceptable to the Administrative Agent), (iii) the applicable Domestic Credit Party to deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Person and (iv) the applicable Domestic Credit Party to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) **Pledged Stock.** Cause each Domestic Credit Party to cause (i) 100% of the Capital Stock in each of its Domestic Subsidiaries that are Restricted Subsidiaries and (ii) 100% of the total outstanding non-voting Capital Stock and 65% of the total outstanding voting Capital Stock of each of its first tier Foreign Subsidiaries that are Restricted Subsidiaries (without regard to whether such Foreign Subsidiary is a Material Foreign Subsidiary), to the extent owned by such Domestic Credit Party, to be subject at all times to a first priority and perfected Lien in favor of the Administrative Agent pursuant to the terms of the Pledge Agreement (other than Permitted Liens arising by operation of law).

(d) **Merger Subsidiaries.** Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating an acquisition or merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any material assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction or liability under any related merger or acquisition, such new Subsidiary shall not be required to take the actions set forth in Section 8.11(a), (b) or (c), as applicable, until after the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 8.11(a), (b) or (c), as applicable, within ten (10) Business Days of the consummation of such Permitted Acquisition).

(e) **Foreign Subsidiaries.** Notwithstanding anything contained herein or in any other Loan Document to the contrary, no Foreign Subsidiary shall be required to grant a Lien on its assets or property.

**SECTION 8.12 Use of Proceeds.** The Borrowers shall use the proceeds of the Extensions of Credit (a) to finance Permitted Acquisitions, (b) to pay Transaction Costs, (c) to refinance existing Indebtedness of the Company and its Subsidiaries, including the Existing Credit Agreement, (d) to finance capital expenditures and (e) for working capital and general corporate uses of the Company and its Restricted Subsidiaries, including the payment of dividends upon any of its Capital Stock and the making



of distributions to the holders of shares of its Capital Stock, the payment of certain fees, commissions and expenses incurred in connection with the transactions contemplated hereby (to the extent not otherwise paid in cash by the Company).

#### **SECTION 8.13 Further Assurances.**

(a) Make, execute and deliver all such additional and further acts, things, deeds and instruments as the Administrative Agent, the Issuing Lenders or the Required Lenders (through the Administrative Agent) may reasonably require to document and consummate the transactions contemplated hereby and to vest completely in and insure the Administrative Agent, the Issuing Lenders and the Lenders their respective rights under this Agreement, the Letters of Credit and the other Loan Documents.

(b) Deliver to the Administrative Agent within 10 days after the date hereof (as such deadline may be extended by the Administrative Agent in its sole discretion) (i) all certificated Capital Stock subject to the Security Documents and required to be delivered pursuant to the terms thereof and (ii) executed acknowledgments to the Pledge Agreement by each Restricted Subsidiary of the Company whose Capital Stock is subject to the Pledge Agreement, each in form and substance reasonably acceptable to the Administrative Agent.

(c) To the extent requested by the Administrative Agent, cause each Responsible Officer to provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

#### **SECTION 8.14 Designation of Subsidiaries.**

The Company may at any time after the Closing Date designate any Restricted Subsidiary of the Company as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary by written notice to the Administrative Agent; provided that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) the Credit Parties would be in compliance on a pro forma basis with the financial covenants set forth in Article IX recomputed as of the end of the period of the four fiscal quarters most recently ended for which the Company has delivered financial statements pursuant to Section 7.1(a) or 7.1(b) after giving effect to such redesignation, (iii) in the case of the designation of any Restricted Subsidiary as an Unrestricted Subsidiary, such designation shall constitute an Investment in such Unrestricted Subsidiary (calculated as an amount equal to the sum of (x) the net worth of the Subsidiary designated immediately prior to such designation (such net worth to be calculated without regard to any Obligations of such Subsidiary under the Loan Documents) and (y) to the extent not reflected in such net worth, the aggregate principal amount of any Indebtedness owed by the Subsidiary to the Company or any of its Restricted Subsidiaries immediately prior to such designation, all calculated, except as set forth in the parenthetical to clause (x) above, on a Consolidated basis in accordance with GAAP), and such Investment shall be permitted under Section 10.3, (iv) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of (or is otherwise subject to the covenants under, or otherwise obligated for) any material Indebtedness for borrowed money of the Company or any Restricted Subsidiary, (v) immediately after giving effect to the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Company shall comply with the provisions of Section 8.11 with respect to such designated Restricted Subsidiary, to the extent applicable, (vi) no Restricted Subsidiary may be a Subsidiary of an Unrestricted Subsidiary, and no Unrestricted Subsidiary shall have a Lien on the assets of the Company or a Restricted Subsidiary except as permitted by Section 10.2, (vii) once an Unrestricted Subsidiary is designated as a Restricted Subsidiary pursuant to this Section 8.14, such Restricted Subsidiary may not be redesignated as an Unrestricted Subsidiary thereafter, and once a Restricted Subsidiary is

designated as an Unrestricted Subsidiary pursuant to this Section 8.14, such Unrestricted Subsidiary may only be redesignated as a Restricted Subsidiary one time thereafter and (viii) the Company shall have delivered to the Administrative Agent and each Lender a certificate executed by its chief financial officer or treasurer, certifying to the best of such officer's knowledge, compliance with the requirements of the preceding clauses (i) through (vi), inclusive, and containing the calculations (in reasonable detail) required by the preceding clause (ii). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Company in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Company's Investment in such Subsidiary (that have not otherwise been transferred to or invested in other Unrestricted Subsidiaries).

#### **SECTION 8.15 ~~Anti-Corruption~~Anti-Corruption Laws.**

Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar ~~anti-corruption~~anti-corruption legislation in other jurisdictions applicable to the Company and its Subsidiaries and maintain policies and procedures that, in the Company's reasonable business judgment, are designed to promote ~~and achieve~~ compliance with such laws.

#### **SECTION 8.16 Approvals and Authorizations.**

Maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which each Foreign Obligor is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents.

#### **SECTION 8.17 Post-Closing Covenants:**

~~(a) Within sixty (60) days following the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion), the Company shall deliver to the Administrative Agent each certificate representing the Capital Stock of JG US, Inc., a Delaware corporation, that is required to be pledged pursuant to the Pledge Agreement, together with an undated stock power for each such certificate executed in blank by the Company;~~

~~(b) Within sixty (60) days following the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion), the Company shall deliver to the Administrative Agent each certificate representing the Capital Stock of Blackbaud Latin America S.R.L., a company organized under the laws of Costa Rica, that is required to be pledged pursuant to the Pledge Agreement, together with an undated stock power for each such certificate executed in blank by the Company;~~

### **ARTICLE IX**

#### **FINANCIAL COVENANTS**

Until all of the Obligations (other than contingent ~~indemnification~~ obligations not yet due for which no claim has been asserted) have been paid in full (or, in the case of Letters of Credit, cash collateralized) and the Commitments terminated, unless consent has been obtained in the

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manner set forth in Section 13.2, the Company and its Restricted Subsidiaries on a Consolidated basis will not:

**SECTION 9.1 Net Leverage Ratio.** As of any fiscal quarter end, permit the ratio (the "Net Leverage Ratio") of (a) Total Funded Net Indebtedness on such date to (b) EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to be greater than: ~~(a) commencing with the fiscal quarter ending December 31, 2021 and through December 31, 2023, 4.00 to 1.00 and (b) commencing with the fiscal quarter ending March 31, 2024 and thereafter, 3.75 to 1.00; provided, however,~~ that the Net Leverage Ratio for any fiscal quarter may be increased by the Company by 0.50 if such increase satisfies the Leverage Ratio Increase Requirements; provided, that the maximum Net Leverage Ratio permitted after giving effect to such increase shall not exceed 4.25 to 1.00. No increase shall be given effect unless all of the Leverage Ratio Increase Requirements are satisfied.

**SECTION 9.2 Interest Coverage Ratio.** As of any fiscal quarter end, commencing with the fiscal quarter ending December 31, 2020, permit the ratio of (a) EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to (b) Interest Expense for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date to be less than 2.50 to 1.0.

### **ARTICLE X**

#### **NEGATIVE COVENANTS**

Until all of the Obligations (other than contingent ~~indemnification~~ obligations not yet due for which no claim has been asserted and Bank Product Debt) have been paid in full (or, in the case of Letters of Credit, cash collateralized) and the Commitments terminated, unless consent has been obtained in the manner set forth in Section 13.2, the Borrowers have not, will not and will not permit any of their Restricted Subsidiaries (and each of their Subsidiaries in the case of Sections 10.7 and 10.13) to:

**SECTION 10.1 Limitations on Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness except:

- (a) the Obligations (excluding Bank Product Debt permitted pursuant to Section 10.1(b));
- (b) Indebtedness incurred in connection with Bank Products and other Hedging Agreements with a counterparty (other than a Lender or an Affiliate of a Lender) and upon terms and conditions (including interest rate) reasonably satisfactory to the Administrative Agent;
- (c) Indebtedness of the Company and its Restricted Subsidiaries incurred in connection with Capital Leases and purchase money Indebtedness in an aggregate amount not to exceed ~~\$79,000,000~~ 105,000,000 on any date of determination;

(d) Guaranty Obligations with respect to Indebtedness permitted under this Section 10.1;

(e) Indebtedness owed by (i) any Domestic Credit Party to any other Domestic Credit Party or any Domestic Subsidiary that is a Restricted Subsidiary so long as such Domestic Subsidiary becomes a Domestic Credit Party within the time period specified by Section 8.11(a), (ii) any Foreign Obligor to any other Foreign Obligor, (iii) any Restricted Subsidiary that is not a

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Credit Party to any other Restricted Subsidiary that is not a Credit Party, (iv) any Restricted Subsidiary that is not a Guarantor to any Credit Party in an aggregate amount not to exceed ~~\$40,000,000~~ \$60,000,000 at any time outstanding, (v) any Domestic Credit Party to any Restricted Subsidiary that is not a Guarantor or an Unrestricted Subsidiary in an aggregate amount not to exceed ~~\$40,000,000~~ \$60,000,000 at any time outstanding or (vi) any Restricted Subsidiary to the Company or any other Restricted Subsidiary, pursuant to an Investment permitted by Section 10.3(h)(iii) (collectively, the "Intercompany Debt");

(f) unsecured Indebtedness and Subordinated Indebtedness and the refinancing, refunding, renewal and extension thereof; provided that in the case of each issuance of such Indebtedness at the time of issuance, (i) no Default or Event of Default shall have occurred and be continuing or would be caused by the issuance of such Indebtedness, (ii) the Administrative Agent shall have received reasonably satisfactory written evidence that the Company would be in compliance with Sections 9.1 and 9.2 on a pro forma basis after giving effect to the issuance of any such Indebtedness, and (iii) (x) the maturity date of such Indebtedness shall be no earlier than the date which is six months following the Maturity Date and such Indebtedness shall not be subject to amortization or prepayment prior to such date (other than any such amortization or prepayments permitted to be paid under the applicable intercreditor or subordination agreement with respect to such Indebtedness as to which the Administrative Agent is a party) and (y) the financial covenants and events of default to which such Indebtedness is subject are not more restrictive, when taken as a whole, than the financial covenants and the Events of Default under this Agreement, as determined in good faith by the Company and the Administrative Agent (provided, that, if the Administrative Agent fails to object to such determination of the Company within three (3) Business Days after receipt of written notification thereof, the Administrative Agent will be deemed to have agreed with the Company's determination), unless the Company agrees to amend this Agreement such that the conditions in this clause (iii) would be satisfied upon the execution of such amendment;

(g) Indebtedness incurred by the Company or any Restricted Subsidiary thereof arising from agreements providing for indemnification, adjustment of purchase price or similar obligations incurred or assumed in connection with any Permitted Acquisition to the extent permitted pursuant to Section 10.3(g);

(h) Indebtedness of Foreign Subsidiaries of the Company that are Restricted Subsidiaries in an aggregate principal amount not to exceed ~~\$50,000,000~~ \$75,000,000 at any time outstanding; provided that such Indebtedness shall at all times be and remain non-recourse to any Credit Party and, at the time of such issuance, no Default or Event of Default exists;

(i) [Intentionally Omitted];

(j) other Indebtedness, in an aggregate amount not to exceed ~~\$25,000,000~~ \$37,500,000 at any time outstanding for this clause (j);

(k) Indebtedness existing on the ~~Closing~~ Third Amendment Effective Date and listed on Schedule 10.1 and the renewal, refinancing, extension and replacement (but not the increase in the aggregate principal amount) thereof;

(l) other Indebtedness in an aggregate principal amount not to exceed ~~\$5,000,000~~ \$7,500,000 at any time outstanding for letters of credit not issued by the Issuing Lenders hereunder;

(m) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, bankers acceptances, letters of credit, surety bonds or other similar obligations arising in the ordinary course of business, and any refinancing thereof to the extent not provided to secure the repayment of other Indebtedness;

(n) Indebtedness related to customer financings; provided that the aggregate principal amount of all such Indebtedness and all Investments made pursuant to Section 10.3(j) shall not exceed ~~\$25,000,000~~ 37,500,000 at any time outstanding; and

(o) Indebtedness (i) of a Person that becomes a Restricted Subsidiary of the Company after the ~~Closing~~ Third Amendment Effective Date in connection with any Permitted Acquisition or (ii) assumed in connection with any assets acquired in connection with any Permitted Acquisition, and the refinancing, refunding, renewal and extension thereof; provided, that such Indebtedness (x) exists at the time such Person becomes a Restricted Subsidiary or such assets are acquired and is not created in contemplation of, or in connection with, such Person becoming a Restricted Subsidiary or such assets being acquired and (y) shall not exceed ~~\$25,000,000~~ 37,500,000 in the aggregate on any date of determination.

**SECTION 10.2 Limitations on Liens.** Create, incur, assume or suffer to exist, any Lien on or with respect to any of its assets or properties (including, without limitation, shares of Capital Stock), real or personal, whether now owned or hereafter acquired, except:

(a) Liens for Taxes (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(b) the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, (i) which are not overdue for a period of more than sixty (60) days or (ii) which are being contested in good faith and by appropriate proceedings;

(c) Liens consisting of deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar legislation;

(d) Liens constituting encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate do not result in a Material Adverse Effect and which do not, in any case, detract from the value of such property or impair the use thereof in the ordinary conduct of business;

(e) Liens securing the Obligations;

(f) Liens not otherwise permitted by this Section and in existence on the ~~Closing~~ Third Amendment Effective Date and described on Schedule 10.2;

(g) Liens securing Indebtedness permitted under Section 10.1(c); provided that (i) such Liens shall be created substantially simultaneously with or within 180 days of the acquisition or lease of the related asset, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not

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increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original purchase price or lease payment amount of such property at the time it was acquired;

(h) deposits to secure the performance of bids, tenders, trade contracts, liability to insurance carriers and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds, contractual or warranty obligations and other obligations of a like nature incurred in the ordinary course of business;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 11.1(n) or securing appeal or other surety bonds related to such judgments;

(j) Liens solely on the assets of Foreign Subsidiaries of the Company that are Restricted Subsidiaries securing Indebtedness of such Foreign Subsidiaries that is permitted pursuant to Section 10.1(h); provided that (i) such Liens shall not extend to any assets of any Credit Party or any of its Domestic Subsidiaries and (ii) the aggregate principal amount of obligations secured by such Liens shall not exceed ~~\$35,000,000~~ 52,500,000 at any time outstanding;

(k) [Intentionally Omitted];

(l) Liens securing Indebtedness permitted under Section 10.1(m);

(m) Liens on assets of any Restricted Subsidiary acquired pursuant to a Permitted Acquisition, or on assets of any Restricted Subsidiary which are in existence at the time that such Restricted Subsidiary is acquired pursuant to a Permitted Acquisition (provided that such Liens (i) are not incurred in connection with, or in anticipation of, such Permitted Acquisition, (ii) are applicable only to specific assets, (iii) are not "blanket" or all asset Liens and (iv) do not attach to any other property or assets of any Credit Party);

(n) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depository bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any deposit account of the Company or any of its Restricted Subsidiaries;

(o) any extension, renewal or replacement of any Lien permitted by clauses (a) through (n); provided that (i) the Liens permitted under this clause (o) shall not (A) secure any Indebtedness other than the Indebtedness that was secured by the Lien being extended, renewed or replaced and (B) be extended to cover any property that was not encumbered by the Lien being extended, renewed or replaced; (ii) the principal amount of Indebtedness secured by the Lien permitted by this clause (o) shall not be increased over the principal amount of such Indebtedness immediately prior to such extension, renewal or replacement and (iii) both before and after giving effect to such extension, renewal or replacement, no Default or Event of Default shall occur and be continuing or would result therefrom;

(p) Liens arising from precautionary UCC filings regarding "true" operating leases; and

(q) Liens not otherwise permitted hereunder on assets other than the Collateral securing obligations not at any time exceeding in the aggregate ~~\$40,000,000~~ 60,000,000.

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**SECTION 10.3 Limitations on Loans, Advances, Investments and Acquisitions.** Purchase, own, invest in or otherwise acquire any Capital Stock, interests in any partnership or joint venture (including, without limitation, the creation or capitalization of any Restricted Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, or make or permit to exist, any loans, advances or extensions of credit to, or any investment in cash or by delivery of property in, any Person (each, an "Investment"), except:

(a) Investments in any of the following (collectively "Cash Equivalents");

(i) with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder;

(ii) any variable or fixed rate notes (other than notes of the type described in clause (ix) below) issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or ~~P-1~~ 1 (or the equivalent thereof) or better by Moody's and maturing within twelve (12) months of the date of acquisition;

(iii) auction preferred stocks having the highest ~~short-term~~ short-term credit rating by S&P or Moody's; ~~Investments as of the Closing Date in Restricted Subsidiaries existing on the Closing Date;~~

(iv) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one (1) year from the date of acquisition thereof;

(v) commercial paper or banker's acceptances maturing no more than three hundred ~~sixty-four~~ sixty-four (364) days from the date of creation thereof and currently having a rating of either A-2 (or the equivalent thereof) or better by S&P or ~~P-2~~ 2 (or the equivalent thereof) or better by Moody's;

(vi) certificates of deposit maturing no more than three hundred ~~sixty-four~~ sixty-four (364) days from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than \$250,000,000 and having a rating of "A" or better by a nationally recognized rating agency; provided, that, unless otherwise approved by the Administrative Agent, the aggregate amount invested in such certificates of deposit shall not at any time exceed ~~\$5,000,000~~ 7,500,000 for any one such certificate of deposit and ~~\$10,000,000~~ 15,000,000 for any one such bank;

(vii) time deposits maturing no more than three hundred ~~sixty-four~~sixty-four (364) days from the date of creation thereof

(viii) repurchase agreements with a term of not more than thirty (30) days with a bank or other trust company (including a Lender) or a recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully and unconditionally guaranteed or insured by the United States;

(ix) obligations of states, municipalities, counties, political subdivisions, agencies of the foregoing and other similar entities and paying interest which is exempt from federal

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tax, provided that the maturity of such debt is three hundred ~~sixty-four~~sixty-four (364) days or less and such debt is rated at least A1 or MIG-4-1 by Moody's or at least A by S&P;

(x) variable rate demand notes (low floaters) to the extent such notes may be sold at no less than par upon not more than (7) days' notice and so long as such obligations have been provided credit support by the issuance of a letter of credit from a commercial bank meeting the description in clause (iv) above;

(xi) Investments, classified in accordance with GAAP as current assets of the Company and its Restricted Subsidiaries, in marketable short term money market mutual funds registered under the Investment Company Act of 1940, as amended, which are administered by institutions that have the highest rating obtainable from either Moody's, S&P or Morningstar and which invest substantially all of their assets in Investments of the types described in clauses (i) through (x) above; and

(xii) other similar Investments approved by the Administrative Agent, including without limitation, Investments by Foreign Subsidiaries that are substantially similar to those described in the foregoing clauses (i) through (xi) in any country outside the United States in which such Person is organized;

(b) (i) Investments in Subsidiaries as of the ~~Closing~~Third Amendment Effective Date; (ii) additional Investments in Domestic Subsidiaries that are Restricted Subsidiaries; (iii) Investments in Restricted Subsidiaries formed or acquired after the ~~Closing~~Third Amendment Effective Date made in accordance with the terms and conditions of this Agreement; and (iv) the other loans, advances and Investments existing on the ~~Closing~~Third Amendment Effective Date which are described on Schedule 10.3;

(c) Bank Products and Hedging Agreements permitted pursuant to Section 10.1;

(d) purchases of assets in the ordinary course of business;

(e) Investments in the form of loans and advances to directors, officers and employees in the ordinary course of business, which, in the aggregate, do not exceed at any time ~~\$500,000~~750,000;

(f) Intercompany Debt permitted pursuant to Section 10.1(e);

(g) Investments by the Company or any Restricted Subsidiary thereof in the form of acquisitions of all or substantially all of the business or a line of business (whether by the acquisition of Capital Stock, assets or any combination thereof) of any other Person if each such acquisition meets all of the following requirements (any such Investment, a "Permitted Acquisition"):

(i) the Person to be acquired shall be in a substantially similar or complementary line of business as the Company;

(ii) evidence of approval of the acquisition by the acquiree's board of directors or equivalent governing body or a copy of the opinion of counsel delivered by legal counsel to the acquiree in connection with the acquisition which evidences such approval or opines that such approval is not required shall be delivered to the Administrative Agent at the time the documents referred to in clause (vii) of this Section 10.3(g) are required to be delivered;

(iii) if the Company is a party to such transaction, the Company shall be survivor of such transaction and no Change in Control shall have been effected thereby;

(iv) if (A) the Person to be acquired will not become, or be merged into, a Domestic Credit Party in connection with such acquisition or (B) the acquisition of all of the business or a line of business of a Person will be made by a Restricted Subsidiary that is not a Domestic Credit Party, the aggregate amount of cash consideration and any assumed debt, earn-outs (valued at any amount reasonably determined in good faith by the Company to be payable in connection with such earn-outs) and deferred payments for any such acquisition shall not exceed ~~\$200,000,000~~ 300,000,000;

(v) (A) the Company shall be (as of the date of the proposed acquisition and after giving effect thereto and to any extensions of credit (including any Extension of Credit) made or to be made in connection therewith) in proforma compliance with the covenants contained in and in the manner set forth in Section 9.1 and 9.2, and (B) no Default or Event of Default shall have occurred and be continuing both before and after giving effect to the acquisition;

(vi) if the aggregate amount of cash consideration and any assumed debt, earn-outs (valued at an amount reasonably determined in good faith by the Company to be payable in connection with such earn-outs) and deferred payments for any such acquisition exceeds ~~\$75,000,000~~ 112,500,000, the Company shall have demonstrated to the Administrative Agent (as of the date of the proposed acquisition and after giving effect thereto and to any extensions of credit (including any Extension of Credit) made or to be made in connection therewith) (A) proforma compliance with the covenants contained in and in the manner set forth in Section 9.1 and 9.2, and (B) no Default or Event of Default shall have occurred and be continuing both before and after giving effect to the acquisition;

(vii) the Company shall have delivered to the Administrative Agent such documents reasonably requested by the Administrative Agent or the Required Lenders (through the Administrative Agent) pursuant to Section 8.11 to be delivered at the time required pursuant to Section 8.11; and

(viii) the Company shall provide such other documents and other information as may be reasonably requested by the Administrative Agent or the Required Lenders (through the Administrative Agent) in connection with the proposed acquisition;

(h) (i) Investments made by any Restricted Subsidiary that is not a Credit Party in any other Restricted Subsidiary that is not a Credit Party, (ii) Investments by the Company or any Restricted Subsidiary thereof in Foreign Subsidiaries or Unrestricted Subsidiaries not in the form of acquisitions covered by Section 10.3(g) in an aggregate amount not to exceed ~~\$50,000,000~~ 75,000,000 at any time outstanding and (iii) Investments by the Company or any Restricted Subsidiary in any Restricted Subsidiary, the proceeds of which are used to consummate a Permitted Acquisition, in an aggregate amount not to exceed ~~\$140,000,000~~ 210,000,000 at any time outstanding;

(i) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and Investments received

in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with customers and suppliers;

(j) Investments related to customer financings; provided that the aggregate principal amount of all such Investments and all Indebtedness made pursuant to Section 10.1(n) shall not exceed ~~\$25,000,000~~ 37,500,000 at any time outstanding; and

(k) in addition to the Investments permitted above, an unlimited amount of Investments (other than Permitted Acquisitions) so long as, (i) no Default or Event of Default shall have occurred and be continuing or would be caused by the making of such Investment and (ii) in the case of any Investment in an aggregate amount in excess of ~~\$5,000,000~~ 7,500,000, the Company shall be in compliance with Sections 9.1 and 9.2 on a pro forma basis after giving effect to the making of such Investment.

provided, that, notwithstanding any to the contrary set forth in this Agreement or any other Loan Document, the Borrowers shall not, and shall not permit any of their Restricted Subsidiaries to consummate any transaction that results in the transfer (whether by way of any dividend, distribution, investment, disposition, designation



of any Restricted Subsidiary as an Unrestricted Subsidiary, or otherwise, and whether in a single transaction or a series of related transactions) of Material Intellectual Property from any Borrower or any of their Restricted Subsidiaries to any Unrestricted Subsidiary.

**SECTION 10.4 Limitations on Mergers and Liquidation.** Merge, consolidate or enter into any similar combination with any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

(a) any Subsidiary of the Company may be merged or consolidated with or into (i) the Company (provided that the Company shall be the continuing or surviving Person) or (ii) a Restricted Subsidiary of the Company (provided that (x) if a Subsidiary Borrower is a part of such transaction, such Subsidiary Borrower shall be the continuing or surviving Person, (y) if a Guarantor is a part of such transaction, a Guarantor shall be the continuing or surviving Person and (z) if a Wholly-Owned Subsidiary is a part of such transaction, a Wholly-Owned Subsidiary shall be the continuing or surviving Person);

(b) any Restricted Subsidiary may sell, lease, transfer or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Company or any other Wholly-Owned Subsidiary; provided that (i) if the transferor in such a transaction is a Guarantor and the transferee is not a Credit Party, the fair market value of the assets subject to such transaction together with Investments permitted under Section 10.3(h)(ii) shall not exceed ~~\$50,000,000~~ 75,000,000, and (ii) if the transferor in such a transaction is not a Credit Party and the transferee in such a transaction is the Company or a Guarantor, then the sale, lease, transfer or other disposition shall not be for an amount greater than the fair market value of the assets subject to such transaction;

(c) any Wholly-Owned Subsidiary of the Company may merge into the Person such Wholly-Owned Subsidiary was formed to acquire in connection with a Permitted Acquisition; and

(d) (i) any Restricted Subsidiary of the Company may wind-up into the Company or any Guarantor and (ii) any Restricted Subsidiary that is not a Credit Party may ~~wind-up~~ wind-up into any other Restricted Subsidiary that is not a Credit Party.

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**SECTION 10.5 Limitations on Sale of Assets.** Convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets (including, without limitation, the sale of any receivables and leasehold interests and any sale-leaseback or similar transaction), whether now owned or hereafter acquired except:

(a) the sale of inventory in the ordinary course of business;

(b) the disposition of worn, damaged, surplus or obsolete assets or other assets no longer used or usable in the business of the Company or any of its Restricted Subsidiaries;

(c) the transfer of assets to any Borrower or any Guarantor pursuant to Section 10.4;

(d) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof;

(e) the disposition of any Hedging Agreement;

(f) the disposition of Investments in cash and Cash Equivalents;

(g) non-exclusive licenses of intellectual property in the ordinary course of business;

(h) (i) the transfer by any Credit Party of its assets to any other Credit Party; provided, that if the transferor is the Company or a Domestic Subsidiary, the transferee shall be the Company or a Credit Party that is a Domestic Subsidiary, (ii) the transfer by any Restricted Subsidiary of the Company that is not a Credit Party of its assets to any Credit Party (provided that in connection with any new transfer, such Credit Party shall not pay more than an amount equal to the fair market value of such assets as determined in good faith at the time of such transfer) and (iii) the transfer by any Restricted Subsidiary of the Company that is not a Credit Party of its assets to any other Restricted Subsidiary of the Company that is not a Credit Party; and

(i) additional dispositions of assets not otherwise permitted pursuant to this Section in an aggregate amount not to exceed an amount equal to the greater of (x) ~~\$100,000,000~~ 150,000,000 and (y) five percent (5%) of Total Assets, determined as of the most recently ended fiscal quarter of the Company, in each case, during any Fiscal Year.



**SECTION 10.6 Limitations on Dividends and Distributions.** Declare or pay any dividends upon any of its Capital Stock; purchase, redeem, retire or otherwise acquire, directly or indirectly, any shares of its Capital Stock, or make any distribution of cash, property or assets among the holders of shares of its Capital Stock, or make any change in its capital structure which such change in its capital structure would reasonably be expected to have a Material Adverse Effect; provided that:

- (a) the Company or any Restricted Subsidiary may pay dividends in shares of its own Capital Stock;
- (b) any Restricted Subsidiary may pay cash dividends or make cash distributions to a Credit Party and may repurchase shares of its Capital Stock from a Credit Party;
- (c) the Company may purchase, redeem or otherwise acquire Capital Stock of the Company or warrants or options to acquire any such Capital Stock with the proceeds received from the substantially concurrent issue of new shares of Capital Stock of the Company; ~~and~~

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(d) the Company may declare and pay dividends ~~to holders upon any~~ of its Capital Stock ~~and/or repurchase, purchase, redeem, retire or otherwise acquire, directly or indirectly, any shares of its Capital Stock, or make any distribution of cash, property or assets among the holders of~~ shares of its Capital Stock; provided that on the date such dividend is paid and/or shares of Capital Stock are repurchased and after giving effect thereto and to any extension of credit (including any Extension of Credit) made in connection therewith: (i) no Default or Event of Default shall have occurred and be continuing; and (ii) the pro forma Net Leverage Ratio at such time is 0.25 less than the Net Leverage Ratio currently required to be maintained under Section 9.1; provided, further that the foregoing shall not operate to prevent the making of dividends or repurchases previously declared by the Company so long as (i) at the declaration date, such dividend or repurchase was permitted by the foregoing and (ii) such dividend or repurchase is consummated within the earlier of 60 days and any date under Applicable Law on which such dividend or repurchase must be consummated; ~~and~~ and

(e) in addition to the dividends and distributions permitted above, each of the Company and its Restricted Subsidiaries may declare and pay dividends upon any of its Capital Stock, purchase, redeem, retire or otherwise acquire, directly or indirectly, any shares of its Capital Stock, or make any distribution of cash, property or assets among the holders of shares of its Capital Stock in an aggregate amount after the Third Amendment Effective Date not to exceed \$50,000,000; so long as, (i) no Default or Event of Default shall have occurred and be continuing or would be caused by the making of such dividend or distribution and (ii) the Company shall be in compliance with Sections 9.1 and 9.2 on a pro forma basis after giving effect to the making of such dividend or distribution.

**SECTION 10.7 Sanctions.** Directly or, to the knowledge of the Borrowers, indirectly, use any Extension of Credit or the proceeds of any Extension of Credit, or lend, contribute or otherwise make available such Extension of Credit or the proceeds of any Extension of Credit to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of applicable Sanctions, in each case, in violation of applicable Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, Sustainability Coordinator, Issuing Lender, Swingline Lender, or otherwise) of applicable Sanctions.

**SECTION 10.8 Transactions with Affiliates.** Except for (a) transactions permitted by Sections 10.1, 10.3, 10.4, 10.6, (b) those transactions existing on the ~~Closing~~ Third Amendment Effective Date and identified on Schedule 10.8, (c) transactions among Credit Parties, (d) normal compensation, indemnity and reimbursement of reasonable expenses of officers, directors and employees, (e) the issuance of Capital Stock in the Company to any officer, director, employee or consultant of the Company and its Restricted Subsidiary, or (f) any issuance of Capital Stock of the Company or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans of the Company or any of its Restricted Subsidiaries, directly or indirectly (i) make any loan or advance to, or purchase or assume any note or other obligation to or from, any of its officers, directors or Affiliates, or to or from any member of the immediate family of any of its officers, directors or Affiliates, or (ii) enter into, or be a party to, any other transaction not described in clause (i) above with any of its Affiliates, except upon fair and reasonable terms, taken as a whole, and are no less favorable, taken as a whole, to it than it would obtain in a comparable arm's length transaction with a Person not its Affiliate.

**SECTION 10.9 Certain Accounting Changes; Organizational Documents.** (a) Change its Fiscal Year end (other than any change of a newly acquired Subsidiary's Fiscal Year end to December 31), or make any change in its accounting treatment and reporting practices except, subject to Section 1.3(b), as

permitted by or in accordance with, GAAP or (b) amend, modify or change its articles of incorporation (or corporate charter or other similar organizational documents) or amend, modify or change its bylaws (or other similar documents), in each case of this clause (b) in any manner adverse in any material respect to the rights or interests of the Lenders (it being agreed that changing such Person's name or jurisdiction of organization is not adverse to the Lenders if the Company provides written notice of such change at least ten (10) Business Days (or such shorter time as agreed to by the Administrative Agent) prior to such change).

**SECTION 10.10 Amendments; Payments and Prepayments of Subordinated Indebtedness.**

(a) Amend or modify (or permit the modification or amendment of) any of the terms or provisions of any Subordinated Indebtedness in any respect which, when taken as a whole, would materially adversely affect the rights or interests of the Administrative Agent and Lenders hereunder, it being agreed that amendments or modifications expressly permitted under the terms of any applicable subordination agreement or provision shall not materially adversely affect the rights or interests of the Administrative Agent and the Lenders.

(b) Make any payment or prepayment on, or redeem or acquire for value (including, without limitation, (i) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and (ii) at the maturity thereof) any Subordinated Indebtedness, except (x) to the extent not prohibited by the terms of the applicable subordination agreement and (y) refinancings, refundings, renewals, extensions or exchange of any Subordinated Indebtedness permitted by [Section 10.1\(f\)](#).

**SECTION 10.11 Restrictive Agreements.** The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Company or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to holders of its Capital Stock or to make or repay loans or advances to the Company or any other Restricted Subsidiary or to guarantee the Obligations; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document, (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the Restricted Subsidiary that is to be sold and such sale is permitted hereunder, (iii) the foregoing shall not apply to restrictions imposed by any agreement relating to Indebtedness permitted by [Section 10.1](#) to the extent (A) such restrictions are not more restrictive, taken as a whole, than the restrictions contained in this Agreement as determined in good faith by the Company and (B) such encumbrances will not, in the good faith judgment of the Company at the time such Indebtedness is incurred, affect the ability of the Credit Parties to service the Loans or other Obligations, (iv) the foregoing shall not apply to restrictions or Liens imposed by any agreement relating to secured Indebtedness permitted by [Section 10.1](#) if such restrictions or Liens apply only to the property or assets securing such Indebtedness, (v) the foregoing shall not apply in the case of any Restricted Subsidiary that is not a ~~Wholly-Owned~~ [Wholly Owned](#) Subsidiary, to restrictions and conditions imposed by its organizational documents or any related joint venture or similar agreements; provided that such restrictions and conditions only apply to such Restricted Subsidiary and to the Capital Stock of such Restricted Subsidiary, (vi) the foregoing shall not apply to restrictions affecting any Foreign Subsidiary (other than a Subsidiary Borrower) of the Company under any agreement or instrument governing any Indebtedness of such Foreign Subsidiary permitted pursuant to [Section 10.1](#), and customary restrictions contained in "comfort" letters and guarantees of any such Indebtedness, (vii) the foregoing shall not apply to restrictions arising by reason of customary provisions restricting assignments, subletting or other transfers contained in contracts, leases, licenses and similar agreements entered into in the ordinary course

of business (viii) the foregoing shall not apply to customary restrictions and conditions contained in any agreement relating to the sale or purchase of any asset permitted under [Section 10.5](#) pending the consummation of such sale or purchase and (ix) the foregoing shall not apply to any agreement to which a Restricted Subsidiary is a party that is in effect at the time such Subsidiary becomes a Restricted Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary.

**SECTION 10.12 Nature of Business.** Substantively alter in any material respect the character or conduct of the business conducted by the Company and its Restricted Subsidiaries, taken as a whole, as of the Closing Date.

**SECTION 10.13 Anti-Corruption Laws.** Directly or, [to the knowledge of the Borrowers](#), indirectly, use any Extension of Credit or the proceeds of any Extension of Credit for any purpose which would ~~breach~~ [result in a violation of](#) the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar ~~anti-corruption~~ [anti-corruption](#) legislation in other jurisdictions applicable to the Company and its Subsidiaries.

## ARTICLE XI

### DEFAULT AND REMEDIES

**SECTION 11.1 Events of Default.** Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or otherwise:

(a) **Default in Payment of Principal of Loans and Reimbursement Obligations.** Any Borrower shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise).

(b) **Other Payment Default.** Any Borrower or any other Credit Party shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of three (3) Business Days.

(c) **Misrepresentation.** Any representation, warranty, certification or written statement of fact made or deemed made by or on behalf of the Company or any other Credit Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Credit Party herein, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(d) **Default in Performance of Certain Covenants.** Any Borrower or any other Credit Party shall default in the performance or observance of any covenant or agreement contained in Sections 7.1, 7.2 or 7.5(d) or Articles IX or X of this Agreement.

(e) **Default in Performance of Other Covenants and Conditions.** Any Borrower or any other Credit Party shall default in the performance or observance of any term, covenant, condition

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or agreement contained in this Agreement (other than as specifically provided for otherwise in this Section) or any other Loan Document and such default shall continue for a period of thirty (30) days after written notice thereof has been given to the Company by the Administrative Agent.

(f) **Hedging Agreement.** Any Borrower or any other Credit Party shall default in the performance or observance of any term, covenant, condition or agreement (after giving effect to any applicable grace or cure period) under any Hedging Agreement and such default causes the termination of such Hedging Agreement and the Termination Value owed by such Credit Party as a result thereof exceeds ~~\$40,000,000~~ 60,000,000.

(g) **Indebtedness Cross-Default.** Any Borrower or any other Credit Party shall (i) default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligations) the aggregate outstanding amount of which Indebtedness is in excess of ~~\$40,000,000~~ 60,000,000 beyond the period of grace if any, provided in the instrument or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligations) the aggregate outstanding amount of which Indebtedness is in excess of ~~\$40,000,000~~ 60,000,000 or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, any such Indebtedness to become due prior to its stated maturity (any applicable grace period having expired).

(h) **[Intentionally Omitted].**

(i) **Change in Control.** A Change in Control shall occur.

(j) **Voluntary Bankruptcy Proceeding.** Any Credit Party or any Voluntary Proceeding Subsidiary shall (i) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (ii) file a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition for adjustment of debts, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors,

or (vii) take any corporate or other organizational action for the purpose of authorizing any of the foregoing. For purposes of this clause (j), "Voluntary Proceeding Subsidiary" means any Restricted Subsidiary of the Company that individually (i) owns assets with a fair market value in excess of five percent (5%) of the Consolidated assets of the Company and its Restricted Subsidiaries as of the most recent Fiscal Year end or (ii) accounted for more than five percent (5%) of EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Fiscal Year; provided, however, if Restricted Subsidiaries (x) that are not Credit Parties or Voluntary Proceeding Subsidiaries and (y) in the aggregate own assets with a fair market value in excess of ten percent (10%) of the Consolidated assets of the Company and its Restricted Subsidiaries as of the most recent Fiscal Year end or account for more than ten percent (10%) of EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Fiscal Year, are subject to actions or proceedings under this clause (j), then all Restricted Subsidiaries of the Company shall be subject to this clause (j),

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irrespective of whether they otherwise qualify as Credit Parties or Voluntary Proceeding Subsidiaries.

(k) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against any Borrower or any Credit Party in any court of competent jurisdiction seeking (i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Borrower or any Credit Party thereof or for all or any substantial part of their respective assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

(l) Failure of Agreements. Any provision of this Agreement or any provision of any other Loan Document shall for any reason cease to be valid and binding on any Borrower or any other Credit Party party thereto (except in the event this Agreement or other Loan Document is, by its terms, terminated and no longer in force) or any such Person shall so state in writing.

(m) Termination Event. The occurrence of any of the following events, if any such event would reasonably be expected to have a Material Adverse Effect: (i) the Company or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan, Multiemployer Plan, ERISA or the Code, the Company or any ERISA Affiliate is required to pay as contributions to such Pension Plan or Multiemployer Plan, (ii) ~~the value of the accumulated plan benefits under any Pension Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions) by \$1,000,000 or more~~ [reserved], (iii) a Termination Event or (iv) the Company or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan ~~and the plan sponsor of such Multiemployer Plans notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding \$1,000,000.~~

(n) Judgment. A judgment or order for the payment of money which causes the aggregate amount of all such judgments to exceed ~~\$40,000,000~~ 60,000,000 in any Fiscal Year (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), shall be entered against any Borrower or any Credit Party by any court and such judgment or order shall continue without having been discharged, vacated, stayed or bonded pending appeal for a period of sixty (60) days after the entry thereof (or such longer period as permitted by the court to file such appeal).

**SECTION 11.2 Remedies**. Upon the occurrence of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Company:

(a) Acceleration; Termination of Facilities. Terminate the Commitments and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations (other than Hedging Obligations and Bank Product Debt), to be forthwith due and payable, whereupon the

same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrowers to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of a Bankruptcy Event of Default, the Credit Facility shall be automatically terminated and all Obligations (other than Hedging Obligations and Bank Product Debt) shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, the Company shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Obligations on a pro rata basis. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligations shall have been satisfied and all other Obligations (other than contingent ~~indemnification~~ obligations not yet due for which no claim has been asserted and Bank Product Debt) shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Company.

(c) Rights of Collection. Exercise on behalf of the Lenders all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Borrowers' Obligations.

### SECTION 11.3 [Intentionally Omitted].

**SECTION 11.4 Crediting of Payments and Proceeds**. In the event that any Borrower shall fail to pay any of the Obligations when due and the Obligations have been accelerated pursuant to Section 11.2, all payments received by the Lenders upon the Obligations and all net proceeds from the enforcement of the Obligations shall be applied:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such and each Issuing Lender in its capacity as such (ratably among the Administrative Agent and the Issuing Lenders in proportion to the respective amounts described in this clause First payable to them);

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees (ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them);

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations and any Bank Product Debt (ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them);

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Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and any Bank Product Debt (including any termination payments thereon) (ratably among the Lenders and Bank Product Providers in proportion to the respective amounts described in this clause Fourth held by them);

Fifth, to the Administrative Agent for the account of each Issuing Lender, to cash collateralize any L/C Obligations then outstanding; and

Last, the balance, if any, after all of the Obligations (other than contingent ~~indemnification~~ obligations not yet due for which no claim has been asserted) have been indefeasibly paid in full, to the Borrowers or as otherwise required by Applicable Law.

Excluded Hedging Obligations with respect to any Credit Party shall not be paid with amounts received from such Credit Party or its assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

## ARTICLE XII

### THE ADMINISTRATIVE AGENT

#### SECTION 12.1 Appointment and Authority.

(a) Appointment. Each of the Lenders and the Issuing Lenders hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and neither the Company nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Lenders and the holders of the Obligations hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document or other Loan Document governed by the laws of such jurisdiction on such Lender's or holder of the Obligation's behalf.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Bank Product Provider) and the Issuing Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any ~~co-agents, sub-agents and attorneys-in-fact~~ co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 12.5 for purposes of holding or enforcing any Lien

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on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article XII and Article XIII (including Section 13.4(c)), as though such ~~co-agents, sub-agents and attorneys-in-fact~~ co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**SECTION 12.2 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Credit Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

#### SECTION 12.3 Exculpatory Provisions.

(a) The Administrative Agent, the Sustainability Coordinator or BAS, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent, the Sustainability Coordinator or BAS, as applicable, and its Related Parties:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or ~~applicable~~ Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may ~~effect~~ affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and



(iii) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any Issuing Lender any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, [the Sustainability Coordinator](#), BAS or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

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(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in [Sections 13.2 and 11.2](#)) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Company, a Lender or an Issuing Lender.

(c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in [Article V](#) or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment of Loans, or disclosure of confidential information, to any Disqualified Institution.

**SECTION 12.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Credit Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in [Section 5.1](#), each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or

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approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

**SECTION 12.5 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more ~~sub-agents~~sub-agents appointed by the Administrative Agent. The Administrative Agent and any such ~~sub-agent~~sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such ~~sub-agent~~sub-agent and to the Related Parties of the Administrative Agent and any such ~~sub-agent~~sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any ~~sub-agents~~sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with bad faith, gross negligence or willful misconduct in the selection of such ~~sub-agents~~sub-agents.

**SECTION 12.6 Resignation and Removal of Administrative Agent.**

(a) **Notice of Resignation.** The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Company so long as no Event of Default has occurred and is outstanding (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders and the Company) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any successor Administrative Agent be a Defaulting Lender or a Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) **Notice of Removal.** If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Company or the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Company (or, if such removal is initiated by the Company, to the Required Lenders) and such Person remove such Person as Administrative Agent and, subject, so long as no Event of Default then exists or is continuing, to the prior written consent of the Company (such consent not to be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days (or such earlier day as shall be agreed by the Required Lenders and the Company) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) **Effect of Resignation and Removal.** With effect from the Resignation Effective Date or the Removal Effective Date (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative

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Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than as provided in Section 4.11(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Company to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring or removed Administrative Agent's resignation or removal, as applicable, hereunder and under the other Loan Documents, the provisions of this Article and Section 13.4 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the holders of the Obligations and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.



(d) **Issuing Lender and Swingline Lender.** Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Lender and Swingline Lender. If Bank of America resigns as an Issuing Lender, it shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Lender and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to [Section 2.3\(c\)](#). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to [Section 2.4\(c\)](#). Upon the appointment by the Company of a successor Issuing Lender or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender or Swingline Lender, as applicable, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**SECTION 12.7 ~~Non-Reliance~~Non-Reliance on Administrative Agent, Sustainability Coordinator and Other Lenders.**

Each Lender and each Issuing Lender expressly acknowledges that none of the Administrative Agent, [the Sustainability Coordinator](#) nor BAS has made any representation or warranty to it, and that no act by the Administrative Agent, [the Sustainability Coordinator](#) or BAS hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the

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Administrative Agent, [the Sustainability Coordinator](#) or BAS to any Lender or each Issuing Lender as to any matter, including whether the Administrative Agent, [the Sustainability Coordinator](#) or BAS have disclosed material information in their (or their Related Parties') possession. Each Lender and each Issuing Lender represents to the Administrative Agent, [the Sustainability Coordinator](#) and BAS that it has, independently and without reliance upon the Administrative Agent, [the Sustainability Coordinator](#), BAS, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrowers hereunder. Each Lender and each Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, [the Sustainability Coordinator](#), BAS, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties. Each Lender and each Issuing Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or Issuing Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or Issuing Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each Issuing Lender agrees not to assert a claim in contravention of the foregoing. Each Lender and each Issuing Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

**SECTION 12.8 ~~No Other Duties, Etc.~~** Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof, [nor any sustainability coordinator](#), shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, an Arranger, a [Sustainability Coordinator](#), a Lender or an Issuing Lender hereunder.

**SECTION 12.9 ~~Administrative Agent May File Proofs of Claim; Credit Bidding~~**

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the

Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 2.3(h) and (i), 4.2(b), 4.3 and 13.4 allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9, 4.2(b) and 13.4.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Lender or in any such proceeding.

The holders of the Obligations hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Applicable Laws in any other jurisdictions to which a Credit Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the holders of the Obligations shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Capital Stock or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (j) of Section 13.2 of this Agreement), and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle

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shall automatically be cancelled, without the need for any holders of the Obligations or any acquisition vehicle to take any further action.

**SECTION 12.10 Collateral and Guaranty Matters.** Each of the Lenders (including in its capacities as a potential Bank Product Provider) and each of the Issuing Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, (iii) to the extent a Subsidiary is no longer required by the Loan Documents to grant a Lien on the Capital Stock owned directly by such Subsidiary or (iv) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 13.2;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 10.1(c); and

(c) to release any Guarantor from its obligations under the Guaranty Agreement if such Person ceases to be a Material Domestic Subsidiary as a result of a transaction permitted under the Loan Documents.

In connection with a termination or release pursuant to this Section, the Administrative Agent shall promptly execute and deliver to the applicable Credit Party, at the Company's expense, all documents that the applicable Credit Party shall reasonably request to evidence such termination or release. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 12.10. In each case as specified in this Section 12.10, the Administrative Agent will, at the Company's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 12.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**SECTION 12.11 Bank Products.** Except as otherwise expressly set forth herein, no Bank Product Provider that obtains the benefit of the provisions of Section 11.2, 11.4 and 13.3, the Guaranty Agreement or any Collateral by virtue of the provisions hereof or any Security 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

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Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty Agreement or any Security Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article XII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Bank Product Debt except to the extent expressly provided herein and unless the Administrative Agent has received a Bank Product Provider Notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Product Provider, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Bank Product Debt in the case of a Facility Termination Date.

**SECTION 12.12 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for

the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that at least one of the following is and will be true:

- (i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments, or this Agreement,
- (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by ~~in-house~~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~~sub-sections (b) through (g) of Part I of PTE 84–14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or
- (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**SECTION 12.13 Recovery of Erroneous Payments.** Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Party, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Party promptly upon determining that any payment made to such Lender Party comprised, in whole or in part, a Rescindable Amount.

## ARTICLE XIII

### MISCELLANEOUS

#### SECTION 13.1 Notices; Effectiveness; Electronic Communications.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight

courier service, mailed by certified or registered mail or sent by fax transmission or ~~e-mail~~ transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company or any other Credit Party, the Administrative Agent, Bank of America, as Issuing Lender, or the Swingline Lender, to the address, fax number, ~~e-mail~~ address or telephone number specified for such Person on Schedule 1.1(a); and

(ii) if to any other Lender or Issuing Lender, to the address, fax number, ~~e-mail~~ address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender

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on its Administrative Questionnaire then in effect for the delivery of notices that may contain material ~~non-public~~non-public information relating to the Company).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the Issuing Lenders hereunder may be delivered or furnished by electronic communication (including ~~e-mail~~, FPML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender, the Swingline Lender or any Issuing Lender pursuant to Article II if such Lender, Swingline Lender or such Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swingline Lender, the Issuing Lenders or the Company may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an ~~e-mail~~ address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return ~~e-mail~~ or other written acknowledgement) and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return ~~e-mail~~ address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ~~NON-INFRINGEMENT~~NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Company, any Lender, any Issuing Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Company's, any Credit Party's or the Administrative Agent's transmission of Borrower

Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Company, the Administrative Agent, each Issuing Lender and the Swingline Lender may change its address, fax number or telephone number or ~~e-mail~~e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or ~~e-mail~~e-mail address for notices and other communications hereunder by notice to the Company, the Administrative Agent, such Issuing Lender and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and ~~e-mail~~e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including United States federal and state securities laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material ~~non-public~~non-public information with respect to the Company or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, Issuing Lender and Lenders. The Administrative Agent, the Issuing Lenders and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notice of Prepayment and Swingline Loan Notices) purportedly given by or on behalf of any Credit Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Credit Parties shall indemnify the Administrative Agent, each Issuing Lender, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Credit Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**SECTION 13.2 Amendments, Etc.** Except as set forth below or as specifically provided in any Loan Document (including Section 4.8(c)), any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrowers; provided, that no amendment, waiver or consent shall:

~~(a) [Intentionally Omitted];~~

~~(a) subordinate, or have the effect of subordinating, the Obligations or Liens securing the Obligations hereunder to any other Indebtedness, Liens securing the Obligations or other obligation without the written consent of each Lender directly affected thereby;~~

~~(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 11.2) or the amount of Loans of any Lender without the written consent of such Lender;~~

~~(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document (other than any payments due under Section 2.5(b)(ii)) without the written consent of each Lender directly affected thereby;~~

~~(d) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clause (iv) of the second proviso to this Section) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive any obligation of the Borrowers to pay interest at the rate set forth in Section 4.1(b) during the continuance of an Event of Default, or (ii) to amend any financial covenant hereunder (or any defined term used therein) if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligations or to reduce any fee payable hereunder;~~

~~(e) change Section 4.4 or Section 11.4.6 in a manner that would alter the prorata sharing of payments required thereby or change Section 11.4, in each case, without the written consent of each Lender directly affected thereby;~~



(f) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(g) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Tranche differently than those of Lenders holding Loans of any other Tranche without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each adversely affected Tranche;

(h) release all of the Guarantors or release Guarantors comprising substantially all of the credit support for the Obligations, in either case, from the Guaranty Agreement (other than as authorized in [Section 12.10](#)), without the written consent of each Lender;

(i) release all or substantially all of the Collateral or release any Security Document (other than as authorized in [Section 12.10](#) or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender;

(j) amend, waive or modify the definition of "Foreign Designated Currencies" without the written consent of each Designated Currency Tranche Revolving Credit Lender;

(k) amend, waive or modify [Section 1.9](#) without the written consent of each Designated Currency Tranche Revolving Credit Lender; or

(l) amend, waive or modify [Section 2.10](#) without the written consent of each Lender;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each Issuing Lender in addition to the Lenders required above, affect the rights or duties of such Issuing Lender

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under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the applicable Fee Letter [or other fee letters](#) may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (v) solely for the purposes of [Section 5.2\(b\)](#), no waiver of a Default or Event of Default shall be effective without the consent of Revolving Credit Lenders holding more than fifty percent (50%) of the Revolving Credit Commitments (or if the Revolving Credit Facility has been terminated, Lenders holding more than fifty percent (50%) of the aggregate Extensions of Credit thereunder); (vi) the Administrative Agent and the Company shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Company shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision; and (vii) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders under one Tranche but not the other Tranche may be effected by an agreement or agreements in writing entered into by the Borrowers and requisite percentage in interest of the affected Tranche of Lenders. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

In addition, the Company may, by written notice to the Administrative Agent from time to time (and with the consent of the Administrative Agent, not to be unreasonably withheld), make one or more offers (each, a "Loan Modification Offer") to all the Lenders under the Revolving Credit Facility or all of the Lenders holding the Term Loan to make one or more amendments or modifications to (i) allow the maturity and scheduled amortization (if any) of the Loans of the accepting Lenders to be extended and/ or (ii) increase the Applicable Margin and/or fees payable with respect to the Loans and Commitments (if any) of the accepting Lenders ("Permitted Amendments") pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Company. Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Loans and/or Commitments of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Loans and/or Commitments as to which such Lender's acceptance has been made. The Company, each other Credit Party and each Accepting Lender shall execute and deliver to the Administrative Agent such documentation (a "Loan Amendment") as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Credit Parties shall also deliver such corporate resolutions, customary opinions and other customary documents as reasonably requested by the Administrative Agent. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Amendment. Any such Permitted Amendment shall contain language to appropriately include the Lenders participating in any such tranches in (x) any determination of the Required Lenders and (y) provisions regarding pro rata payments or sharing of payments. Each of the parties hereto hereby agrees that upon the

effectiveness of any Loan Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendment evidenced thereby and only with respect to the Loans and Commitments of the Accepting Lenders as to which such Lenders' acceptance has been made. For the avoidance of doubt, this paragraph shall supersede any provision of this [Section 13.2](#) to the contrary.

Notwithstanding the foregoing, any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Lenders under one or more Tranches but not under

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any other Tranche may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite percentage in interest of the affected Tranche or Tranches of Lenders that would be required to consent thereto under this [Section 13.2](#) if such Tranche or Tranches of Lenders were the only Tranche or Tranches of Lenders hereunder at the time.

For the avoidance of doubt and notwithstanding anything to the contrary contained herein, each Lender hereby authorizes the Administrative Agent on its behalf, and without its further consent, to enter into amendments to this Agreement and the other Loan Documents as the Administrative Agent may reasonably deem appropriate in order to effectuate any increase in the Revolving Credit Commitment pursuant to Section 2.8 or any Incremental Term Loans pursuant to Section 2.9, including, without limitation, amendments to permit such increases in the Revolving Credit Commitment and any Incremental Term Loans to share ratably in the benefits of this Agreement and the other Loan Documents and to include appropriately any Lenders under such increases in the Revolving Credit Commitment and any Incremental Term Loans in any determination of Required Lenders; provided that no such amendment shall adversely affect in any material respect the rights of any Lender, in each case, without the written consent of such Lender.

**SECTION 13.3 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender, any Issuing Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

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, the Administrative Agent in accordance with [Section 11.2](#) for the benefit of all the Lenders and the Issuing Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) each Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with [Section 13.5](#) (subject to the terms of [Section 4.6](#)), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to [Section 11.2](#) and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to [Section 4.6](#), any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**SECTION 13.4 Expenses; Indemnity; Damage Waiver.** In each case, subject to [Section 2.10\(b\)](#):



(a) **Costs and Expenses.** The Credit Parties shall pay (i) all reasonable and documented ~~out-of-pocket~~out-of-pocket expenses incurred by the Administrative Agent ~~and its, the Sustainability Coordinator and their respective~~ Affiliates (including the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent and, if necessary, one firm of local counsel in each relevant jurisdiction), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented ~~out-of-pocket~~out-of-pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all ~~out-of-pocket~~out-of-pocket expenses incurred by the Administrative Agent, any Lender or any Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the Issuing Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the Issuing Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such ~~out-of-pocket~~out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by the Credit Parties.** The Credit Parties shall indemnify the Administrative Agent (and any ~~sub-agent~~sub-agent thereof), ~~the Sustainability Coordinator~~, each Lender and each Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee; provided, that such legal fees and expenses shall be limited to the reasonable and documented fees, disbursements and other ~~out-of-pocket~~out-of-pocket charges of one primary counsel, one local counsel in each relevant jurisdiction, one specialty counsel for each relevant specialty, and one or more counsel to each group of affected Persons similarly situated if one or more conflicts of interest, or perceived conflicts of interest, arise), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Company or any other Credit Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby (including, without limitation, the Indemnitee's reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record), the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any ~~sub-agent~~sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 4.11), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Credit Party or any of its Restricted Subsidiaries, or any Environmental Claims related in any way to a Credit Party or any of its Restricted Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any other Credit Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any

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Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Credit Party against an Indemnitee for a material breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 4.11(c), this Section 13.4(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any ~~non-Tax~~non-Tax claim.

(c) **Reimbursement by Lenders.** To the extent that the Company for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any ~~sub-agent~~sub-agent thereof), any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such ~~sub-agent~~sub-agent), such Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the unused Commitments, the aggregate principal amount of outstanding Revolving Credit Loans and such Lender's participation in L/C Obligations and Swingline Loans and the Outstanding Amount of all Term Loans at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such ~~sub-agent~~sub-agent), each Issuing Lender or the Swingline Lender in its capacity as

such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such ~~sub-agent~~sub-agent), each Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 4.4(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by ~~applicable~~Applicable Law, no Credit Party shall assert, and each Credit Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 13.1(e) shall survive the resignation of the Administrative Agent, any Issuing Lender and

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the Swingline Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**SECTION 13.5 Set-off.** If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, the Swingline Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, subject to Section 2.10(b), to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency), other than deposits in Blackbaud Payment Services Accounts, at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Issuing Lender, the Swingline Lender, or any such Affiliate to or for the credit or the account of the Company or any other Credit Party against any and all of the obligations of the Company or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, such Issuing Lender, or the Swingline Lender, irrespective of whether or not such Lender, such Issuing Lender, or the Swingline Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Company or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender, such Issuing Lender, or the Swingline Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.14 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender, and the other Lenders, and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Lender, the Swingline Lender, and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Lender, the Swingline Lender, or their respective Affiliates may have. Each Lender, each Issuing Lender, and the Swingline Lender, agrees to notify the Company and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**SECTION 13.6 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH OTHER CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY ISSUING LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE

TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF

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THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY ISSUING LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY OTHER CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 13.1**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**SECTION 13.7 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**SECTION 13.8 Reversal of Payments.** To the extent a Borrower makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such

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payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

**SECTION 13.9 Successors and Assigns.**

(a) **Successors and Assigns Generally.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Company nor any other Credit

Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Lenders and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Company shall be deemed to have given its consent five (5) Business Days after the date written notice thereof has been delivered by the assigning Lender

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(through the Administrative Agent) unless such consent is expressly refused by the Company prior to such fifth (5th) Business Day.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swingline Lender's rights and obligations in respect of Swingline Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a ~~non-pro~~ non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any unfunded Term Loan Commitment or Incremental Term Loan Commitment or any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan or Incremental Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Lenders and the Swingline Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Company or any of the Company's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to

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the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any Issuing Lender or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under ~~applicable~~ Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 4.9, 4.10, 4.11 (subject to the requirements thereof, including Section 4.11(e)) and 13.4 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a ~~non-fiduciary~~ non-fiduciary agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The parties intend that the Loans and L/C Obligations are treated as being maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and within the meaning of Sections 5f.103-1(c) and 1.871-14(c) of the United States Treasury Regulations, and this Section 13.9(c) shall be construed in a manner that gives effect to such intent.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Company or the Administrative Agent, sell participations to any Person (other than a natural

Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Company or any of the Company's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the Issuing Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 13.4(c) without regard to the existence of any participations.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 13.2 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 4.9 and 4.10, 4.11 (subject to the requirements and limitations therein, including the requirements under Section 4.11(e) (it being understood that the documentation required under Section 4.11(e) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 4.12 and 13.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 4.10 or 4.11, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Company's request and expense, to use reasonable efforts to cooperate with the Company to effectuate the provisions of Section 4.12 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.5 as though it were a Lender; provided that such Participant agrees to be subject to Section 4.6 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a ~~non-fiduciary~~ non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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 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~~ within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and within the meaning of Sections 5f.103-1(c) and 1.871-14 of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. The parties intend that the Loans and L/C Obligations are treated as being maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and within the

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meaning of Sections 5f.103-1(c) and 1.871-14(c) of the United States Treasury Regulations, and this Section 13.9(d) shall be construed in a manner that gives effect to such intent.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as Issuing Lender or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America or any other Revolving Credit Lender assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to subsection (b) above, Bank of America or such other Revolving Credit Lender may, (i) upon thirty (30) days' notice to the Borrower and the Lenders, resign as Issuing Lender and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as Issuing Lender or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor Issuing Lender or Swingline Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America or such other Revolving Credit Lender



as Issuing Lender or Swingline Lender, as the case may be. If Bank of America or such other Revolving Credit Lender resigns as Issuing Lender, it shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all applicable Letters of Credit outstanding as of the effective date of its resignation as Issuing Lender and all applicable L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to [Section 2.3\(c\)](#)). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to [Section 2.4\(c\)](#). Upon the appointment of a successor Issuing Lender and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender or Swingline Lender, as the case may be, and (B) the successor Issuing Lender shall issue letters of credit in substitution for the applicable Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America or such other Revolving Credit Lender to effectively assume the obligations of Bank of America or such other Revolving Credit Lender with respect to such Letters of Credit.

**(g) Disqualified Institutions.**

(i) No assignment or, to the extent the DQ List has been posted on the Platform for all Lenders, participation shall be made to any Person that was a Disqualified Institution as of the date (the "[Trade Date](#)") on which the applicable Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Company has consented to such assignment as otherwise contemplated by this [Section 13.9](#) or a Payment Event of Default or a Bankruptcy Event of Default has occurred and is continuing at the time of such assignment, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). For the avoidance of doubt, with respect to any assignee or participant that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the

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notice period referred to in, the definition of "Disqualified Institution"), such assignee shall not retroactively be considered a Disqualified Institution. Any assignment in violation of this clause (g)(i) shall not be void, but the other provisions of this clause (g) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Company's prior consent in violation of clause (i) above, the Company may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Institution and repay all obligations of the Borrowers owing to such Disqualified Institution in connection with such Revolving Credit Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, prepay 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 under the other Loan Documents and/or (C) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this [Section 13.9](#)), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents; provided that (i) the Company shall have paid to the Administrative Agent the assignment fee (if any) specified in [Section 13.9\(b\)](#), (ii) such assignment does not conflict with ~~applicable~~[Applicable](#) Laws and (iii) in the case of clause (B), the Borrowers shall not use the proceeds from any Loans to prepay Term Loans held by Disqualified Institutions.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrowers, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (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 the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws ("[Plan of Reorganization](#)"), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the 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 Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy

Code (or any similar provision in any other Debtor Relief Laws) and (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).

(iv) The Administrative Agent shall have the right, and the Company hereby expressly authorizes the Administrative Agent, to (A) post the DQ List on the Platform, including that portion of the Platform that is designated for “public side” Lenders or (B) provide the DQ List to each Lender requesting the same.

#### **SECTION 13.10 Treatment of Certain Information; Confidentiality.**

(a) **Treatment of Certain Information.** Each of the Administrative Agent, [the Sustainability Coordinator](#), the Lenders and the Issuing Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any ~~self-regulatory~~[self-regulatory](#) authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by ~~applicable~~[Applicable](#) Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to [Section 2.8](#) or [2.9](#) or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to a Borrower and its obligations, this Agreement or payments hereunder (it being understood that the DQ List may be disclosed to any assignee or Participant, or prospective assignee or Participant, in reliance on this clause (vi)), (vii) on a confidential basis to (A) any rating agency in connection with rating the Company or its Subsidiaries or the credit facilities provided hereunder or (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, any Issuing Lender and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders or (C) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (viii) with the consent of the Company or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section, (2) becomes available to the Administrative Agent, [the Sustainability Coordinator](#), any Lender, any Issuing Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Company or (3) is independently discovered or developed by a party thereto without utilizing any Information received from the Company or violating the terms of this Section. For purposes of this Section, “Information” means all information received from the Company or any Restricted Subsidiary relating to the Company or any Restricted Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, [the Sustainability Coordinator](#), any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by the Company or any Restricted Subsidiary, provided that, in the case of information received from the Company or any Restricted Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent, [the Sustainability Coordinator](#) and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the

Administrative Agent, agents, [the Sustainability Coordinator](#) and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.



(b) ~~Non-Public~~Non-Public Information. Each of the Administrative Agent, the Sustainability Coordinator, the Lenders and the Issuing Lenders acknowledges that (i) the Information may include material ~~non-public~~non-public information concerning a Credit Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material ~~non-public~~non-public information and (iii) it will handle such material ~~non-public~~non-public information in accordance with applicableApplicable Law, including United States federal and state securities laws.

(c) Customary Advertising Material. The Credit Parties consent to the publication by the Administrative Agent, the Sustainability Coordinator or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Credit Parties.

**SECTION 13.11 Performance of Duties.** Each of the Credit Party's obligations under this Agreement and each of the other Loan Documents shall be performed by such Credit Party at its sole cost and expense.

**SECTION 13.12 All Powers Coupled with Interest.** All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the Credit Facility has not been terminated.

**SECTION 13.13 Survival.** Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XIII and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

**SECTION 13.14 Titles and Captions.** Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limits nor amplifies the provisions of this Agreement.

**SECTION 13.15 Severability of Provisions.** Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**SECTION 13.16 [Reserved].**

**SECTION 13.17 Integration.** This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this

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Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

**SECTION 13.18 Term of Agreement.** This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (except for Hedging Obligations and Bank Product Debt not then due and payable and contingent ~~indemnification~~obligations not yet due for which no claim has been asserted) arising hereunder or under any other Loan Document shall have been indefeasibly and irrevocably paid in full and all Commitments have been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

**SECTION 13.19 USA Patriot Act.** Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Company and the other Credit Parties that pursuant to the requirements of the 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 the Administrative Agent, as applicable, to identify each Credit Party in accordance with the Patriot Act. The Company and the Credit Parties agree to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender reasonably requests in order to comply with ~~its ongoing obligations~~requirements (as reasonably determined by the Administrative Agent or such Lender) under applicable "know your customer" and ~~anti-money~~anti-money laundering rules and regulations, including the Patriot Act.

**SECTION 13.20 Advice of Counsel, No Strict Construction.** Each of the parties represents to each other party hereto that it has discussed this Agreement with its counsel. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

**SECTION 13.21 Inconsistencies with Other Documents; Independent Effect of Covenants.**

(a) In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the other Loan Documents which imposes additional burdens on the Company or its Subsidiaries or further restricts the rights of the Company or its Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

(b) Each Borrower expressly acknowledges and agrees that each covenant contained in Articles VIII, IX, or X hereof shall be given independent effect. Accordingly, no Borrower shall engage in any transaction or other act otherwise permitted under any covenant contained in Articles VIII, IX, or X if, before or after giving effect to such transaction or act, such Borrower shall or would be in breach of any other covenant contained in Articles VIII, IX, or X.

**SECTION 13.22 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby, each of the Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the Credit Facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial

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transaction between the Credit Parties and their Affiliates, on the one hand, and the Administrative Agent, BAS, the Sustainability Coordinator, and each Lender (including Affiliates acting as arrangers) on the other hand, and the Credit Parties are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, the Administrative Agent, BAS, the Sustainability Coordinator, and each Person acting as an arranger hereunder, each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any Credit Party or any of their Affiliates, stockholders, creditors or employees or any other Person; (c) neither the Administrative Agent, BAS, the Sustainability Coordinator nor any Person acting as an arranger hereunder has assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Credit Party with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent, BAS, the Sustainability Coordinator or such other Person has advised or is currently advising any Credit Party or any of its Affiliates on other matters) and neither the Administrative Agent, BAS, the Sustainability Coordinator nor any Person acting as an arranger hereunder has any obligation to any Credit Party or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Administrative Agent, BAS, the Sustainability Coordinator or each Person acting as an arranger hereunder and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Credit Parties and their Affiliates, and neither the Administrative Agent, BAS, the Sustainability Coordinator nor any Person acting as an arranger hereunder has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent, BAS, the Sustainability Coordinator, and each Person acting as an arranger hereunder have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate. Each of the Credit Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent, BAS, the Sustainability Coordinator or each Person acting as an arranger hereunder with respect to any breach or alleged breach of agency or fiduciary duty.

**SECTION 13.23 Judgment Currency.** If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from any Borrower hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent's Office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of the Borrowers in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Administrative Agent, as the case may be, in the specified currency, each Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case

may be, against such loss, and if the amount of the specified currency so purchased exceeds the sum originally due to the Lenders or the Administrative Agent, as the case may be, in the specified currency, the applicable Lender or the Administrative Agent, as the case may be, agrees to remit such excess to the applicable Borrower.

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**SECTION 13.24 Electronic Execution; Electronic Records.** This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Credit Parties and each of the Administrative Agent, [the Sustainability Coordinator](#) and each Lender Party agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent, [the Sustainability Coordinator](#) and each of the Lender Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, none of the Administrative Agent, [the Sustainability Coordinator](#), any Issuing Lender or the Swingline Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, [the Sustainability Coordinator](#), any Issuing Lender and/or Swingline Lender has agreed to accept such Electronic Signature, the Administrative Agent, [the Sustainability Coordinator](#) and each of the Lender Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Credit Party and/or any Lender Party without further verification and (b) upon the request of the Administrative Agent, [the Sustainability Coordinator](#) or any Lender Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

None of the Administrative Agent, [the Sustainability Coordinator](#), any Issuing Lender or the Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's, [the Sustainability Coordinator's](#), any Issuing Lender's or the Swingline Lender's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, [the Sustainability Coordinator](#), each Issuing Lender and the Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Credit Parties and each Lender Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or any other

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Loan Document based solely on the lack of paper original copies of this Agreement and/or such other Loan Document, and (ii) waives any claim against the Administrative Agent, [the Sustainability Coordinator](#), each Lender Party and each Related Party for any liabilities arising solely from the

Administrative Agent's, the Sustainability Coordinator's and/or any Lender Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Credit Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

**SECTION 13.25 Acknowledgement and Consent to ~~Bail-In~~Bail-In of Affected Financial Institutions.** Solely to the extent any Lender or Issuing Lender that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or Issuing Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the ~~Write-Down~~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~~Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or Issuing Lender that is an Affected Financial Institution; and

(b) the effects of any ~~Bail-In~~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~~Write-Down and Conversion Powers of the applicable Resolution Authority.

**SECTION 13.26 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedging Agreement 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~~Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to

the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

**SECTION 13.27 Amendment and Restatement.** The parties to the Existing Credit Agreement, to the extent party hereto, each hereby agree that, at such time as this Agreement shall have become effective pursuant to the terms of Section 5.1, (a) the Existing Credit Agreement automatically shall be deemed amended and restated in its entirety by this Agreement, and (b) the Commitments and Loans under the Existing Credit Agreement and as defined therein automatically shall be replaced with the Commitments and Loans hereunder. This Agreement is not a novation of the Existing Credit Agreement. On the Closing Date, (i)(x) the Credit Parties shall prepay any dollar tranche revolving credit loans outstanding under the Existing Credit Agreement to the extent necessary to keep the outstanding Dollar Tranche Revolving Credit Loans ratable with the revised Dollar Tranche Revolving Credit Commitments as of the Closing Date, and (y) the dollar tranche revolving credit loans and dollar tranche revolving credit commitments made by the lenders under the Existing Credit Agreement shall be ~~re-allocated~~re-allocated and restated among the Lenders so that, as of the Closing Date, the respective Dollar Tranche Revolving Credit Commitments of the Lenders shall be as set forth on Schedule 1.1(b), and (ii)(x) the Credit Parties shall prepay any designated currency tranche revolving credit loans outstanding under the Existing Credit Agreement to the extent necessary to keep the outstanding Designated Currency Tranche Revolving Credit Loans ratable with the revised Designated Currency

Tranche Revolving Credit Commitments as of the Closing Date, and (y) the designated currency tranche revolving credit loans and designated currency tranche revolving credit commitments made by the lenders under the Existing Credit Agreement shall be ~~re-allocated~~re-allocated and restated among the Lenders so that, as of the Closing Date, the respective Designated Currency Tranche Revolving Credit Commitments of the Lenders shall be as set forth on Schedule 1.1(b).

[Signature pages omitted]

EXHIBIT 31.1

Blackbaud, Inc.

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael P. Gianoni, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Blackbaud, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November May 1, 2023 2024

By: /s/ Michael P. Gianoni  
Michael P. Gianoni  
President and Chief Executive Officer, President and Vice Chairman of the Board  
(Principal Executive Officer)

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## Blackbaud, Inc.

## CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Anthony W. Boor, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Blackbaud, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November May 1, 2023 2024

By: /s/ Anthony W. Boor

Anthony W. Boor  
Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

## Blackbaud, Inc.

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Blackbaud, Inc. (the "Company") for the period ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on or about the date hereof (the "Report"), I, Michael P. Gianoni, President and Chief Executive Officer, President and Vice Chairman of the Board, hereby certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November May 1, 2023 2024

By: /s/ Michael P. Gianoni

Michael P. Gianoni

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

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EXHIBIT 32.2

Blackbaud, Inc.

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Blackbaud, Inc. (the "Company") for the period ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on or about the date hereof (the "Report"), I, Anthony W. Boor, Executive Vice President and Chief Financial Officer, hereby certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November May 1, 2023 2024

By: /s/ Anthony W. Boor

Anthony W. Boor

Executive Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

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