

REFINITIV

# DELTA REPORT

## 10-Q

MDXG - MIMEDX GROUP, INC.

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

The following comparison report has been automatically generated

TOTAL DELTAS	7324
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CHANGES	133
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DELETIONS	1260
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ADDITIONS	5931
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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 001-35887

**MIMEDX GROUP, INC.**

(Exact name of registrant as specified in its charter)

**Florida**

(State or other jurisdiction of incorporation or organization)

**26-2792552**

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

**1775 West Oak Commons Ct NE**

**Marietta, GA**

(Address of principal executive offices)

**30062**

(Zip Code)

**(770) 651-9100**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	MDXG	The Nasdaq Stock Market

Securities registered pursuant to Section 12(g) of the Act: None.

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 x No "

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes x 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 definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

There were 116,376,583 147,603,955 shares of the registrant's common stock, par value \$0.001 per share, outstanding as of October 26, 2023 April 24, 2024.

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## Explanatory Note and Important Cautionary Statement Regarding Forward-Looking Statements

As used herein, the terms "MIMEDX," the "Company," "we," "our" and "us" refer to MiMedx Group, Inc., a Florida corporation, and its consolidated subsidiaries as a combined entity, except where it is clear that the terms mean only MiMedx Group, Inc.

Certain statements made in this Quarterly Report on Form 10-Q (this "Quarterly Report") are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended. All statements relating to events or results that may occur in the future are forward-looking statements, including, without limitation, statements regarding the following:

- our strategic focus and current business priorities, and our ability to implement these priorities, including as a result of our no longer being able to market our micronized products and certain other products;
- our expectations regarding future revenue growth, margins, and cash flows;
- the advantages of our products and development of new products;

- our expectations regarding the size of potential markets for our products and any growth in such markets;
- our expectations regarding the regulatory pathway for our products;
- our expectations regarding ongoing regulatory obligations and oversight and the changing nature thereof impacting our products, research and clinical programs, and business, including those relating to patient privacy;
- our expectations regarding our ability to procure sufficient supplies of human tissue to manufacture and process our products;
- our expectations regarding costs relating to compliance with regulatory requirements, including those arising from maintaining current Good Tissue Practice compliance; requirements;
- the likelihood, timing, and scope of possible regulatory approval and commercial launch of new products;
- our expectations regarding government and other third-party coverage and reimbursement for our existing and new products;
- our expectations regarding capital allocation;
- our expectations regarding future revenue growth;
- our expectations regarding the outcome of pending litigation and investigations;
- our belief in the sufficiency of our intellectual property rights in our technology;
- our expectations regarding our ability to procure sufficient supplies of human tissue to manufacture and process our products;
- our expectations regarding our ability to fund our ongoing operations and future operating costs and the sufficiency of our liquidity and existing capital resources to implement our current business priorities;
- our expectations regarding future income tax liability;
- our expectations regarding the outcome of pending litigation and investigations;
- demographic and market trends; and
- our ability to compete effectively.

Forward-looking statements generally can be identified by words such as “expect,” “will,” “change,” “intend,” “seek,” “target,” “future,” “plan,” “continue,” “potential,” “possible,” “could,” “estimate,” “may,” “anticipate,” “to be” and similar expressions. These statements are based on numerous assumptions and involve known and unknown risks, uncertainties and other factors that could significantly affect the Company’s operations and may cause the Company’s actual actions, results, financial condition, performance or achievements to differ materially from any future actions, results, financial condition, performance or achievements expressed or implied by any such forward-looking statements. Factors that may cause such a difference include, without limitation, those discussed under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023 (our “2022 2023 Form 10-K”), filed with the Securities and Exchange Commission (“SEC”) on February 28, 2023 February 28, 2024 and those discussed in Part II, Item 1A, Risk Factors, if any.

Unless required by law, the Company does not intend, and undertakes no obligation, to update or publicly release any revision to any forward-looking statements, whether as a result of the receipt of new information, the occurrence of subsequent events, a change in circumstances or otherwise. Each forward-looking statement contained in this Quarterly Report is specifically qualified in its entirety by the aforementioned factors. Readers are advised to carefully read this Quarterly Report in conjunction with the important disclaimers set forth above prior to reaching any conclusions or making any investment decisions and not to place undue reliance on forward-looking statements, which speak only as of the date of the filing of this Quarterly Report with the SEC.

## Estimates and Projections

This Quarterly Report includes certain estimates, projections and other statistical data. These estimates and projections reflect management’s best estimates based upon currently available information and certain assumptions we believe to be reasonable as of the date of this Quarterly Report. These estimates are inherently uncertain, subject to risks and uncertainties, many of which are not within our control, have not been reviewed by our independent auditors and may be revised as a result of management’s further review. In addition, these estimates and projections are not a comprehensive statement of our financial results, and our actual results may differ materially from these estimates and projections due to developments that may arise between now and the time the results are final. There can be no assurance that the estimates will be realized, and our results may vary significantly from the estimates, including as a result of unexpected issues in our business and operations. Accordingly, you should not place undue reliance on such information. Projections, assumptions and estimates of our future performance and the future performance of the markets in which we operate are necessarily subject to a high degree of uncertainty and risk.

## PART I - FINANCIAL INFORMATION

### Item 1. Financial Statements

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(in thousands, except share data)  
(unaudited)

		September 30, 2023	December 31, 2022		March 31, 2024	December 31, 2023
ASSETS	ASSETS			ASSETS		
Current assets:	Current assets:			Current assets:		
Cash		\$ 81,164	\$ 65,950			
Cash and cash equivalents						
Accounts receivable, net	Accounts receivable, net	49,005	43,084			
Inventory	Inventory	19,068	13,183			
Prepaid expenses	Prepaid expenses	2,954	8,646			
Other current assets	Other current assets	2,311	3,335			
Other current assets						
Other current assets						
Total current assets	Total current assets	154,502	134,198			
Property and equipment, net	Property and equipment, net	7,094	7,856			
Property and equipment, net						
Property and equipment, net						
Right of use asset	Right of use asset	2,441	3,400			
Deferred tax asset, net						
Goodwill	Goodwill	19,441	19,976			
Intangible assets, net	Intangible assets, net	5,395	5,852			
Other assets						
Other assets		149	148			
Total assets	Total assets	\$ 189,022	\$ 171,430			
LIABILITIES, CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY (DEFICIT)						
Total assets						
Total assets						
LIABILITIES AND STOCKHOLDERS' EQUITY				LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:	Current liabilities:			Current liabilities:		
Current portion of long term debt						

Accounts payable	Accounts payable	\$ 9,170	\$ 8,847
Accrued compensation	Accrued compensation	23,159	21,852
Accrued expenses	Accrued expenses	9,444	11,024

Current liabilities of discontinued operations

Current liabilities of discontinued operations

Current liabilities of discontinued operations

Other current liabilities	Other current liabilities	1,854	1,834
Total current liabilities	Total current liabilities	43,627	43,557
Long term debt, net	Long term debt, net	48,966	48,594
Other liabilities	Other liabilities	2,605	4,773

Total liabilities	Total liabilities	\$ 95,198	\$ 96,924
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Commitments and contingencies (Note 13)

Convertible preferred stock Series B; \$0.001 par value; 100,000 shares authorized, issued and outstanding at September 30, 2023 and December 31, 2022

\$ 92,494 \$ 92,494

Stockholders' equity (deficit)

Preferred stock Series A; \$0.001 par value; 5,000,000 shares authorized, 0 issued and outstanding at September 30, 2023 and December 31, 2022

\$ — \$ —

Common stock; \$0.001 par value; 250,000,000 shares authorized, 116,359,748 issued and outstanding at September 30, 2023 and 187,500,000 shares authorized, 113,705,447 issued and outstanding at December 31, 2022

116 114

Commitments and contingencies (Note 12)

Commitments and contingencies (Note 12)

Stockholders' equity

Stockholders' equity

Stockholders' equity

Common stock; \$0.001 par value; 250,000,000 shares authorized; 147,528,596 issued and outstanding at March 31, 2024 and 146,227,639 issued and outstanding at December 31, 2023

Common stock; \$0.001 par value;  
250,000,000 shares authorized;  
147,528,596 issued and  
outstanding at March 31, 2024  
and 146,227,639 issued and  
outstanding at December 31,  
2023

Common stock; \$0.001 par value;  
250,000,000 shares authorized;  
147,528,596 issued and  
outstanding at March 31, 2024  
and 146,227,639 issued and  
outstanding at December 31,  
2023

Additional paid-in capital	Additional paid-in capital	188,369	173,804
Accumulated deficit	Accumulated deficit	(187,155)	(191,906)
Total stockholders' equity (deficit)		1,330	(17,988)
Total liabilities, convertible preferred stock, and stockholders' equity (deficit)		\$ 189,022	\$171,430

Accumulated deficit

Accumulated deficit

Total stockholders' equity

Total liabilities and stockholders' equity

See notes to unaudited condensed consolidated financial statements

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(in thousands, except share and per share data)  
(unaudited)

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Net sales	Net sales	\$ 81,712	\$ 67,689	\$ 234,645	\$ 193,466
Net sales					
Net sales					
Cost of sales					
Cost of sales					
Cost of sales	Cost of sales	14,790	12,188	40,792	33,947
Gross profit	Gross profit	66,922	55,501	193,853	159,519
Gross profit					
Gross profit					
Operating expenses:					
Operating expenses:					
Operating expenses:	Operating expenses:				

Selling, general and administrative	Selling, general and administrative	52,571	53,475	156,773	158,838
Selling, general and administrative					
Selling, general and administrative					
Research and development	Research and development	3,175	5,953	18,168	17,429
Restructuring (Note 16)		208	—	3,464	—
Research and development					
Research and development					
Investigation, restatement and related	Investigation, restatement and related	(38)	3,001	4,652	8,771
Investigation, restatement and related					
Investigation, restatement and related					
Amortization of intangible assets	Amortization of intangible assets	190	175	570	519
Amortization of intangible assets					
Amortization of intangible assets					
Impairment of intangible assets					
Impairment of intangible assets					
Impairment of intangible assets					
Operating income (loss)					
Operating income (loss)					
Operating income (loss)	Operating income (loss)	10,816	(7,103)	10,226	(26,038)
Other expense, net	Other expense, net				
Other expense, net					
Other expense, net					
Interest expense, net	Interest expense, net	(1,680)	(1,270)	(4,864)	(3,566)
Other expense, net		(11)	—	(42)	(1)
Income (loss) before income tax provision		9,125	(8,373)	5,320	(29,605)
Income tax provision expense		(591)	(53)	(569)	(178)
Interest expense, net					
Interest expense, net					
Other (expense) income, net					
Other (expense) income, net					
Other (expense) income, net					
Income (loss) from continuing operations before income tax					
Income (loss) from continuing operations before income tax					
Income (loss) from continuing operations before income tax					
Income tax expense from continuing operations					
Income tax expense from continuing operations					



Income tax expense from continuing operations						
Net income (loss) from continuing operations						
Net income (loss) from continuing operations						
Net income (loss) from continuing operations						
Income (loss) from discontinued operations, net of tax						
Income (loss) from discontinued operations, net of tax						
Income (loss) from discontinued operations, net of tax						
Net income (loss)						
Net income (loss)						
Net income (loss)	Net income (loss)	\$	8,534	\$	(8,426)	\$ 4,751 \$ (29,783)
Net income (loss) available to common shareholders (Note 9)		\$	6,761	\$	(10,096)	\$ (433) \$ (34,667)
Net income (loss) from continuing operations available to common stockholders						
Net income (loss) from continuing operations available to common stockholders						
Net income (loss) per common share - basic		\$	0.06	\$	(0.09)	\$ (0.00) \$ (0.31)
Net income (loss) per common share - diluted		\$	0.06	\$	(0.09)	\$ (0.00) \$ (0.31)
Net income (loss) from continuing operations available to common stockholders						
Basic net income (loss) per common share:						
Basic net income (loss) per common share:						
Basic net income (loss) per common share:						
Continuing operations						
Continuing operations						
Continuing operations						
Discontinued operations						
Discontinued operations						
Discontinued operations						
Basic net income (loss) per common share						
Basic net income (loss) per common share						
Basic net income (loss) per common share						
Diluted net income (loss) per common share:						

Diluted net income (loss) per common share:					
Diluted net income (loss) per common share:					
Continuing operations					
Continuing operations					
Continuing operations					
Discontinued operations					
Discontinued operations					
Discontinued operations					
Diluted net income (loss) per common share					
Diluted net income (loss) per common share					
Diluted net income (loss) per common share					
Weighted average common shares outstanding - basic					
Weighted average common shares outstanding - basic					
Weighted average common shares outstanding - basic	Weighted average common shares outstanding - basic	116,298,146	113,448,251	115,528,067	112,650,713
Weighted average common shares outstanding - diluted	Weighted average common shares outstanding - diluted	119,327,709	113,448,251	115,528,067	112,650,713
Weighted average common shares outstanding - diluted					
Weighted average common shares outstanding - diluted					

See notes to unaudited condensed consolidated financial statements

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT) EQUITY  
(in thousands, except share data)  
(unaudited)

	Common Stock							
	Issued							
	Shares							
	Shares							
	Shares		Amount	Capital	Shares	Amount	Deficit	Total
Balance at December 31, 2023								
Share-based compensation expense								
Share-based compensation expense								

Share-based compensation expense

Exercise of stock options

Employee stock purchase plan

Issuance of restricted stock, net

	Common Stock Issued		Additional Paid-In Capital	Treasury Stock		Accumulated Deficit		Total
	Shares	Amount		Shares	Amount	Deficit	Total	
Balance at June 30, 2023	116,109,125	\$ 116	\$182,907	—	\$ —	\$ (195,689)		\$(12,666)
Net income								
Share-based compensation expense	—	—	4,388	—	—	—		4,388
Exercise of stock options	41,233	—	274	(17,032)	112	—		386
Employee stock purchase plan	209,390	—	688	—	—	—		688
Issuance of restricted stock	—	—	(73)	(11,080)	73	—		—
Restricted stock shares canceled/forfeited	—	—	185	28,112	(185)	—		—
Net income	—	—	—	—	—	8,534		8,534
Balance at September 30, 2023	116,359,748	\$ 116	\$188,369	—	\$ —	\$ (187,155)		\$ 1,330
Net income								
Balance at March 31, 2024								

	Common Stock Issued		Additional Paid-In Capital	Treasury Stock		Accumulated Deficit		Total
	Shares	Amount		Shares	Amount	Deficit	Total	
Balance at June 30, 2022	113,609,274	\$ 114	\$ 169,352	1,003	\$ (3)	\$ (183,066)		\$(13,603)
Share-based compensation expense	—	—	2,372	—	—	—		2,372
Exercise of stock options	49,666	—	132	(1,001)	5	—		137
Issuance of restricted stock	11,077	—	—	—	—	—		—
Restricted stock shares canceled/forfeited	—	—	9	1,836	(9)	—		—
Net loss	—	—	—	—	—	(8,426)		(8,426)
Balance at September 30, 2022	113,670,017	\$ 114	\$ 171,865	1,838	\$ (7)	\$ (191,492)		\$(19,520)

	Common Stock Issued		Additional Paid-In	Treasury Stock		Accumulated	Total
	Shares	Amount		Shares	Amount	Deficit	
Balance at December 31, 2022	113,705,447	\$ 114	\$ 173,804	—	\$ —	\$ (191,906)	\$ (17,988)
Share-based compensation	—	—	12,793	—	—	—	12,793
Employee stock purchase plan	444,809	—	1,368	—	—	—	1,368
Issuance of restricted stock	2,163,925	2	(268)	(73,335)	266	—	—
Restricted stock shares canceled/forfeited	—	—	378	90,367	(378)	—	—
Exercise of stock options	45,567	—	294	(17,032)	112	—	406
Net income	—	—	—	—	—	4,751	4,751
Balance at September 30, 2023	116,359,748	\$ 116	\$ 188,369	—	\$ —	\$ (187,155)	\$ 1,330

	Common Stock Issued		Additional Paid-In	Treasury Stock		Accumulated	Total
	Shares	Amount		Shares	Amount	Deficit	
Balance at December 31, 2021	112,703,926	\$ 113	\$ 165,695	778,710	\$ (4,017)	\$ (161,709)	\$ 82
Share-based compensation expense	—	—	10,798	—	—	—	10,798
Exercise of stock options	133,762	—	(697)	(151,239)	1,271	—	574
Issuance of restricted stock	832,329	1	(3,960)	(880,749)	3,959	—	—
Restricted stock shares canceled/forfeited	—	—	29	5,338	(29)	—	—
Shares repurchased for tax withholding	—	—	—	249,778	(1,191)	—	(1,191)
Net loss	—	—	—	—	—	(29,783)	(29,783)
Balance at September 30, 2022	113,670,017	\$ 114	\$ 171,865	1,838	\$ (7)	\$ (191,492)	\$ (19,520)

See notes to unaudited condensed consolidated financial statements

	Common Stock Issued		Additional Paid - in	Treasury Stock		Accumulated	Total
	Shares	Amount		Shares	Amount	Deficit	
Balance at December 31, 2022	113,705,447	\$ 114	\$ 173,804	—	\$ —	\$ (191,906)	\$ (17,988)
Share-based compensation expense	—	—	4,345	—	—	—	4,345
Issuance of restricted stock	1,439,676	1	(179)	(57,770)	178	—	—
Restricted stock shares canceled/forfeited	—	—	179	58,104	(179)	—	—
Employee stock purchase plan	235,419	—	680	—	—	—	680
Net loss	—	—	—	—	—	(4,983)	(4,983)
Balance at March 31, 2023	115,380,542	\$ 115	\$ 178,829	334	\$ (1)	\$ (196,889)	\$ (17,946)

MIMEDX GROUP, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(unaudited)

	Nine Months Ended September 30,			Three Months Ended March 31,	
	2023	2022		2024	2023
Cash flows from operating activities:	Cash flows from operating activities:		Cash flows from operating activities:		
Net income (loss)	\$ 4,751	\$(29,783)			

Adjustments to reconcile net income (loss) to net cash flows provided by (used in) operating activities:			
Net income (loss) from continuing operations			
Adjustments to reconcile net income (loss) from continuing operations to net cash flows provided by (used in) operating activities from continuing operations:			
Adjustments to reconcile net income (loss) from continuing operations to net cash flows provided by (used in) operating activities from continuing operations:			
Share-based compensation	Share-based compensation	12,793	10,798
Impairment of clinical trial assets		1,974	—
Change in deferred income taxes			
Loss on extinguishment of debt			
Depreciation	Depreciation	2,054	2,549
Non-cash lease expenses	Non-cash lease expenses	959	931
Bad debt expense	Bad debt expense	737	2,817
Amortization of intangible assets	Amortization of intangible assets	570	519
Impairment of goodwill		535	—
Loss on fixed asset disposal			
Accretion of asset retirement obligation			
Amortization of deferred financing costs	Amortization of deferred financing costs	373	348
Accretion of asset retirement obligation		70	69
Gain on fixed asset disposal		—	(17)
Amortization of deferred financing costs			

Amortization of deferred financing costs			
Increase (decrease) in cash resulting from changes in:	Increase (decrease) in cash resulting from changes in:	Increase (decrease) in cash resulting from changes in:	
Accounts receivable	Accounts receivable	(6,659)	(3,295)
Inventory	Inventory	(5,885)	(2,586)
Prepaid expenses	Prepaid expenses	3,718	1,467
Other assets	Other assets	1,024	(287)
Other assets			
Other assets			
Accounts payable	Accounts payable	323	1,090
Accrued compensation	Accrued compensation	1,511	495
Accrued expenses	Accrued expenses	(1,289)	1,711
Other liabilities	Other liabilities	(1,041)	905
Net cash flows provided by operating activities from continuing operations			
Net cash flows used in operating activities of discontinued operations			
Net cash flows provided by (used in) operating activities	Net cash flows provided by (used in) operating activities	16,518	(12,269)
Cash flows from investing activities:			
Cash flows from investing activities:			
Consideration paid pursuant to TELA APA (Note 12)			
Consideration paid pursuant to TELA APA (Note 12)			
Consideration paid pursuant to TELA APA (Note 12)			
Purchases of equipment	Purchases of equipment	(1,560)	(847)
Patent application costs	Patent application costs	(114)	(128)

Proceeds from sale of equipment	—	24
Patent application costs		
Patent application costs		
Net cash flows used in investing activities	Net cash flows used in investing activities	(1,674) (951)
Cash flows from financing activities:	Cash flows from financing activities:	
Cash flows from financing activities:		
Proceeds from Citizens Revolving Credit Facility		
Proceeds from Citizens Revolving Credit Facility		
Proceeds from Citizens Revolving Credit Facility		
Proceeds from Citizens Term Loan Facility		
Proceeds from exercise of stock options	Proceeds from exercise of stock options	406 574
Principal payments on finance lease	Principal payments on finance lease	(36) (29)
Stock repurchased for tax withholdings on vesting of restricted stock		— (1,191)
Prepayment premium on Hayfin term loan		
Deferred financing cost		
Repayment of Hayfin term loan		
Repayment of Citizens Revolving Credit Facility		
Principal payments on Citizens Term Loan Facility		
Stock repurchased for tax withholdings on vesting of restricted stock units		
Net cash flows used in financing activities		

Net cash flows provided by (used in)			
financing activities			
		370	(646)
Net change in cash			
Net change in cash			
Net change in cash	Net change in cash	15,214	(13,866)
Cash and cash equivalents, beginning of period	Cash and cash equivalents, beginning of period	65,950	87,083
Cash and cash equivalents, beginning of period			
Cash and cash equivalents, beginning of period			
Cash and cash equivalents, end of period	Cash and cash equivalents, end of period	\$81,164	\$ 73,217

See notes to unaudited condensed consolidated financial statements

**MIMEDX GROUP, INC.**  
**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, MARCH 31, 2024 AND 2023 AND 2022**

## 1. Nature of Business

MiMedx Group, Inc. (together with its subsidiaries, except where the context otherwise requires, “**MIMEDX**,” or the “**Company** “**Company**”) is a pioneer and leader in placental biologics focused on **delivering innovative** helping humans heal. With more than a decade of helping clinicians manage chronic and other hard-to-heal wounds, **MIMEDX** is dedicated to providing a leading portfolio of products for applications in the wound care, burn, and surgical sectors of healthcare. The Company's vision is to be the leading global provider of healing solutions through relentless innovation to patients and the healthcare professionals who treat them. restore quality of life. All of the Company's our products sold in the United States are regulated by the United States Food & Drug Administration (“**FDA** “**FDA**”).

The Company's product portfolio and product development focuses on Wound and Surgical markets.

The Company's business is focused primarily on the United States of America but the Company is pursuing opportunities for also has a small commercial presence in several international expansion, with specific focus on the sale of its placental tissue products in locations, including Japan.

During the three and nine months ended September 30, 2023, the Company operated as two defined, internal business units: Wound & Surgical and Regenerative Medicine. On June 20, 2023, the Company announced that it would disband its Regenerative Medicine business unit and suspended its associated Knee Osteoarthritis clinical trial program. All activities in Regenerative Medicine during the three months ended September 30, 2023 were part of the wind-down of the unit, primarily related to regulatory obligations associated with its clinical trial, and it is expected that these activities will materially conclude during the fourth quarter of 2023.

## 2. Significant Accounting Policies

Please see Note 2, *Significant Accounting Policies*, to the Company's Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023** (the “**2022 2023 Form 10-K**”), filed with the Securities and Exchange Commission (“**SEC**”) on **February 28, 2023** **February 28, 2024** for a description of all significant accounting policies.

### Basis of Presentation

**These** **The** unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“**GAAP**”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments considered necessary for a fair presentation of the results of operations for the periods presented have been included. The operating results for the three **and nine** months ended **September 30, 2023** **March 31, 2024** and **2022 2023** are not necessarily indicative of the results that may be expected for the full fiscal year. The balance sheet as of **December 31, 2022** **December 31, 2023** was derived from the audited consolidated financial statements at that date, but does not include all of the information and footnotes required by GAAP for complete financial statements.

These unaudited condensed consolidated financial statements should be read in conjunction with the historical consolidated financial statements of the Company included in the **2022 2023** Form 10-K.



## Reclassifications

Current portion of long term debt of \$1.0 million as of December 31, 2023, which was presented in other current liabilities in previously-issued financial statements, has been reclassified to be presented in a separate line item still within current liabilities in the March 31, 2024 balance sheet presentation.

## Principles of Consolidation

The consolidated financial statements include the accounts of MiMedx Group, Inc. and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated upon consolidation.

## Use of Estimates

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 consolidated financial statements and the reported consolidated statements of operations during the reporting period. Actual results could differ from those estimates. Significant estimates include estimated useful lives and potential impairment of property and equipment, estimates of impairment for goodwill and intangible assets, estimates of useful lives for intangible assets, estimates of loss for contingent liabilities, estimate of allowance for doubtful accounts, management's assessment of the Company's ability to continue as a going concern, estimate of fair value and the probable achievement of share-based payments, estimates of returns and allowances, and valuation of deferred tax assets.

## Share-Based Compensation

The Company grants share-based awards to employees and members of the Company's Board of Directors (the "Board"). Awards to employees and the Board are generally made annually. Grants are issued outside of the annual cadence for certain new hires, promotions, and other events.

The amount of expense to be recognized is determined by the fair value of the award using inputs available as of the grant date. The fair value of non-option share awards that are not subject to a market condition is the value of the common stock on the grant date. For non-option share awards that are subject to a market condition, the fair value of the common stock on the grant date is adjusted to reflect the value of the market condition, generally using a path-dependent pricing model, such as a Monte Carlo simulation.

The fair value of stock option grants is estimated using an option pricing model, as appropriate based on the terms of the grant. Use of a valuation model requires management to make certain assumptions with respect to selected model inputs, which generally follows the inputs to a Black-Scholes option pricing model. Absent the availability of an option market with similar terms to the awarded options, the Company infers an expectation for volatility using the historical volatility of daily price changes in its share price for a period equal to the contractual or expected term of the option, as applicable, subject to adjustment for price activity associated with certain events which are not expected to recur during the relevant term. The expected term is derived based on the Company's expectations for option exercise by the recipients. The Company uses U.S. Treasury yields with a maturity similar to the expected or contractual term, as applicable, as the basis for its risk-free interest rate assumption. The Company has never declared a dividend on its common stock and, therefore, assumes a dividend yield of 0%.

Expense is recognized over the requisite service period to achieve a vesting condition associated with an award, which can either be explicitly defined by the award, implied by its terms, or derived from potential market movements. In situations where multiple vesting conditions must be achieved, the longest service period is used as a basis for expense recognition. Derived service periods associated with market conditions are accelerated if such market conditions are met prior to the initially-assessed derived service period, but are not deferred if the market conditions are not met prior to the end of the initially-assessed derived service period.

For awards with only service-based vesting conditions, the Company recognizes share-based compensation expense on a straight-line basis through the vesting date of the last tranche of the award. For awards which vest based on more than service conditions, the Company recognizes share-based compensation expense using a graded-vesting method, treating each tranche as if it were a separately-granted award and recognizing expense through the vesting date of each individual tranche. In each scenario, the Company recognizes share-based compensation expense to the extent that the associated service and performance conditions are considered probable to occur. Determinations of probability are made each reporting period and the Company uses available evidence considered relevant for evaluating the performance conditions. The Company recognizes the cumulative effect of changes in the probability of occurrence in the period of re-evaluation. The probability of occurrence and ultimate resolution of a market condition is not considered in expense recognition. Consequently, the Company could recognize expense for awards that do not ultimately vest.

## Basic and Diluted Net Income (Loss) Per Common Share

Basic net income (loss) per common share is calculated as net income (loss) available to common stockholders divided by weighted average common shares outstanding for the applicable period. Net income (loss) available to common stockholders is calculated by adjusting net income (loss) for periodic accumulated dividends on the Company's Series B Convertible Preferred Stock ("Series B Preferred Stock"). This amount is divided by the weighted average common shares outstanding during the period.

Weighted average common shares outstanding is calculated as shares of the Company outstanding adjusted for the portion of the period for which they are outstanding. Unvested non-option share awards are excluded from the calculation of weighted average common shares outstanding until they have vested. Unexercised stock options are excluded from the calculation of weighted average common shares outstanding until they are exercised. Shares issuable pursuant to the Company's Employee Stock Purchase Plan ("ESPP") are included for the minimum number of shares issuable beginning at the point in time that all contingencies for share issuance are resolved.

Diluted net income (loss) per common share adjusts basic net income (loss) per common share for convertible securities, options, equity incentive awards, and other share-based payment awards which have yet to vest and vest only on the satisfaction of a service condition. Equity incentive awards and options that are subject to a performance or market condition are included only if the performance or market condition would be satisfied if the end of the applicable period were the end of the

performance period. In any case, these adjustments are reflected in the calculation of diluted net income (loss) per common share to the extent that they reduce basic net income (loss) per common share.

The Company uses the if-converted method to calculate the dilutive effect of the Series B Preferred Stock and other convertible securities to the extent they are outstanding. The if-converted method assumes that convertible securities are converted at the later of the issuance date and the beginning of the period. If the hypothetical conversion of convertible securities, and the consequential avoidance of any accumulated preferred dividends, would decrease basic net income (loss) per common share,

these effects are incorporated in the calculation of diluted net income (loss) per common share, adjusted for the portion of the period the securities were outstanding.

The Company uses the treasury stock method to calculate the dilutive effect of options, non-option share awards, and certain other share-based payments. The treasury stock method assumes that the proceeds from exercise are used to repurchase common shares at the weighted average market price during the period, increasing the denominator for the net effect of shares issued upon exercise less hypothetical shares repurchased.

Shares issuable pursuant to the ESPP are included in the calculation of diluted net loss per common share to the extent that such shares would be issued based on the share price at the conclusion of the period, to the extent such shares are not already included in the calculation of weighted average common shares outstanding.

Recently Adopted Issued Accounting Pronouncements Standards Not Yet Adopted

In March 2020, November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-04, 2023-07, "Reference Rate Reform Segment Reporting: Improvements to Reportable Segment Disclosures (Topic 848): Facilitation of 280". The standard improves disclosures about a public entity's reportable segments and addresses requests from investors for additional, more detailed information about a reportable segment's expenses. Additionally, ASU 2023-07 extends the Effects of Reference Rate Reform on Financial Reporting." ASU 2020-04 provides temporary expedients to accounting guidance for certain contract modifications and hedging arrangements to ease financial reporting burdens as a result of market transitions from certain reference rates, including the London Interbank Offered Rate disclosure requirements under Accounting Standards Codification ("LIBOR ASC") Topic 280 to entities with a single reportable segment. ASU 2023-07 is effective for annual reporting periods beginning after December 15, 2023, and interim periods in fiscal years beginning after December 15, 2024. The updates are effective immediately and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated As of March 31, 2024, the Company is evaluating the impact of this standard on or before December 31, 2024, its consolidated financial statements.

In June December 2023, the Company entered into Amendment No. 2 (the FASB issued ASU 2023-09, "Second Amendment Improvement to Income Tax Disclosures (Topic 740)") to the loan agreement, dated as of June 30, 2020, by and among the Company, Hayfin Services, LLP ("Hayfin"), an affiliate of Hayfin Capital Management LLP, which requires additional disclosures for income tax rate reconciliations, income taxes paid, and certain other parties, (as amended, tax disclosures. ASU 2023-09 is intended to enhance the "Hayfin Loan Agreement", pursuant to which the reference rate used to determine the interest rate was changed from the London Interbank Offered Rate ("LIBOR") transparency and decision usefulness of income tax disclosures. The amendments in ASU 2023-09 address investor requests for enhanced income tax information primarily through changes to the Secured Overnight Financing Rate ("SOFR") rate reconciliation and income taxes paid information. Adoption is required for annual periods beginning after December 15, 2024. Because The Company is currently evaluating the only terms impact of the Second Amendment that affected the Company's contractual cash flows were related to the changes in the reference rate, the Company adopted the optional guidance prescribed by Topic 848 to this transaction. The adoption of ASU 2020-04 and standard on its application to the Second Amendment did not materially impact the Company's unaudited condensed consolidated financial statements as of or for the three or nine months ended September 30, 2023, and related disclosures.

Recently Issued Accounting Pronouncements Not Yet Adopted

All other ASUs issued and not yet effective for the three and nine months ended September 30, 2023 as of March 31, 2024, and through the date of this report, were assessed and determined to be either not applicable or are expected to have minimal impact on the Company's current and future financial position and results of operations.

3. Accounts Receivable, Net

Accounts receivable, net, consisted of the following (in thousands):

		September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Accounts receivable, gross	Accounts receivable, gross	\$ 51,579	\$ 46,867		
Less: allowance for doubtful accounts	Less: allowance for doubtful accounts	(2,574)	(3,783)		

Accounts receivable, net	Accounts receivable, net	\$ 49,005	\$ 43,084
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Activity related to the Company's allowance for doubtful accounts for the three months ended September 30, 2023 and 2022 were March 31, 2024 was as follows (in thousands):

	2023	2022
Balance at July 1	\$ 2,196	\$ 3,471
Bad debt expense	447	426
Write-offs	(69)	(67)
Balance at September 30	\$ 2,574	\$ 3,830

#### Allowance for Doubtful Accounts

Balance at December 31, 2023	\$ 3,144
Bad debt expense	199
Write-offs	(77)
Balance at March 31, 2024	\$ 3,266

Activity related to the Company's allowance for doubtful accounts for the nine months ended September 30, 2023 and 2022 were as follows (in thousands):

	2023	2022
Balance at January 1	\$ 3,783	\$ 1,187
Bad debt expense	737	2,817
Write-offs	(1,946)	(174)
Balance at September 30	\$ 2,574	\$ 3,830

#### Allowance for Doubtful Accounts

Balance at December 31, 2022	\$ 3,783
Bad debt expense reversal	(60)
Write-offs	(122)
Balance at March 31, 2023	\$ 3,601

## 4. Inventory

Inventory consisted of the following (in thousands):

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Raw materials	\$ 838	\$ 810		
Work in process	10,547	6,855		
Finished goods	7,683	5,518		
Inventory	\$ 19,068	\$ 13,183		
Inventory				
Inventory				

## 5. Property and Equipment, Net

Property and equipment, net, consisted of the following (in thousands):

	September 30, 2023	December 31, 2022
Laboratory and clean room equipment	\$ 17,551	\$ 16,422
Furniture and equipment	15,255	15,016
Leasehold improvements	9,418	9,190
Construction in progress	1,656	1,983
Asset retirement cost	960	983
Finance lease right-of-use asset	189	189
Property and equipment, gross	45,029	43,783
Less: accumulated depreciation and amortization	(37,935)	(35,927)
Property and equipment, net	\$ 7,094	\$ 7,856

Depreciation expense for the three and nine months ended September 30, 2023 and 2022 is summarized in the table below (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Depreciation expense	\$ 653	\$ 831	\$ 2,054	\$ 2,549

Depreciation expense is allocated amongst cost of sales, research and development expense, and selling, general, and administrative expense on the unaudited condensed consolidated statements of operations.

	March 31, 2024	December 31, 2023
Laboratory and clean room equipment	\$ 14,504	\$ 13,954
Furniture and equipment	2,205	1,989
Leasehold improvements	8,141	8,141
Construction in progress	1,870	1,791
Asset retirement cost	889	938
Finance lease right-of-use asset	189	189
Property and equipment, gross	27,798	27,002
Less: accumulated depreciation and amortization	(20,458)	(20,028)
Property and equipment, net	\$ 7,340	\$ 6,974

## 6. Goodwill and Intangible Assets, Net

### Goodwill

The following table provides a summary of goodwill activity for the nine months ended September 30, 2023 (in thousands):

	Wound & Surgical	Regenerative Medicine	Goodwill
Balance as of December 31, 2022	\$ 19,441	\$ 535	\$ 19,976
Impairment of goodwill	—	(535)	(535)
Balance as of September 30, 2023	\$ 19,441	\$ —	\$ 19,441

There was no goodwill activity during the three months ended September 30, 2023 or during the three or nine months ended September 30, 2022.

### Impairment of Regenerative Medicine Business Unit

On June 20, 2023, the Company announced the disbanding of its Regenerative Medicine business unit and the suspension of its Knee Osteoarthritis clinical trial program. As a result of this event, the Company evaluated goodwill associated with the Regenerative Medicine reporting unit for potential impairment. The Company estimated fair value for the reporting unit using the income approach; specifically, a discounted cash flow method. As a result of this assessment, management concluded that the carrying value of the reporting unit exceeded its carrying value by an amount that exceeded its goodwill balance. Accordingly, the Company recognized an impairment loss for the full amount of the goodwill ascribed to the Regenerative Medicine reporting unit. The impairment loss is included as a component of restructuring expense in the unaudited condensed statement of operations for the nine months ended September 30, 2023.

### Intangible Assets, Net

Intangible assets, net, are summarized as follows (in thousands):

		September 30, 2023			December 31, 2022		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
March 31, 2024		March 31, 2024			December 31, 2023		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortized intangible assets	Amortized intangible assets						
Patents and know-how	Patents and know-how	\$ 9,969	\$ (7,638)	\$ 2,331	\$ 9,923	\$ (7,106)	\$ 2,817
Patents and know-how							
Patents and know-how							
Licenses	Licenses	1,000	(42)	958	1,000	(4)	\$ 996
Distribution rights							
Total amortized intangible assets							
Total amortized intangible assets							
Total amortized intangible assets	Total amortized intangible assets	\$10,969	\$ (7,680)	\$ 3,289	\$10,923	\$ (7,110)	\$ 3,813
Unamortized intangible assets:	Unamortized intangible assets:						
Unamortized intangible assets:							
Unamortized intangible assets:							
Tradenames and trademarks							
Tradenames and trademarks							
Tradenames and trademarks	Tradenames and trademarks	\$ 1,008		\$ 1,008	\$ 1,008		\$ 1,008
Patents in Process	Patents in Process	1,098		1,098	1,031		1,031
Total intangible assets	Total intangible assets	\$13,075		\$ 5,395	\$12,962		\$ 5,852

The Company recognized \$0.1 million of impairment of intangible assets during the three months ended March 31, 2024 related to patents which were abandoned.

Expected future amortization of intangible assets as of September 30, 2023 March 31, 2024, is as follows (in thousands):

Year ending December 31,	Estimated Amortization Expense
2024 (excluding the three months ended March 31, 2024)	\$ 1,708

2025	1,883
2026	1,729
2027	1,728
2028	1,726
Thereafter	1,780
Total amortized intangible assets	<u>\$ 10,554</u>

	Estimated Amortization Expense
Year ending December 31,	
2023 (excluding the nine months ended September 30, 2023)	\$ 190
2024	759
2025	364
2026	210
2027	209
Thereafter	1,557
Total amortized intangible assets	<u>\$ 3,289</u>

## 7. Accrued Expenses

Accrued expenses consisted of the following (in thousands):

		September 30, 2023	December 31, 2022		
	March 31, 2024			March 31, 2024	December 31, 2023
Commissions to sales agents	Commissions to sales agents	\$ 3,213	\$ 2,941		
Accrued rebates	Accrued rebates	1,244	707		
Legal and settlement costs	Legal and settlement costs	1,025	4,447		
Accrued Group Purchasing Organization fees					
Estimated sales returns	Estimated sales returns	910	659		
Accrued group purchasing organization fees		713	638		
Accrued clinical trials		694	90		
Accrued contract termination costs		547	—		
Accrued travel	Accrued travel	259	566		
Other	Other	839	976		
Accrued expenses	Accrued expenses	<u>\$ 9,444</u>	<u>\$ 11,024</u>		

## 8. Long Term Debt, Net

**Hayfin Loan** **Citizens Credit Agreement**

On **June 30, 2020** January 19, 2024, the Company entered into **the Hayfin Loan** a Credit Agreement **which provided the Company** (the **"Citizens Credit Agreement"**) with certain lenders party thereto, and Citizens Bank, N.A., as administrative agent (the **"Agent"**). The Citizens Credit Agreement provides for senior secured credit facilities in an aggregate principal amount of up to \$95.0 million consisting of: (i) a \$75.0 million senior secured revolving credit facility (the **"Revolving Credit Facility"**) with a **\$50** \$10.0 million letter of credit sublimit and a \$10.0 million swingline loan sublimit, and (ii) a \$20.0 million senior secured term loan facility (the **"Term Loan Facility"**) and, together with the Revolving Credit Facility, the **"Credit Facilities"**). **The Term Loan matures** All obligations are required to be paid in full on **June 30, 2025** January 19, 2029 (the **"Maturity Date"**). **Interest on** The Company has the option to obtain one or more incremental Term Loan Facilities and/or increase the commitments under the Revolving Credit Facility in an aggregate principal amount equal to the greater of (i) \$50.0 million and (ii) 1.00 times the Company's Consolidated EBITDA (as defined therein), each subject to the existing or any new lenders' election to extend additional term loans or revolving commitments.

At the Company's option, borrowings **is based on** under the Citizens Credit Agreement (other than any swingline loan) will bear interest at a rate per annum equal to (i) the Alternate Base Rate, as defined therein, or (ii) a Term SOFR as defined therein, in each case plus an applicable margin ranging from 1.25% and 2.50% with respect to Alternate Base Rate borrowings and 2.25% and 3.50% for Term SOFR borrowings, plus a fallback provision of **0.15%, subject** 0.1%. Swingline loans will bear interest at a **floor** rate per annum equal to one-month Term SOFR plus the applicable margin. The applicable margin will be determined based on the Company's consolidated total net leverage ratio.

The Company is required to pay a quarterly commitment fee on any unused portion of **1.5% (the "Floor")**, plus a **Margin** the Revolving Credit Facility, letter of **6.75% (the "Margin")**, credit fees, and other customary fees to the Agent and the Lenders. The Term Loan **carried an interest rate** Facility will amortize on a quarterly basis at 1.25% (for year one and two), 1.88% (for year three and four), and 2.5% (for year five) based on the aggregate principal amount outstanding under the Term Loan Facility, with the remainder due on the Maturity Date. The Company must make mandatory prepayments in connection with certain asset dispositions and casualty events, subject in each case to customary reinvestment rights. The Company may prepay borrowings under the Credit Facilities at any time, without premium or penalty, and may, at its option, reduce the aggregate unused commitments under the Revolving Credit Facility in whole or in part, in each case subject to the terms of **12.3%** the Credit Agreement. The Company must also comply with certain financial covenants, including a maximum total net leverage ratio and a minimum consolidated fixed charge coverage ratio, as **of September 30, 2023**, well as other customary restrictive covenants.

**As of September 30, 2023** On January 19, 2024, the Company **was in compliance with all applicable financial covenants** borrowed \$30.0 million under the Revolving Credit Facility and \$20.0 million under the Term Loan Facility. Proceeds from the initial drawings under the Credit Facilities together with cash on hand were used to repay in full the \$50.0 million principal amount and other outstanding obligations under the Company's prior senior secured term loan with Hayfin (the **"Hayfin Loan Agreement"**) and to pay related fees, premiums, costs and expenses (collectively with the entry into the Citizens Credit Agreement and the initial borrowings thereunder, the **"Debt Refinancing Transactions"**). The Company recorded a loss on extinguishment of debt of \$1.4 million. This amount is reflected as a part of interest expense, net on the unaudited condensed consolidated statement of operations for the three months ended March 31, 2024. The composition of the loss on extinguishment of debt was as follows (amounts in thousands):

	January 19, 2024	
Unamortized deferred financing costs	\$	781
Unamortized original issue discount		120
Prepayment premium		500
Loss on extinguishment of debt	\$	1,401

In addition, on February 27, 2024, the Company repaid the initial \$30.0 million drawing under the Revolving Credit Facility and had no outstanding borrowings under this facility as of March 31, 2024. Deferred financing costs and original issue discount allocated to the Revolving Credit Facility are amortized straight-line through the expiration of the commitment term. The Revolving Credit Facility is currently subject to a commitment fee of 0.25% per annum of the amount undrawn, which is recognized as interest expense.

Original issue discount and deferred financing costs incurred as part of the Credit Facilities were allocated between the Term Loan Facility and the Revolving Credit Facility on the basis of the maximum potential principal outstanding permitted under the Citizens Credit Agreement. The allocation of the deferred financing costs and original issue discount between the Term Loan Facility and the Revolving Credit Facility were as follows (in thousands):

		January 19, 2024			
		Term Loan Facility		Revolving Credit Facility	
		Long term debt		Other assets	
				Total	
Original issue discount	\$	224	\$	839	\$ 1,063
Deferred financing		54		202	256

The balances of the Term Loan Facility as of **September 30, 2023** March 31, 2024 and **December 31, 2022** the Hayfin Loan Agreement as of December 31, 2023 were as follows (in thousands):

	September 30, 2023	December 31, 2022
March 31, 2024		

	March 31, 2024		
	March 31, 2024		
	Current portion of long term debt		
	Current portion of long term debt		
	Current portion of long term debt		
Outstanding principal			
Outstanding principal			

Outstanding principal	Outstanding principal	\$ 50,000	\$ 50,000
Deferred financing costs	Deferred financing costs	(896)	(1,219)

Deferred financing costs			
Deferred financing costs			
Original issue discount			
Original issue discount			

Original issue discount	Original issue discount	(138)	(187)
Long term debt, net	Long term debt, net	\$ 48,966	\$ 48,594

Long term debt, net			
Long term debt, net			

The Citizens Term Loan Facility bears interest at a rate per annum equal to (i) the Alternate Base Rate, as defined therein, or (ii) a Term SOFR as defined therein, in each case plus an applicable margin ranging from 1.25% and 2.50% with respect to Alternate Base Rate borrowings and 2.25% and 3.50% for Term SOFR borrowings, plus a fallback provision of 0.1%. The applicable margin is determined based on the Company's consolidated total net leverage ratio. The Term Loan Facility carried an interest rate of 7.9% as of March 31, 2024. Interest expense related to the Term Loan Facility and the Hayfin Loan Agreement included in interest expense, net in the unaudited condensed consolidated statements of operations, was as follows (in amounts in thousands):

	Three Months Ended March 31,	
	2024	2023
Stated interest	\$ 661	\$ 1,436
Amortization of deferred financing costs	29	105
Accretion of original issue discount	13	16
Interest expense	\$ 703	\$ 1,557

Interest expense related to the Revolving Credit Facility included in interest expense, net in the unaudited condensed consolidated statements of operations, was as follows (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Stated interest	\$ 1,554	\$ 1,151	\$ 4,498	\$ 3,225
Amortization of deferred financing costs	111	103	323	302
Accretion of original issue discount	17	16	50	46



Interest expense	\$	1,682	\$	1,270	\$	4,871	\$	3,573

Net income (loss) from continuing operations					
Net income (loss) from continuing operations					
Income (loss) from discontinued operations, net of tax					
Income (loss) from discontinued operations, net of tax					
Income (loss) from discontinued operations, net of tax					
Net income (loss)					
Net income (loss)					
Net income (loss)					
Adjustments to reconcile to income (loss) available to common stockholders:					
Adjustments to reconcile to income (loss) available to common stockholders:					
Adjustments to reconcile to income (loss) available to common stockholders:					
Accumulated dividend on previously converted Series B Preferred Stock					
Accumulated dividend on previously converted Series B Preferred Stock					
Accumulated dividend on previously converted Series B Preferred Stock					
Net income (loss) available to common stockholders from continuing operations					
Net income (loss) available to common stockholders from continuing operations					
Net income (loss) available to common stockholders from continuing operations					
Weighted average common shares outstanding	Weighted average common shares outstanding	116,298,146	113,448,251	115,528,067	112,650,713
Weighted average common shares outstanding					
Weighted average common shares outstanding					
Basic net income (loss) per common share:					
Basic net income (loss) per common share:					

Basic net income (loss) per common share:									
Continuing operations									
Continuing operations									
Continuing operations									
Discontinued operations									
Discontinued operations									
Discontinued operations									
Basic net income (loss) per common share	Basic net income (loss) per common share	\$	0.06	\$	(0.09)	\$	(0.00)	\$	(0.31)
Basic net income (loss) per common share									
Basic net income (loss) per common share									

Diluted Net Income (Loss) Per Common Share

The following table sets forth the computation of diluted net loss income (loss) per common share (in thousands, except share and per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net income (loss) available to common stockholders	\$ 6,761	\$ (10,096)	\$ (433)	\$ (34,667)
Net income (loss) available to common stockholders from continuing operations				
Net income (loss) available to common stockholders from continuing operations				
Net income (loss) available to common stockholders from continuing operations				
Adjustments:	Adjustments:			
Accumulated dividends on Series B Convertible Preferred Stock	1,773	1,670	5,184	4,884
Adjustments:				
Adjustments:				
Dividends on Series B Preferred Stock				
Dividends on Series B Preferred Stock				
Dividends on Series B Preferred Stock				
Less: antidilutive adjustments				
Less: antidilutive adjustments				
Less: antidilutive adjustments	(1,773)	(1,670)	(5,184)	(4,884)
Total adjustments	—	—	—	—
Total adjustments				
Total adjustments				
Numerator	\$ 6,761	\$ (10,096)	\$ (433)	\$ (34,667)
Numerator				
Numerator				

Net income (loss) available to common shareholders from continuing operations					
Net income (loss) available to common shareholders from continuing operations					
Net income (loss) available to common shareholders from continuing operations					
Income (loss) from discontinued operations, net of tax					
Income (loss) from discontinued operations, net of tax					
Income (loss) from discontinued operations, net of tax					
Weighted average shares outstanding					
Weighted average shares outstanding					
Weighted average shares outstanding	Weighted average shares outstanding	116,298,146	113,448,251	115,528,067	112,650,713
Adjustments:					
Adjustments:					
Adjustments:					
Potential common shares (a)					
Potential common shares (a)					
Potential common shares (a)	Potential common shares (a)				
Restricted stock unit awards	Restricted stock unit awards	1,845,832	—	—	—
Restricted stock unit awards					
Restricted stock unit awards					
Outstanding stock options					
Outstanding stock options					
Outstanding stock options	Outstanding stock options	1,131,410	—	—	—
Performance stock unit awards	Performance stock unit awards	35,441	—	—	—
Restricted stock awards		15,767	—	—	—
Performance stock unit awards					
Performance stock unit awards					
Employee stock purchase plan	Employee stock purchase plan	1,113	—	—	—
Employee stock purchase plan					
Employee stock purchase plan					
Total adjustments					
Total adjustments					
Total adjustments	Total adjustments	3,029,563	—	—	—
Weighted average shares outstanding adjusted for potential common shares	Weighted average shares outstanding adjusted for potential common shares	119,327,709	113,448,251	115,528,067	112,650,713
Weighted average shares outstanding adjusted for potential common shares					
Weighted average shares outstanding adjusted for potential common shares					

Diluted net income (loss) per common share:									
Diluted net income (loss) per common share:									
Diluted net income (loss) per common share:									
Continuing operations									
Continuing operations									
Continuing operations									
Discontinued operations									
Discontinued operations									
Discontinued operations									
Diluted net income (loss) per common share	Diluted net income (loss) per common share	\$	0.06	\$	(0.09)	\$	(0.00)	\$	(0.31)
Diluted net income (loss) per common share									
Diluted net income (loss) per common share									

(a) Weighted average common shares outstanding for the calculation of diluted net income (loss) per common share does not include the following adjustments for potential common shares below because their effects were determined to be antidilutive for the periods presented.

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Series B Convertible Preferred Stock		30,445,997	28,685,739	29,559,946	27,850,916
		Three Months Ended March 31,			
		Three Months Ended March 31,			
		Three Months Ended March 31,			
		2024			
		2024			
		2024			
Series B Preferred Stock					
Series B Preferred Stock					
Series B Preferred Stock					
Restricted stock unit awards	Restricted stock unit awards	—	474,355	1,219,776	574,507
Restricted stock unit awards					
Restricted stock unit awards					
Restricted stock awards					
Restricted stock awards					
Restricted stock awards					
Employee stock purchase plan					
Employee stock purchase plan					
Employee stock purchase plan					
Performance stock unit awards	Performance stock unit awards	—	59,996	13,425	40,141
Employee stock purchase plan		—	4,536	372	1,517
Restricted stock awards		—	22,327	23,733	293,778
Performance stock unit awards					
Performance stock unit awards					

Outstanding stock options				
Outstanding stock options				
Outstanding stock options	Outstanding stock options	—	22,528	107,897
Potential common shares	Potential common shares	30,445,997	29,269,481	30,925,149
Potential common shares				
Potential common shares				

## 10. Equity

### Series B Convertible Preferred Stock

The Company has not declared or paid any dividends on the Series B Preferred Stock since issuance. Dividends accumulated but not paid as of September 30, 2023 were \$19.0 million. As this amount has not been declared, the Company has not recorded this amount on its unaudited condensed consolidated balance sheet as of September 30, 2023.

Based on accumulated dividends as of September 30, 2023, the Series B Preferred Stock was convertible into an aggregate of 30,906,441 shares of the Company's common stock as of that date.

### Equity Incentive Awards

The Company has issued restricted stock awards ("RSAs"), restricted stock unit awards ("RSUs"), and performance stock unit awards ("PSUs", together with RSAs and RSUs, collectively, the "Equity Incentive Awards") to its employees. The following is summary information for Equity Incentive Awards for the nine months ended September 30, 2023.

As of September 30, 2023, there was \$24.1 million of unrecognized share-based compensation expense related to the Equity Incentive Awards. This expense is expected to be recognized over a weighted-average period of 2.33 years, which approximates the remaining vesting period of these grants. The table below summarizes activity of unvested Equity Incentive Awards by award type from January 1, 2023 through September 30, 2023.

	RSA		RSU		PSU	
	Number of Shares	Weighted-Average Grant Date Fair Value	Number of Shares	Weighted-Average Grant Date Fair Value	Number of Shares	Weighted-Average Grant Date Fair Value
Unvested at January 1, 2023	122,755	\$ 6.13	4,774,971	\$ 6.28	241,072	\$ 4.62
Granted	—	—	3,266,244	4.65	3,851,427	3.83
Vested	(13,624)	6.18	(2,237,260)	6.20	—	—
Forfeited	(90,367)	5.83	(1,715,136)	5.45	(365,227)	4.24
Unvested at September 30, 2023	18,764	\$ 7.55	4,088,819	\$ 5.38	3,727,272	\$ 3.84

### Stock Options

A summary of stock option activity for the nine months ended September 30, 2023 is presented below:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at January 1, 2023	933,894	\$ 6.46		
Granted	3,694,000	3.77		
Exercised	(62,599)	6.50		
Vested options expired	(423,213)	5.81		
Outstanding at September 30, 2023	4,142,082	4.13	6.31	13,178,214
Exercisable at September 30, 2023	448,082	\$ 7.06	0.60	\$ 174,314

As of September 30, 2023, there was \$5.5 million of unrecognized share-based compensation expense related to Stock Options. This expense is expected to be recognized over a weighted-average period of 2.22 years.

#### CEO Performance Grant

On January 27, 2023, the Company's Board of Directors appointed Joseph H. Capper to serve as Chief Executive Officer. The Company entered into a Letter Agreement with Mr. Capper that included, among other things, a grant of 3,300,000 PSUs (the "**CEO Performance PSUs**") and a non-qualified stock option (the "**CEO Performance Option**", collectively with the CEO Performance PSUs, the "**CEO Performance Grant**") for 3,600,000 shares of the Company's common stock. In addition to continued employment with the Company, the occurrence and extent of vesting of each component of the CEO Performance Grant is dependent upon the Company's operating and share price performance: the CEO Performance PSUs vest on the basis of achieved revenue growth, while the CEO Performance Option vests on the basis of share price appreciation.

#### CEO Performance PSUs

The CEO Performance PSUs vest in a single tranche on the earlier of the filing date of the Company's 2026 Annual Report on Form 10-K and March 15, 2027. The occurrence and extent of vesting depends on the Company's compound annual growth rate ("**CAGR**") achieved with respect to its revenue growth between the year ended December 31, 2022 and the year ending December 31, 2026. The PSUs may vest with respect to 50% to 200% of the granted number of PSUs, depending on the extent of CAGR achievement. Failure to achieve the CAGR associated with 50% of achievement would result in no vesting.

Management determined the probable level of vesting using internally-developed forecasts for the relevant period representing the Company's best estimate for revenue, with a factor applied to calculate the highest level of CAGR evaluated to be probable of occurrence based on that estimate. The Company recognized \$0.4 million and \$1.1 million of expense related to the CEO Performance PSUs during the three and nine months ended September 30, 2023, respectively.

#### CEO Performance Option

The CEO Performance Option grants Mr. Capper the right to purchase up to 3,600,000 shares of common stock for \$3.70 per share. The CEO Performance Option vests based on the satisfaction of service and market conditions. Mr. Capper may vest in 25% of the CEO Performance Option on each of the first four anniversary dates of the date of grant provided that he remains employed by the Company and provided that specified share price goals are achieved at any point between the date of grant and January 31, 2027. There are three separate share price goals associated with the CEO Performance Option. If specified share price goals are met at one level, one-third of the option may vest, at a second level, a further one-third may vest, and at a third level, the full amount of the option may vest. Satisfaction of the share price goals is based on the average of the closing price of the Company's common stock during any 20 consecutive trading days through January 31, 2027 exceeding the stipulated share price goal. The CEO Performance Option expires on February 1, 2030.

The Company estimated the fair value of the awards using a Monte Carlo simulation using the following assumptions:

	Assumption	
Stock price on grant date	\$	3.70
Exercise price	\$	3.70
Risk-free interest rate		3.58 %
Expected volatility (annualized)		75.00 %
Dividend yield		— %
Weighted average grant date fair value	\$	1.93

The risk-free interest rate was derived based on the U.S. Treasury Yield curve in effect at the date of grant for maturities of similar periods to the contractual term. The expected volatility was estimated principally based on the Company's historical daily stock price movements for a term similar in length to the contractual term. The dividend yield was based on the Company's history of dividends on its common stock. The fair value was determined using an expected term which reflects the anticipated holding and post-vesting behavior pattern, calculated for each individual simulation.

The total grant date fair value of the CEO Performance Option was \$7.0 million. The fair value associated with each tranche of the award will be recognized, straight-line, over the associated requisite service period for that tranche, subject to acceleration if the market condition is met prior to the end of the derived service period. Failure to meet the market condition for an award does not result in reversal of previously-recognized expense, so long as the service is provided for the duration of the required service period. The Company recognized \$0.7 million and \$2.0 million of expense related to the CEO Performance Option during the three and nine months ended September 30, 2023, respectively.

#### CFO Inducement Grant

On July 5, 2023, the Company announced that Doug Rice was appointed to serve as Chief Financial Officer of the Company, effective that day. Mr. Rice's compensation included, among other things, a grant of 162,000 PSUs, 97,200 RSUs, and 94,000 stock options (the "**CFO Options**"), as a material inducement to his hiring.

The PSUs vest based on a three-year performance period ending on December 31, 2025 based upon the achievement of specified performance conditions, subject to Mr. Rice's continued employment, except in the case of Mr. Rice's death or disability. The awards can vest between 50% and 150% of the original number of PSUs, depending on actual performance. Vesting is limited to 100% of the award in the event that certain share price conditions are not achieved. The total grant date fair value of the PSUs was \$1.5 million.

The RSUs vest in three equal tranches on each of the first three anniversary dates of the grant date, provided Mr. Rice remains in continuous service with the Company. The total grant date fair value of the RSUs was \$0.6 million.

The CFO Options vest in four equal tranches on each of the first four anniversary dates of the grant date, subject to Mr. Rice's continued employment. The CFO Options expire on July 5, 2030. The total grant date fair value of the CFO Options was \$0.4 million.

## 11. Income Taxes

On a continuing operations basis, the effective tax rates for the Company were 6.5%, 20.6% and (0.6) (2.7)% for the three months ended September 30, 2023, March 31, 2024 and 2022, 2023, respectively. The Restricted stock vestings impacted the effective tax rates for the Company were 10.7% and (0.6)% three months ended March 31, 2024. Net operating losses generated for the nine three months ended September 30, 2023 and 2022, respectively. The effective tax rates for 2023 reflect the utilization of net operating losses and certain tax credits. The effective tax rates for 2022 reflect net operating losses March 31, 2023 were offset by a valuation allowance.

## 12. Supplemental Disclosure of Cash Flow and Non-cash Investing and Financing Activities

Selected cash payments, receipts, and non-cash activities are as follows (in thousands):

		Nine Months Ended September 30,		Three Months Ended March 31,		Three Months Ended March 31,	
		2023	2022	2024		2023	
Cash paid for interest	Cash paid for interest	\$4,496	\$3,233				
Cash paid for income taxes	Cash paid for income taxes	210	184				
Non-cash activities:	Non-cash activities:						
Present value of minimum earn out							
Present value of minimum earn out							
Present value of minimum earn out							
Right of use assets arising from operating lease liabilities							
Issuance of shares pursuant to employee stock purchase plan							
Issuance of shares pursuant to employee stock purchase plan							
Issuance of shares pursuant to employee stock purchase plan	Issuance of shares pursuant to employee stock purchase plan	1,368	—				



Purchases of equipment in accounts payable	Purchases of equipment in accounts payable	126	353
Right of use assets arising from operating lease liabilities		—	(37)
Consideration payable to TELA			
Unpaid deferred financing costs			

### 13.12. Commitments and Contingencies

#### Nordic Agreement TELA and Regenity Agreements

In June 2022, On March 15, 2024, the Company entered into a collaboration agreement an Asset Purchase Agreement (the “**Nordic TELA APA**”) with TELA Bio, Inc. (“**TELA**”) to obtain exclusive rights to sell and market a 510(k)-cleared collagen particulate xenograft product in the United States pursuant to a preexisting Manufacturing and Supply Agreement (the “**TELA-Regenity Supply Agreement**”) between TELA and Regenity Biosciences, Inc. (“**Regenity**”), which retains all intellectual property rights and regulatory clearances related to the product. Pursuant to the TELA APA, the Company paid \$5.0 million of initial consideration to TELA and will be required to make future payments of \$0.4 million to acquire TELA's remaining product inventory, as well as future profit share payments (the “**Profit Share Payments**”) of between a minimum of \$3.0 million and a maximum of \$7.0 million based on MIMEDX's net sales of the product over the two-years following its commercialization of the product.

Simultaneously with entry into the TELA APA, the Company executed a new Manufacturing and Supply Agreement (the “**Supply Agreement**”) with Nordic Bioscience Clinical Development A/S (“**NBCD**”) Regenity, replacing the previous TELA-Regenity Supply Agreement. The Supply Agreement maintains MIMEDX's exclusive right to provide full operational support sell and market the product in the United States and requires MIMEDX to purchase a minimum amount of the xenograft product from Regenity annually through December 31, 2033. Should MIMEDX fail to meet a purchasing minimum in any one period, it has the option (among others) to amend its distribution rights under the Supply Agreement to be non-exclusive.

The transaction was accounted for as an acquisition of assets. The cost to acquire the assets on the transaction date was assessed to be \$8.1 million, reflecting the \$5.0 million of initial consideration, \$0.4 million to acquire inventory, and \$2.7 million, reflecting the fair value of the minimum amount of the Profit Share Payments, were allocated amongst the assets acquired. The Company assigned \$7.6 million to the distribution rights acquired and \$0.5 million to inventory. These amounts are reflected in the consolidated balance sheets as part of intangible assets, net and inventory, respectively, on the unaudited condensed consolidated balance sheet as of March 31, 2024.

The \$2.7 million fair value for the minimum amount of Profit Share Payments reflects the anticipated timing of such Profit Share Payments, discounted to present value at a discount rate approximating the Company's KOA clinical trial program. Under borrowing rate plus a risk premium.

Of the terms minimum Profit Share Payment, \$1.1 million is reflected as part of other current liabilities in the unaudited condensed consolidated balance sheet as of March 31, 2024, reflecting the extent of the Nordic Agreement, the Company was obligated obligation that is anticipated to pay \$10.2 million upon the achievement be repaid within twelve months of specified milestones over the course of the clinical trial. In July 2023, the Company terminated the Nordic Agreement, in accordance with which the Company is obligated to reimburse NBCD for services performed through the effective termination date and for non-cancelable obligations reasonably incurred prior to that date. In addition, the Company and NBCD have certain regulatory obligations for all trial participants enrolled The remaining balance is reflected in the study prior to the suspension of clinical trial activities. Refer to Note 16, “Restructuring,” for additional discussion. other liabilities.

#### Litigation and Regulatory Matters

In the ordinary course of business, the Company and its subsidiaries may be a party to pending and threatened legal, regulatory, and governmental actions and proceedings (including those described below). In view of the inherent difficulty of predicting the outcome of such matters, particularly where the plaintiffs or claimants seek very large or indeterminate damages or where the matters present novel legal theories or involve a large number of parties, the Company generally cannot predict what the eventual outcome of the pending matters will be, what the timing of the ultimate resolution of these matters will be, or what the

eventual recovery, loss, fines or penalties related to each pending matter may be. The Company's Company's unaudited condensed consolidated balance sheet as of September 30, 2023 March 31, 2024 reflects the Company's Company's current best estimate of probable losses associated with these matters, including costs to comply with various settlement agreements, where applicable. For more information regarding the Company's legal proceedings, refer to Note 16, “Commitments and Contingencies” in the 2022 2023 Form 10-K.

The Company has not accrued for any potential losses related to legal matters as of September 30, 2023 March 31, 2024. The Company made no payments toward the resolution of legal matters involving the Company during the three months ended March 31, 2024. The Company paid \$0.2 million during the three months ended March 31, 2023.

The following is a description of certain litigation and regulatory matters to which the Company is a party:

#### **Securities Class Action**

On January 16, 2019, the United States District Court for the Northern District of Georgia entered an order consolidating two purported securities class actions (MacPhee v. MiMedx Group, Inc., et al. filed February 23, 2018 and Kline v. MiMedx Group, Inc., et al. filed February 26, 2018). The order also appointed Carpenters Pension Fund of Illinois ("CPFI") as lead plaintiff. On May 1, 2019, CPFI filed a consolidated amended complaint, naming as defendants the Company, Michael J. Senken, Parker H. "Pete" Petit, William C. Taylor, Christopher M. Cashman and Cherry Bekaert & Holland LLP. The amended complaint (the "Securities Class Action Complaint") alleged violations of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Rule 10b-5 promulgated thereunder, and Section 20(a) of the Exchange Act. It asserted a class period of March 7, 2013 through June 29, 2018. Following the filing of motions to dismiss by the various defendants, CPFI was granted

leave to file an amended complaint. CPFI filed its amended complaint against the Company, Michael J. Senken, Parker H. Petit, William C. Taylor, and Cherry Bekaert & Holland (Christopher Cashman was dropped as a defendant) on March 30, 2020. The defendants filed motions to dismiss on May 29, 2020. On March 25, 2021, the Court granted defendants' respective motions to dismiss, finding that CPFI lacked standing to bring the underlying claims and also could not establish loss causation because it sold all of its shares in the Company prior to any corrective disclosures, and dismissed the case. On April 22, 2021, CPFI filed a motion for reconsideration of the dismissal and for leave to amend to add a new plaintiff to attempt to cure the standing and loss causation issues. On January 28, 2022, the Court denied CPFI's motion to reconsider and motion to substitute class representative. On February 25, 2022, CPFI filed a Notice of Appeal in the 11th Circuit Court of Appeals. On July 10, 2023, the Court of Appeals affirmed the District Court's dismissal of the case and the denial of the motion for leave to amend. On July 31, 2023, CPFI filed a petition for rehearing *en banc*, which was denied on September 6, 2023.

*Welker v. MiMedx, et. al.*

On November 4, 2022, Troy Welker and Min Turner, former option holders optionholders of the Company, brought a lawsuit in Fulton County State Court against the Company, former directors Terry Dewberry and Charles Evans, and former officers Parker H. "Pete" Petit, William C. Taylor, and Michael Senken alleging violations of the Georgia Racketeer Influenced and Corrupt Organizations ("RICO") Act against all defendants, and conspiracy to violate the Georgia RICO Act and breach of fiduciary duty against the individual defendants. On motion by the Company, the case has been moved to the Fulton County Business Court. The Company and the individual defendants filed answers and motions to dismiss, which were denied on the RICO claims, but granted with respect to the breach of fiduciary duty claims against the individual defendants. The Company is defending against the allegations and removed the case is obligated to the United States District Court for the Northern District indemnify certain of Georgia. Plaintiffs filed a motion its current and former officers and directors who are party to remand back to state court, which was granted. The Company has filed its answer and a motion to dismiss, which is currently pending. this proceeding.

#### **Former Employee Litigation and Related Matters**

On January 12, 2021, the Company filed suit in the Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida (MiMedx Group, Inc. v. Petit, et. al.) against its former CEO, Parker H. "Pete" Petit, and its former COO, William C. Taylor, seeking a determination of its rights and obligations under indemnification agreements with Petit and Taylor following a federal jury's guilty verdict against Petit for securities fraud and Taylor for conspiracy to commit securities fraud. On March 26, 2024, the Company filed an amended complaint against only Petit as the Company previously reached a settlement with Taylor. The Company is seeking a declaratory judgment that it Petit is not obligated entitled to indemnify or advance expenses to Petit and Taylor indemnification in connection with certain cases to which Petit and Taylor are parties and the Company is also seeking to recoup amounts previously paid on behalf of Petit and Taylor in connection with such cases. On April 22, 2021, Petit and Taylor filed an answer and asserted counterclaims against the Company alleging breach of their indemnification agreements, breach of the covenant of good faith and fair dealing with respect to their indemnification agreements, and seeking a declaration that the Company remains obligated to indemnify and advance fees in connection with certain cases. Petit and Taylor simultaneously also filed a motion seeking to compel the Company to advance and reinstate its payments of Petit and Taylor's legal expenses. The Company opposed Petit and Taylor's motion and a hearing was set for June 23, 2021. At the joint request of the parties, the hearing was cancelled to allow the parties to attend a mediation to attempt a resolution of this matter; such mediation was held on August 11, 2021.

Following the mediation, As noted above, the Company and Mr. Taylor reached an agreement to settle the matter between them. Negotiations with Mr. Petit are ongoing.

#### **Other Matters**

Under the Florida Business Corporation Act and agreements with its current and former officers and directors, the Company is obligated to indemnify its current and former officers and directors who are made party to a proceeding, including a proceeding brought by or in the right of the corporation, with certain exceptions, and to advance expenses to defend such matters. The Company has previously borne substantial costs to satisfy these indemnification and expense advance obligations and may continue to incur such costs in the future. Costs incurred pursuant to these agreements are included in investigation, restatement and related expense in the unaudited condensed consolidated statements of operations.

In addition to the matters described above, the Company is a party to a variety of other legal matters that arise in the ordinary course of the Company's business, none of which are deemed to be individually material at this time. Due to the inherent uncertainty of litigation, there can be no assurance that the resolution of any particular claim or proceeding would not have a material adverse effect on the Company's business, results of operations, financial position or liquidity.

#### **14.13. Revenue**

##### **Net Sales by Site of Service**

The Company MIMEDX has three main sites of service for its products (1) Hospital settings and wound care clinics, which are stable reimbursement settings in which products are used for surgical applications, (2) Private offices, which generally represents doctors and practitioners with independent operations, and (3) Other, which includes federal facilities, international sales, and other sites of service.

Below is a summary of net sales by site of service (in thousands):

		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Three Months Ended March 31,					
Three Months Ended March 31,					
Three Months Ended March 31,					
		2024			
		2024			
		2024			
Hospital					
Hospital					
Hospital	Hospital	\$ 47,350	\$ 40,174	\$ 136,108	\$ 116,081
Private Office	Private Office	22,951	19,572	68,188	54,768
Private Office					
Private Office					
Other					
Other					
Other	Other	11,411	7,943	30,349	22,617
Total	Total	\$ 81,712	\$ 67,689	\$ 234,645	\$ 193,466
Total					
Total					

#### Net Sales by Product Line

MIMEDX has two product lines (1) Wound, which reflects products typically used in Advanced Wound Care settings, including the treatment of chronic, non-healing wounds, and (2) Surgical, which reflects products principally used in surgical settings, including the closure of acute wounds or to protect and reinforce tissues and/or regions of interest. The Company manages its product portfolio and pipeline, based upon opportunities in each of these settings.

Below is a summary of net sales by product line (in thousands):

		Three Months Ended March 31,	
		2024	2023
Wound	\$	57,049	\$ 45,206
Surgical		27,660	26,470
Total	\$	84,709	\$ 71,676

The Company did not have significant foreign operations or a single external customer from which 10% or more of revenues were derived during the three or nine months ended September 30, 2023 March 31, 2024 or 2022, 2023.

#### AXIOFILL

#### Net Sales by Product

The Company has two primary classes received a determination letter on March 25, 2024 reaffirming the FDA's position that AXIOFILL does not meet the regulatory classification requirements of products: (1) Advanced Wound Care, a Human Cell, Tissue or Section 361, products, consisting of its tissue and cord sheet allograft products as well as certain particulate products subject to regulation Cellular or Tissue-based Product under Section 361 of the Public Health Service Act. The Company strongly disagrees with this determination and related regulations ("Section 361"), and (2) Section 351 products, consisting of has filed suit in the Company's micronized and certain other particulate products subject to regulation under Section 351 of the Public Health Service Act and related regulations ("Section 351"). Advanced Wound Care is further disaggregated between the Company's Tissue/Other and Cord products.

Below is a summary of net sales by class of product (in thousands):

		Three Months Ended September 30,	Nine Months Ended September 30,

	2023	2022	2023	2022
Advanced Wound Care				
Tissue/Other	\$ 75,570	\$ 61,131	\$ 216,825	\$ 174,256
Cord	6,066	5,678	17,259	17,165
Total Advanced Wound Care	81,636	66,809	234,084	191,421
Section 351 <sup>(1)</sup>	76	880	561	2,045
Total	\$ 81,712	\$ 67,689	\$ 234,645	\$ 193,466

(1) Revenue recognized from collections relating to revenue transactions for which performance obligations were fulfilled prior to October 1, 2019, the date at which the Company changed its pattern of revenue recognition, U.S. District Court for the three and nine months ended September 30, 2022 Northern District of \$0.1 million and \$0.2 million, respectively, which were separately presented in previously-issued financial statements, are presented as part of Section 351 in Georgia against the table above, FDA on this matter.

## 15. Segment Information 14. Discontinued Operations

The Company had two reportable segments during the three and nine months ended September 30, 2023: Wound & Surgical and Regenerative Medicine.

- **Wound & Surgical** focused on the Advanced Wound Care and Surgical Recovery markets through the sale Disbanding of the Company's portfolio of products and product development to serve these primary end markets. Its platform technologies include tissue allografts derived from human placental membrane (EPIFIX®, AMNIOFIX®, and AMNIOEFFECT®), tissue allografts derived from human umbilical cord (EPICORD® and AMNIOCORD®), and a particulate extracellular matrix derived from human placental disc (AXIOFILL®). This segment is also responsible for international sales of the Company's Section 351 products.
- Prior to June 20, 2023, **Regenerative Medicine** focused solely on Regenerative Medicine technologies, specifically progressing the Company's placental biologics platform towards registration as an FDA-approved biological drug. Business Unit

On June 20, 2023, the Company announced a plan to disband the disbanding of its Regenerative Medicine business unit and suspended the suspension of its Knee Osteoarthritis clinical trial program. The During the fourth quarter of 2023, the Company is actively managing wind-down activities for its Regenerative Medicine business unit, primarily related to materially completed the regulatory obligations associated with its the clinical trial.

### Financial Statement Impact of Discontinued Operations

The Company expects that these activities will materially conclude income and expenses of the discontinued operation have been classified as income (loss) from discontinued operations in the fourth quarter of 2023.

The accounting policies of the segments were the same as the Company's accounting policies. See Note 2, "Significant Accounting Policies," included in the 2022 Form 10-K.

The Company evaluated the performance of its segments and allocated resources based on segment contribution, defined as net sales less (i) cost of sales, (ii) selling, general and administrative expense, (iii) research and development expense, (iv) amortization of intangible assets, and (v) restructuring. The only components which comprised income (loss) before income tax provision that were not included in operating income (loss) were interest expense, net and other expense, net.

The Company did not allocate any assets to the reportable segments. No asset information was reported or disclosed to the chief operating decision maker in the financial information for each segment.

Net sales and segment contribution by each reportable segment for the three months ended September 30, 2023 were as follows (in thousands):

	Wound & Surgical	Regenerative Medicine	Corporate & Other	Consolidated
Net sales	\$ 80,376	\$ —	\$ 1,336	\$ 81,712
Cost of sales	13,305	—	1,485	14,790
Selling, general and administrative expense	38,687	—	13,884	52,571
Research and development expense	3,175	—	—	3,175
Restructuring	—	208	—	208
Amortization of intangible assets	—	—	190	190
Segment contribution	\$ 25,209	\$ (208)		
Investigation, restatement and related expense				(38)
Operating income			\$	10,816
<i>Supplemental information</i>				
Depreciation expense	\$ 423	\$ —	\$ 230	\$ 653
Share-based compensation	\$ 1,902	\$ —	\$ 2,486	\$ 4,388

Net sales and segment contribution by each reportable segment for the three months ended September 30, 2022 were as follows (in thousands):

	Wound & Surgical	Regenerative Medicine	Corporate & Other	Consolidated
Net sales	\$ 66,873	\$ —	\$ 816	\$ 67,689
Cost of sales	11,159	—	1,029	12,188
Selling, general and administrative expense	35,530	—	17,945	53,475
Research and development expense	1,680	4,273	—	5,953
Amortization of intangible assets	—	—	175	175
Segment contribution	<u>\$ 18,504</u>	<u>\$ (4,273)</u>		
Investigation, restatement and related expense				3,001
Operating loss			\$	(7,103)
<i>Supplemental information</i>				
Depreciation expense	\$ 451	\$ 36	\$ 344	\$ 831
Share-based compensation	\$ 1,945	\$ 347	\$ 80	\$ 2,372

Net sales and segment contribution by each reportable segment for the nine months ended September 30, 2023 were as follows (in thousands):

	Wound & Surgical	Regenerative Medicine	Corporate & Other	Consolidated
Net sales	\$ 231,466	\$ —	\$ 3,179	\$ 234,645
Cost of sales	37,373	—	3,419	40,792
Selling, general and administrative expense	114,853	—	41,920	156,773
Research and development expense	6,330	11,838	—	18,168
Restructuring	—	3,464	—	3,464
Amortization of intangible assets	—	—	570	570
Segment contribution	<u>\$ 72,910</u>	<u>\$ (15,302)</u>		
Investigation, restatement and related expense				4,652
Operating income			\$	10,226
<i>Supplemental information</i>				
Depreciation expense	\$ 1,208	\$ 135	\$ 711	\$ 2,054
Share-based compensation	\$ 5,130	\$ 259	\$ 7,404	\$ 12,793

Net sales and segment contribution by each reportable segment for the nine months ended September 30, 2022 were as follows (in thousands):

	Wound & Surgical	Regenerative Medicine	Corporate & Other	Consolidated
Net sales	\$ 191,297	\$ —	\$ 2,169	\$ 193,466
Cost of sales	31,126	—	2,821	33,947
Selling, general and administrative expense	108,256	—	50,582	158,838
Research and development expense	6,068	11,361	—	17,429
Amortization of intangible assets	—	—	519	519
Segment contribution	<u>\$ 45,847</u>	<u>\$ (11,361)</u>		
Investigation, restatement and related expense				8,771
Operating loss			\$	(26,038)
<i>Supplemental information</i>				
Depreciation expense	\$ 1,364	\$ 120	\$ 1,065	\$ 2,549
Share-based compensation	\$ 5,609	\$ 910	\$ 4,279	\$ 10,798

## 16. Restructuring

On June 20, 2023, the Company announced that it was suspending all activities associated with its knee osteoarthritis clinical trial program and disbanding its Regenerative Medicine business unit (the “**Restructuring**”). This was the result of the Company’s decision to focus on its Wound & Surgical business to drive profitability and cash flows. The Company anticipates that activities related to the Restructuring will materially conclude in the fourth quarter of 2023. Expenses associated with the Restructuring are recognized as the associated liabilities are incurred in an amount equal to the fair value to settle the liability.

### Severance

As part of the Restructuring, the Company separated from certain employees whose primary responsibilities were toward the advancement of the Company's knee osteoarthritis clinical trial program. The Company offered an aggregate of severance arrangements of \$2.1 million to separated employees during the nine months ended September 30, 2023. This amount was recognized as part of research and development expense on the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2023, as these arrangements were determined not to qualify for accounting as a one-time separation benefit under ASC 420. Of the total severance amount, \$1.8 million was paid out during the three months ended September 30, 2023. The remaining \$0.3 million is reflected in accrued compensation on the unaudited condensed consolidated balance sheet as of September 30, 2023.

Impairments

On June 23, 2023, the Company provided notice to NBCD of the termination of the Nordic Agreement. As part of the Restructuring, the Company no longer anticipated that it would receive any benefits pursuant to the clinical trial program. Accordingly, it recognized an impairment of clinical trial assets related to the Nordic Agreement and all pass-through vendors of \$2.1 million during the nine months ended months ended September 30, 2023, respectively. This amount is reflected as part of restructuring expense on the unaudited condensed consolidated statements of operations for the nine months ended months September 30, 2023.

In addition, the Company recorded goodwill impairment for \$0.5 million, reflecting all goodwill assigned to the Regenerative Medicine reporting unit. This amount is reflected as part of restructuring expense on the unaudited condensed consolidated statements of operations for the nine months ended September 30, 2023. See Note 6, "Goodwill and Intangible Assets, Net," for further information regarding the impairment of goodwill due to the disbanding of the Company's Regenerative Medicine business unit.

Contract Termination Costs

The Company incurred \$0.2 million and \$0.8 million in expenses to wind-down certain contracts related to the knee osteoarthritis clinical trial program for the three and nine months ended September 30, 2023, respectively. This amount generally reflects the Company's expectation both for its obligation to carry out the protocol for the patients enrolled in the trial prior to the suspension of activities and close-out costs related to the trial. During the three months ended September 30, 2023, the Company incurred additional charges \$0.2 million under certain contracts that was offset by a decrease in the number of visits required to wind-down the study and payments totaling \$0.2 million. Contract termination costs are reflected as part of accrued expenses on the unaudited condensed consolidated balance sheet as of September 30, 2023 and as part of restructuring expense on the unaudited condensed consolidated statements of operations for the three and nine months ended September 30, 2023. March 31, 2024 and 2023 as follows (in thousands):

	Three Months Ended March 31,	
	2024	2023
Selling, general and administrative expense	—	29
Research and development expense	\$ (200)	3,012
Income (loss) from discontinued operations	\$ 200	\$ (3,041)

17. Subsequent Events

Hayfin Preferred Share Repurchase

On October 27, 2023, the Company executed a Securities Purchase Agreement with certain entities managed by or affiliated with Hayfin Capital Management LLP (the "Hayfin Shareholders") to repurchase 5,000 shares of the Company's Series B Preferred Stock for \$9.5 million (the "Repurchase"). As part of the Repurchase, the Hayfin Shareholders entered into customary lock-up provisions requiring them to retain the balance of their equity positions for a period of at least one year.

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

Overview

Executive Summary

During the first quarter of 2024, the Company continued its trend of strong commercial performance, delivering 18.2% growth in net sales year-over-year. This growth was driven by execution across all care settings.

Operating and financial highlights during the quarter included:

- Net sales of \$84.7 million, reflecting 18.2% growth over the prior year period.
- GAAP net income from continuing operations and net margin for the first quarter of 2024 of \$9.1 million and 10.7%, respectively.
- Improved capital structure with new senior secured credit facilities and debt refinancing.
- Announced surgical portfolio expansion through a distribution agreement with Regenity Biosciences for a 510(k)-cleared collagen particulate xenograft product.
- Appointed two new independent directors to the Company's Board of Directors.
- Introduced an online product ordering and account management platform for our customers.

## Overview

MIMEDX is a pioneer and leader in placental biologics focused on delivering innovative solutions to patients and the healthcare professionals who treat them. With more than a decade of experience helping clinicians manage acute and chronic wounds, MIMEDX has been dedicated to providing a leading portfolio of products for applications in the wound care, burn, and surgical sectors of healthcare. All of our products sold in the United States are regulated by the U.S. Food & Drug Administration ("FDA"). We apply Current Good Tissue Practices ("CGTP") and other applicable quality standards in addition to terminal sterilization to produce our allografts.

During the three and nine months ended September 30, 2023, we operated under two defined internal business units: Wound & Surgical and Regenerative Medicine.

The Wound & Surgical business focuses on the Advanced Wound Care and Surgical Recovery markets through sales of our existing product portfolio and product development to serve these primary end markets. This business unit is responsible for substantially all sales of our Advanced Wound Care products, as well as the sale outside the United States of America of our micronized and certain other particulate products subject to regulation under Section 351 of the Public Health Service Act and related regulations ("Section 351").

On June 20, 2023, we announced a plan to disband our Regenerative Medicine business unit and the suspension of our knee osteoarthritis ("KOA") clinical trial program (the "Restructuring") given the substantial uncertainties surrounding clinical trial costs and outcomes, as well as regulatory pathways and timing. The Company anticipates that Restructuring-related activities will materially conclude in the fourth quarter of 2023.

This discussion, which presents our results for the three and nine months ended September 30, 2023, March 31, 2024 and 2022, 2023, should be read in conjunction with our financial statements and accompanying notes included in this Form 10-Q and the financial statements and accompanying notes thereto and 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.

## Executive Summary

During the third quarter ended September 30, 2023, the Company experienced broad-based growth in net sales, with contributions from each of its site-of-service categories. Much of this momentum was driven by strong commercial execution, including the acquisition of new customers and continued uptake in new products we launched in the second half of 2022, despite uncertainty in reimbursement policy for Medicare billings in the Private Office care setting. Recent operating and financial highlights include:

- Third quarter 2023 net sales of \$81.7 million, an increase of 20.7% over third quarter 2022.
- GAAP net income of \$8.5 million for third quarter 2023.
- Launched EPIEFFECT™, the latest addition to MIMEDX's portfolio of Advanced Wound Care products.
- Announced \$9.5 million repurchase of 5,000 shares of Series B Preferred Stock held by Hayfin Services, LLP ("Hayfin") and its affiliates.

## Results of Operations

Three Months Ended September 30, 2023, March 31, 2024 Compared to the Three Months Ended September 30, 2022, March 31, 2023

	Total Company			
	Three Months Ended March 31, (in thousands)			
	2024	2023	\$ Change	% Change
Net sales	\$ 84,709	\$ 71,676	\$ 13,033	18.2 %
Cost of sales	12,987	12,419	568	4.6 %
Gross profit	71,722	59,257	12,465	21.0 %
Selling, general and administrative	55,129	52,250	2,879	5.5 %
Research and development	2,841	3,484	(643)	(18.5)%
Investigation, restatement and related	311	3,673	(3,362)	(91.5)%
Amortization of intangible assets	189	190	(1)	(0.5)%
Impairment of intangible assets	54	—	54	— %
Interest expense, net	(1,690)	(1,553)	(137)	8.8 %
Other (expense) income, net	(99)	2	(101)	nm
Income tax provision expense	(2,348)	(51)	(2,297)	nm
Net income (loss) from continuing operations	9,061	(1,942)	11,003	nm



Three Months Ended September 30, (in thousands)				
	2023	2022	\$ Change	% Change
Net sales	\$ 81,712	\$ 67,689	\$ 14,023	20.7 %
Cost of sales	14,790	12,188	2,602	21.3 %
Gross profit	66,922	55,501	11,421	20.6 %
Selling, general and administrative	52,571	53,475	(904)	(1.7)%
Research and development	3,175	5,953	(2,778)	(46.7)%
Restructuring	208	—	208	— %
Investigation, restatement and related	(38)	3,001	(3,039)	nm
Amortization of intangible assets	190	175	15	8.6 %
Interest expense, net	(1,680)	(1,270)	(410)	32.3 %
Income tax provision benefit (expense)	(591)	(53)	(538)	nm
Net income (loss)	\$ 8,534	\$ (8,426)	\$ 16,960	nm

<sup>1</sup>Changes noted as “nm” in the table above indicate that the percentage change is not meaningful.

#### Net Sales

We recorded net sales for the three months ended September 30, 2023 March 31, 2024 of \$81.7 million \$84.7 million, a \$14.0 million \$13.0 million, or 20.7% 18.2%, increase compared to the three months ended September 30, 2022 March 31, 2023, in which we recognized net sales of \$67.7 million \$71.7 million. Net sales in all care settings had one fewer shipping day during the three months ended September 30, 2023 compared to the same period in 2022.

Our sales by care setting product line were as follows (in (amounts in thousands):

Three Months Ended September 30,				Change	
	2023	2022	\$	%	
Hospital	\$ 47,350	\$ 40,174	\$ 7,176	17.9 %	
Private Office	22,951	19,572	3,379	17.3 %	
Other	11,411	7,943	3,468	43.7 %	
Total	\$ 81,712	\$ 67,689	\$ 14,023	20.7 %	

Three Months Ended March 31,				Change	
	2024	2023	\$	%	
Wound	\$ 57,049	\$ 45,206	\$ 11,843	26.2 %	
Surgical	27,660	26,470	1,190	4.5 %	
Total	\$ 84,709	\$ 71,676	\$ 13,033	18.2 %	

Net sales in the Hospital care setting of our Wound product portfolio were \$47.4 million \$57.0 million for the three months ended September 30, 2023 March 31, 2024, a \$7.2 million \$11.8 million or 17.9% 26.2% increase compared to \$40.2 million \$45.2 million for the three months ended September 30, 2022 March 31, 2023. The increase was driven by strong sales, particularly in the private office subsegment of the market.

Net sales of our Surgical products totaled \$27.7 million, reflecting growth of \$1.2 million, or 4.5% compared to the three months ended March 31, 2023. The increase was primarily driven by, sales of our new products introduced during the third quarter of 2022.

Net sales in the Private Office care setting grew by \$3.4 million, or 17.3%, growing contributions from AMNIOEFFECT® and, to \$23.0 million a lesser degree, AXIOFILL®. In addition, Surgical sales for the three months ended September 30, 2023, compared to \$19.6 million for the three months ended September 30, 2022. The increase March 31, 2023 reflects general increases in approximately \$1 million of sales volume, driven by strong commercial execution.

Net sales in Other care settings increased by \$3.5 million, or 43.7%, to \$11.4 million for the three months ended September 30, 2023, compared to \$7.9 million for the three months ended September 30, 2022. The increase was the result of the addition of new customers and general increases in sales volume, driven by strong commercial execution, our dental product which we have since discontinued.

#### Cost of Sales and Gross Profit Margin



Cost of sales for the three months ended September 30, 2023 March 31, 2024 and 2022 were \$14.8 million 2023 was \$13.0 million and \$12.2 million \$12.4 million, respectively, an increase of \$2.6 million \$0.6 million, or 21.3% 4.6%, year-over-year. Gross profit margin for the three months ended March 31, 2024 was 84.7% compared to 82.7% for the three months ended March 31, 2023. The year-over-year improvement in gross margin was driven by favorable product mix and our continued execution on yield improvement projects. Increases in cost of sales were driven by increases in sales volume as noted above.

Gross profit margin for the three months ended September 30, 2023 was 81.9% compared to 82.0% for the three months ended September 30, 2022. Gross profit margin was roughly flat versus the prior year period due to improvements in yield, partially offset by production variances.

1 nm=not meaningful

#### Selling, General and Administrative Expense

Selling, general and administrative ("SG&A") expense for the three months ended September 30, 2023 March 31, 2024 was \$52.6 million \$55.1 million, compared to \$53.5 million \$52.3 million for the three months ended September 30, 2022 March 31, 2023, a decrease an increase of \$0.9 million \$2.9 million, or 1.7% 5.5%, year-over-year. The decrease increase in SG&A expense was driven by year-over-year increases in commissions due to decreases in professional service costs and personnel costs. Lower professional services expense resulted from greater sales volume, as well as a decline in fees paid to third party advisers larger proportion of sales through sales agents during the three months ended September 30, 2022. The decrease in personnel costs reflects the results of our continued cost reduction efforts which began during the third quarter of 2022, together with the impact of higher comparative severance expense associated with the departure of our former CEO in the third quarter of 2022, as well as lower stock-based compensation. These decreases were offset by increases in commissions due to higher sales volumes for three months ended September 30, 2023 March 31, 2024.

#### Research and Development Expense

Our research and development ("R&D") expense decreased by \$2.8 million \$0.6 million, or 46.7% 18.5%, to \$3.2 million \$2.8 million for the three months ended September 30, 2023 March 31, 2024, compared to \$6.0 million \$3.5 million for the three months ended September 30, 2022 March 31, 2023. The decline resulted from decrease was driven primarily by lower headcount and the disbanding timing of our Regenerative Medicine business unit lowering personnel and clinical trial expenses for three months ended September 30, 2023 and from decreases in expenses associated with R&D activities compared to the testing and development of new products launched during the three months ended September 30, 2022. prior year.

#### Restructuring Expense

Restructuring expense of \$0.2 million for the three months ended September 30, 2023 reflects certain charges related to our Regenerative Medicine business unit wind-down activities, primarily associated with clinical trial regulatory obligations.

#### Investigation, Restatement and Related Expense

Investigation, restatement and related expense for the three months ended September 30, 2023 March 31, 2024 was immaterial \$0.3 million compared to \$3.0 million \$3.7 million for the three months ended September 30, 2022 March 31, 2023. The decrease was primarily related to negotiated reductions in legal fees previously incurred under indemnification agreements with certain former members of management year-over-year. In addition, following the end of a legal proceeding, expenses under our last proceeding entailing material obligations under an indemnification agreement, with our former chief financial officer which substantially ceased during the third quarter of in 2023.

#### Amortization of Intangible Assets

Amortization expense related to intangible assets was \$0.2 million for each of the three months ended September 30, 2023 March 31, 2024 and 2022, 2023.

#### Interest Expense, Net

Interest expense, net was \$1.7 million for the three months ended September 30, 2023 March 31, 2024 compared to \$1.3 million \$1.6 million for the three months ended September 30, 2022 March 31, 2023, an increase of \$0.4 million \$0.1 million, or 32.3% 8.8%, year-over-year. The increase was the result of year-over-year increases the loss on extinguishment of debt due to repaying and terminating our Hayfin Loan Agreement during the first quarter of 2024 (\$1.4 million), offset by decreases in the reference market outstanding debt and lower interest rates on under the Citizens Credit Facilities as well as improvement in our outstanding debt treasury management.

#### Income Tax Provision Benefit (Expense) Expense

The effective tax rates for the Company were 6.5% 20.6% and (0.6) (2.7)% for the three months ended September 30, 2023 March 31, 2024 and September 30, 2022 March 31, 2023, respectively. The Company's net income is partially offset effective tax rate for the three months ended March 31, 2024 was favorably impacted by net vestings of restricted stock units. Net operating losses and research and development tax credits, in accordance with the 2018 Tax & Jobs Act legislation.

#### Nine Months Ended September 30, 2023 Compared to the Nine Months Ended September 30, 2022

#### Total Company

Nine Months Ended September 30, (in thousands)			
2023	2022	\$ Change	% Change

Net sales	\$	234,645	\$	193,466	\$	41,179	21.3 %
Cost of sales		40,792		33,947		6,845	20.2 %
Gross profit		193,853		159,519		34,334	21.5 %
Selling, general and administrative		156,773		158,838		(2,065)	(1.3)%
Research and development		18,168		17,429		739	4.2 %
Restructuring		3,464		—		3,464	— %
Investigation, restatement and related		4,652		8,771		(4,119)	(47.0)%
Amortization of intangible assets		570		519		51	9.8 %
Interest expense, net		(4,864)		(3,566)		(1,298)	36.4 %
Other expense, net		(42)		(1)		(41)	nm
Income tax provision benefit (expense)		(569)		(178)		(391)	nm
Net income (loss)	\$	4,751	\$	(29,783)	\$	34,534	nm

#### Net Sales

We recorded net sales generated for the nine three months ended September 30, 2023 of \$234.6 million, a \$41.2 million, or 21.3%, increase compared to the nine months ended September 30, 2022, for which we recorded net sales of \$193.5 million. Net sales for the nine months ended September 30, 2023 in all sites of service benefited from the alleviation of the Omicron wave of the Covid-19 Pandemic, which adversely impacted sales during the nine months ended September 30, 2022. There was one fewer shipping day during the nine months ended September 30, 2023 compared to the same period in 2022.

Our sales by care setting were as follows (in thousands):

	Nine Months Ended September 30,		Change	
	2023	2022	\$	%
Hospital	\$ 136,108	\$ 116,081	\$ 20,027	17.3 %
Private Office	68,188	54,768	13,420	24.5 %
Other	30,349	22,617	7,732	34.2 %
Total	\$ 234,645	\$ 193,466	\$ 41,179	21.3 %

Net sales in the Hospital care setting were \$136.1 million for the nine months ended September 30, 2023, a \$20.0 million or 17.3% increase compared to \$116.1 million for the nine months ended September 30, 2022. The increase was primarily driven by sales of our new products introduced during the third quarter of 2022.

Net sales in the Private Office care setting grew by \$13.4 million, or 24.5%, to \$68.2 million for the nine months ended September 30, 2023, compared to \$54.8 million for the nine months ended September 30, 2022. The increase reflects general increases in sales volume, driven by strong commercial execution.

Net sales in Other care settings increased by \$7.7 million, or 34.2%, to \$30.3 million for the nine months ended September 30, 2023 compared to \$22.6 million for the nine months ended September 30, 2022. The increase was primarily driven by the addition of new customers in certain sites of service and sales of EPIFIX in Japan.

#### Cost of Sales and Gross Profit Margin

Cost of sales for the nine months ended September 30, 2023 was \$40.8 million, an increase of \$6.8 million, or 20.2%, compared to \$33.9 million for the nine months ended September 30, 2022. Increases in cost of sales were driven by increases in sales volume noted above.

Gross profit margin for the nine months ended September 30, 2023 and 2022 was 82.6% and 82.5%, respectively.

#### Selling, General and Administrative Expense

SG&A expense for the nine months ended September 30, 2023 decreased by \$2.1 million, or 1.3%, to \$156.8 million, compared to \$158.8 million for the nine months ended September 30, 2022. The decrease was driven by decreases in professional services expenses, personnel costs and bad debt expense. The decrease in professional services expenses reflects \$2.1 million in consulting and advisory expenses related to a withhold the vote campaign launched by a shareholder together with fees paid to other third-party advisers in 2022. There were no similar activities during 2023. The decrease in personnel costs reflects the results of our continued cost reduction efforts that began in the third quarter of 2022. Increases in stock based compensation March 31, 2023 were offset by reduced severance expense in 2023 compared to the expense associated with the departure of our former CEO in 2022. Finally, the decrease in bad debt expense was the result of the greater deterioration of credit for certain specific customers in 2022 compared to 2023.

These decreases were offset in part by increases in sales commissions, driven by increases in sales volumes, as well as, greater travel expenses, reflecting the removal of COVID-19 travel restrictions that were in place in 2022.

#### Research and Development Expense

Our research and development expenses increased by \$0.7 million, or 4.2%, to \$18.2 million for the nine months ended September 30, 2023, compared to \$17.4 million for the nine months ended September 30, 2022. The increase reflects clinical trial expenses ramping up in the first half of 2023, including associated personnel costs offset in part by the disbanding of our Regenerative Medicine business unit from June 20, 2023.

#### *Investigation, Restatement and Related Expense*

Investigation, restatement and related expenses for the nine months ended September 30, 2023 decreased by \$4.1 million, or 47.0%, to \$4.7 million compared to \$8.8 million for the nine months ended September 30, 2022. The decrease was primarily related to negotiated reductions in legal fees previously incurred under indemnification agreements with certain former members of management year-over-year. In addition, following the end of a legal proceeding, expenses under our last material indemnification agreement substantially ceased during the third quarter of 2023.

#### *Amortization of Intangible Assets*

Amortization expense increased from \$0.5 million for the nine months ended September 30, 2022 to \$0.6 million for the nine months ended September 30, 2023.

#### *Restructuring Expense*

Restructuring expense of \$3.5 million for the nine months ended September 30, 2023 reflects certain charges related to the disbanding of our Regenerative Medicine business unit, including write-downs of prepaid clinical trial assets of \$2.1 million, charges for the wind-down of our KOA clinical trial program of \$0.8 million, and impairment of goodwill of \$0.5 million.

#### *Interest Expense, Net*

Interest expense, net was \$4.9 million for the nine months ended September 30, 2023 compared to \$3.6 million for the nine months ended September 30, 2022. The increase was the result of year-over-year increases in the reference market interest rates on our outstanding debt.

#### *Income Tax Provision Benefit (Expense)*

The effective tax rates for the Company were 10.7% and (0.6)% for the nine months ended September 30, 2023 and 2022, respectively. The Company's net income is partially offset by prior net operating losses and research and development tax credits, in accordance with the 2018 Tax & Jobs Act legislation, valuation allowance.

### **Discussion of Cash Flows**

#### **Operating Activities**

Net cash provided by operating activities from continuing operations during the nine three months ended September 30, 2023 March 31, 2024 was \$16.5 million, \$6.8 million, compared to cash used provided by operating activities from continuing operations of \$12.3 million \$0.6 million for the nine three months ended September 30, 2022 March 31, 2023. The change was primarily the result of year-over-year increases in net sales, which drove increases in collections from customers, as well as customers. These increases were partially offset by year-over-year decreases increases in operating expenses.

#### **Investing Activities**

Net cash used for investing activities during the nine three months ended September 30, 2023 March 31, 2024 was \$1.7 million, \$6.0 million, compared to \$1.0 million \$0.7 million for the nine three months ended September 30, 2022 March 31, 2023. This increase reflects a \$0.7 million year-over-year increase was largely the result of our investment to expand our product portfolio through the TELA and Regenity agreements as described below in capital expenditures. "Liquidity and Capital Resources".

#### **Financing Activities**

Net cash provided by used for financing activities during the nine three months ended September 30, 2023 March 31, 2024 was \$0.4 \$33.5 million. Cash used in financing activities was \$0.6 million immaterial during the nine three months ended September 30, 2022 March 31, 2023. We ceased withholding shares The increase during the three months ended March 31, 2024 was due to satisfy employee the Company repaying the initial \$30.0 million drawing under the Revolving Credit Facility, as described below in "Liquidity and Capital Resources," deferred financing costs incurred under the Citizens Credit Agreement, and stock repurchases for tax obligations withholdings upon vesting of equity awards in 2022. Accordingly, we did not have any cash paid for tax withholdings during the nine months ended September 30, 2023, compared to \$1.2 million for the nine months ended September 30, 2022. This effect was offset by \$0.6 million of cash receipts from option exercises in the nine months ended September 30, 2022, compared to \$0.4 million of cash receipts from option exercises in the nine months ended September 30, 2023. employee restricted share units.

### **Liquidity and Capital Resources**

Our business requires We require capital for our operating activities, including costs associated with the sale of product through direct and indirect sales channels, the conduct of research and development activities, compliance costs, costs to sell and market our products, regulatory fees, and legal and consulting fees in connection with ongoing litigation and other matters. We generally fund our operating capital requirements through our operating activities and cash reserves. We expect to use capital to invest in the broadening of our product portfolio, including through potential acquisitions, licensing agreements or other arrangements, the international expansion of our business and certain capital projects.

As of September 30, 2023 March 31, 2024, we had \$81.2 million \$48.5 million of cash and cash equivalents, total current assets of \$154.5 million \$138.9 million and total current liabilities of \$43.6 million \$42.2 million, reflecting a current ratio of 3.5 3.3, and we had no borrowings outstanding and \$75 million of availability under our Revolving Credit Facility (as defined below).

We are The Company is currently paying our its obligations in the ordinary course of business.

We anticipate cash requirements related to the following items within one year of the date of the filing of this Quarterly Report:

- investments to advance and expand our existing product portfolio;
- expenditures required to achieve necessary regulatory approval and establish operations in new markets deemed strategically important toward the enhancement of our global footprint;
- costs to wind-down certain contracts associated with our KOA clinical trial program; and
- severance payments related to certain former members of management and other employees.

We have analyzed our ability to address these commitments and potential liabilities for the 12 months extending from the date of the filing of this Quarterly Report. After completing this analysis, which included a review of expectations of revenue, margins, and expenses, we believe that our cash from operating activities, existing cash and cash from operations equivalents, and available credit under the Citizens Credit Agreement, as defined below, will be sufficient enable us to meet our obligations as they come due, operational liquidity needs for the twelve months following the filing date of this Quarterly Report.

#### **Term Loan Citizens Credit Facilities**

On June 30, 2020 January 19, 2024, we entered into a Credit Agreement (the "**Citizens Credit Agreement**") with a syndicate of banks comprised of Citizens Bank, N.A. as administrative agent (the "**Agent**"), and Bank of America, N.A. The Citizens Credit Agreement was designed to simultaneously improve our capital structure, providing the ability to refinance our prior \$50 million senior secured term loan under the Hayfin Loan Agreement (as defined below) at lower interest rates and have access to additional borrowing capacity that could be deployed in the future in support of our organic and potential inorganic growth objectives.

The Citizens Credit Agreement provides for senior secured credit facilities in an aggregate principal amount of up to \$95.0 million consisting of: (i) a \$75.0 million senior secured revolving credit facility (the "**Revolving Credit Facility**") with a \$10.0 million letter of credit sublimit and a \$10.0 million swingline loan sublimit, and (ii) a \$20.0 million senior secured term loan facility (the "**Term Loan Facility**") and, together with the Revolving Credit Facility, the "**Credit Facilities**"). All obligations are required to be paid in full on January 19, 2029 (the "**Maturity Date**"), and are guaranteed by certain of the our subsidiaries, and secured by substantially all of the assets of the Company and the guarantors pursuant to a customary security agreement. Subject to the terms of the Citizens Credit Agreement, we have the option to obtain one or more incremental term loan facilities and/or increase the commitments under the Revolving Credit Facility in an aggregate principal amount equal to the greater of (i) \$50.0 million and (ii) 1.00 times our Consolidated EBITDA as defined therein, each subject to the existing or any new lenders' election to extend additional term loans or revolving commitments.

At our option, borrowings under the Citizens Credit Agreement (other than any swingline loan) will bear interest at a rate per annum equal to (i) the Alternate Base Rate, as defined therein, or (ii) a Term SOFR as defined therein, in each case plus an applicable margin ranging from 1.25% and 2.50% with respect to Alternate Base Rate borrowings and 2.25% and 3.50% for Term SOFR borrowings. Swingline loans will bear interest at a rate per annum equal to one-month Term SOFR plus the applicable margin. The applicable margin will be determined based on the Company's consolidated total net leverage ratio.

We are required to pay a quarterly commitment fee on any unused portion of the Revolving Credit Facility, letter of credit fees, and other customary fees to the Agent and the Lenders. The Term Loan Facility will amortize on a quarterly basis at 1.25% (for year one and two), 1.875% (for year three and four), and 2.5% (for year five) based on the aggregate principal amount outstanding under the Term Loan Facility, with the remainder due on the Maturity Date. We must make mandatory prepayments in connection with certain asset dispositions and casualty events, subject in each case to customary reinvestment rights. We may prepay borrowings under the Credit Facilities at any time, without premium or penalty, and may, at its option, reduce the aggregate unused commitments under the Revolving Credit Facility in whole or in part, in each case subject to the terms of the Credit Agreement. We must also comply with certain financial covenants, including a maximum total net leverage ratio and a minimum consolidated fixed charge coverage ratio, as well as other customary restrictive covenants.

On January 19, 2024, we borrowed \$30.0 million under the Revolving Credit Facility and \$20.0 million under the Term Loan Facility. Proceeds from the initial drawings under the Credit Facilities, together with cash on hand, were used to repay in full the \$50.0 million principal amount and other obligations under that certain Loan Agreement, dated as of June 30, 2020 (as amended from time to time), by and among others, the Company, the guarantors party thereto, the lenders party thereto and Hayfin Services LLP, ("**Hayfin**") an affiliate of Hayfin Capital Management, LLP as administrative and collateral agent (as amended from time to time, the "**Hayfin Loan Agreement**") and to pay related fees, premiums, costs and expenses (collectively with the entry into the Citizens Credit Agreement and the initial borrowings thereunder, the "**Debt Refinancing Transactions**").

On February 27, 2024, we repaid the initial \$30.0 million drawing under the Revolving Credit Facility.

#### **Hayfin Term Loan**

In June 2020, we entered into the Hayfin Loan Agreement, pursuant to which Hayfin provided us with a senior secured term loan of \$50 million (the "**Hayfin Term Loan**"). The Hayfin Term Loan matures was to mature on June 30, 2025 (the "**Maturity Date**").

No principal payments are due on the Term Loan until the Maturity Date. Interest is payable on the Term Loan for principal outstanding quarterly through the Maturity Date. Pursuant to Amendment No. 2 to the Loan Agreement entered into in June 2023, interest on any borrowings under the Term Loan is equal to the Secured Overnight Finance Rate ("**was based on SOFR,**") plus a fallback provision of 0.15%, subject to a floor of 1.5%, plus a margin of 6.75%. An additional 3.0% margin would be applied to

As noted above, in January 2024, we repaid the interest rate upon the occurrence of an Event of Default, as defined Hayfin Term Loan in full and terminated the Hayfin Loan Agreement. As of September 30, 2023, the Term Loan carried an interest rate of 12.3%.

The Hayfin Loan Agreement contains certain financial covenants, including a Minimum Consolidated Total Net Sales covenant, tested quarterly, and a Minimum Liquidity covenant, tested monthly (each as defined). In addition, the Hayfin Loan Agreement includes certain negative covenants and events of default customary for facilities of this type. Upon the occurrence of such events of default, all outstanding loans under the Hayfin Loan Agreement may be accelerated or the lenders' commitments terminated. The Hayfin Loan Agreement also specifies mandatory prepayments based on a percentage of Excess Cash Flow (as defined in the Hayfin Loan Agreement, if such is generated), as well as upon the occurrence of other events specified in the Hayfin Loan Agreement.

As of September 30, 2023, we were in compliance with all financial covenants under the Hayfin Loan Agreement. A breach of a financial covenant in the Hayfin Loan Agreement, if uncured or unable to be cured, would likely result in an event of default that could trigger the lenders' remedies, including acceleration of the entire principal balance of the loan as well as any applicable prepayment premiums.

#### **Series B Preferred Stock**

We have 100,000 shares of Series B Preferred Stock outstanding as of September 30, 2023.

The Series B Preferred Stock accumulates dividends at a rate of 6.0% per annum. Dividends are declared at the sole discretion of our Board of Directors. Dividends, if declared, are paid in cash at the end of each quarter based on dividend amounts that accumulate beginning on the last payment date through the day prior to the end of each quarter. In lieu of paying a dividend, we may elect to accrue the dividend owed to shareholders. Dividend balances accumulate at the prevailing dividend rate for each dividend period during which they are outstanding.

Each share of Series B Preferred Stock, including any accrued and unpaid dividends, is convertible into our common stock at any time at the option of the holder at a conversion price of \$3.85 per common share. The Series B Preferred Stock converts automatically at any time after July 2, 2023, provided that the volume-weighted average price of a share of our common stock is \$7.70 or higher (i) for 20 out of 30 consecutive trading days, and (ii) on such date of conversion.

If we undergo a change of control, we will have the option to repurchase some or all of the then-outstanding shares of Series B Preferred Stock for cash in an amount equal to the liquidation preference and any accumulated and unpaid dividends. If we do not exercise this right, holders of the Series B Preferred Stock will have the option to (1) require us to repurchase any or all of their then-outstanding shares of Series B Preferred Stock in an amount equal to the liquidation preference plus unpaid dividends, or (2) convert the Series B Preferred stock into common stock and receive their pro rata consideration thereunder.

We have not declared or paid any cash dividends on our Series B Preferred Stock since issuance. Dividends accumulated but not paid as of September 30, 2023 were \$19.0 million. The Series B Preferred Stock was convertible into 30,906,441 shares of common stock as of September 30, 2023.

#### **Share Repurchases**

We did not repurchase any shares of our common stock during the three months ended September 30, 2023. The timing and amount of future repurchases, if any, will depend upon our stock price, economic and market conditions, regulatory requirements, and other corporate considerations. We may initiate, suspend or discontinue purchases at any time.

On October 27, 2023, we repurchased 5,000 shares of Series B Preferred Stock held by certain entities managed by or affiliated with Hayfin Capital Management, LLP for \$9.5 million in cash.

#### **Contractual Obligations**

Except as described below, and as previously disclosed in our Quarterly Report for the three months ended March 31, 2023, there were no significant changes to our contractual obligations during the nine three months ended September 30, 2023 March 31, 2024 from those disclosed in the section Item 7, "Management's Discussion and Analysis of Financial Condition and Results from Operations", in our 2022 2023 Form 10-K.

##### **Nordic Agreement TELA and Regenity Agreements**

In June 2022, we On March 15, 2024, the Company entered into an Asset Purchase Agreement (the "TELA APA") with TELA Bio, Inc. ("TELA") and a collaboration manufacturing and supply agreement (the "Nordic Supply Agreement") with Nordic Bioscience Clinical Development A/S Regenity Biosciences, Inc. ("NBCD Regenity"), adding to the Company's product portfolio a 510(k)-cleared collagen particulate xenograft product (the "Xenograft Product") indicated for the management of moderately to provide full operational support for our KOA clinical trial program. heavily exudating wounds and to control minor bleeding. Under the terms of the Nordic Agreement, we were obligated TELA APA, the Company made an initial \$5.0 million payment to pay \$10.2 million upon TELA and will be required to make additional future payments aggregating between a minimum of \$3.0 million and a maximum of \$7.0 million based on net sales of the achievement of specified milestones Xenograft Product over the course next two years.

The Supply Agreement maintains MIMEDX's exclusive right to sell and market the Xenograft Product in the United States and requires MIMEDX to purchase a minimum amount of the clinical trial. Xenograft Product from Regenity annually through December 31, 2033. Should MIMEDX fail to meet a purchasing minimum in any one period, it has the option (among others) to amend its distribution rights under the Supply Agreement to be non-exclusive.

During the three months ended September 30, 2023, the Company terminated the Nordic Agreement. Pursuant to the Nordic Agreement, the Company is obligated to reimburse NBCD for services performed through the effective termination date and for non-cancelable obligations reasonably incurred prior to that date. In addition, the Company and NBCD have certain regulatory obligations to all trial participants enrolled in the study prior to the suspension of clinical trial activities. Refer to Note 16, "Restructuring," for additional discussion.



Critical Accounting Estimates

In preparing financial statements, we follow accounting principles generally accepted in the United States, which require us to make certain estimates and apply judgments that affect our financial position and results of operations. We regularly review our accounting policies and financial information disclosures. A summary of critical accounting estimates in preparing the financial statements was provided in our 2022 2023 Form 10-K.

In addition, during the period covered by this Quarterly Report, we identified the following critical accounting estimates which were not material to the 2022 Form 10-K.

Share-Based Compensation Expense

Description

We measure stock options and other stock-based awards granted to employees based on their fair value on the date of the grant and recognize the assessed fair value as share-based compensation expense, straight-line, over the requisite service period to achieve the award based on the vesting requirements, to the extent that the achievement of performance conditions associated with such awards, as applicable, are determined to be "probable."

Judgments and Uncertainties

Share-based payment arrangements are measured at fair value on the grant date. The fair value of equity incentive awards, which are usually shares of our common stock, are generally measured at the last trading price on the grant date.

The fair value of stock options is calculated using an appropriate valuation technique. The valuation technique generally requires us to make certain assumptions, including (1) the fair value of the common stock, (2) the expected volatility of our stock price, (3) the expected term of the award, (4) the risk-free interest rate, and (5) expected dividends. Our expectation for volatility is generally based on historical daily share price movements, with certain adjustments for abnormal share price activity associated with events which are not expected to recur during the expected term. The expected term of the award requires us to make assumptions regarding the post-vesting behavior of the recipients, which is based off available evidence. Our assumption for the risk-free rate is derived from prevailing U.S. Treasuries with similar terms to the award on the grant date. Our assumption for dividends is derived from our own dividend history.

To the extent that any such awards are subject to a market condition, the resolution of the market condition is reflected in the fair value of the grant date. Further, the requisite service period associated with an award containing a market condition must derive the service period over which the market condition is expected to be met. Fair value and derived service periods are generally determined using a Monte Carlo simulation.

Subsequent to the determination of fair value, we recognize expense to the extent we evaluate that performance conditions associated with share-based payment arrangements are probable of occurring. In certain cases where the extent of vesting is based on the extent of achievement, we are required to determine the extent to which achievement is probable. We determine probable performance based on actual performance to date, internally-developed budgets and forecasts for periods covered by the relevant performance condition, and other evidence deemed relevant to this determination. We re-evaluate our probability assessments at least quarterly, with any revisions reflected as a cumulative adjustment to expense. Because of the cumulative nature of adjustments, during any period in which we re-evaluate probability, the adjustments could significantly impact our results of operations.

Sensitivity of Estimate to Change

During the nine months ended September 30, 2023, we granted stock options with a fair value on the grant date of \$7.0 million. This estimate was determined using a Monte Carlo simulation using the following inputs:

	Assumption	
Stock price on grant date	\$	3.70
Exercise price	\$	3.70
Risk-free interest rate		3.58 %
Expected volatility (annualized)		75.00 %
Dividend yield		— %
Weighted average grant date fair value	\$	1.93

The granted stock options reflected an expected term based on our expectations for exercise activity. Changes in any of these assumptions could result in a revised estimate of fair value of the granted stock options, which would impact the amount of expense recognized over the requisite service period, and could materially affect the total fair value or the amount of expense recognized in a particular period.

In addition, cumulative expense recognized for unvested performance stock unit awards was \$1.6 million as of September 30, 2023. This is based on determinations regarding probable resolution or the extent of probable resolution of relevant performance conditions to earn such awards. If it is subsequently determined that the performance conditions associated with these awards are no longer probable of being met, or performance conditions which were determined to be probable of occurring do not actually occur, we could reverse up to this amount of expense in the period such determination is made. Furthermore, if probable levels of achievement are later determined to be greater, or actual achievement exceeds the level of achievement assessed as probable, we could record increases to expense to reflect this level of achievement. The amount of any incremental expense recognition or reversal will depend on the magnitude and timing of such change in estimate.

Recent Accounting Pronouncements

For the effect of recent accounting pronouncements, see Note 2, "Significant Accounting Policies", to the unaudited condensed consolidated financial statements contained herein.

### Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to risks associated with changes in interest rates that could adversely affect our results of operations and financial condition. We do not hedge against interest rate risk.

The interest rate on our Term Loan Facility is determined quarterly based on the 3-month SOFR rate, subject to a floor of 1.5% 1-month term SOFR. As of September 30, 2023 March 31, 2024, the interest rate on our Term Loan Facility was 12.3% 7.9%. A 100 basis point change in SOFR to the extent that such change would not cause SOFR to be below the 1.5% floor, would change our interest expense by \$0.5 million \$0.2 million on an annualized basis.

During the three and nine months ended September 30, 2023 March 31, 2024, we incurred \$0.4 million and \$1.3 million an immaterial decrease in incremental interest expense compared to the equivalent periods period in the prior year resulting from increases lower interest rates in the relevant reference rate our new term loan facility during the intervening period.

### Item 4. Controls and Procedures

#### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended, or the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our Chief

Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this report were effective at a reasonable assurance level in ensuring that information required to be disclosed by us in reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely discussions regarding required disclosure. We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

#### Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the fiscal quarter ended September 30, 2023 March 31, 2024 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II – OTHER INFORMATION

### Item 1. Legal Proceedings

The Company and its subsidiaries are parties to numerous claims and lawsuits arising in the ordinary course of its business activities, some of which involve claims for substantial amounts. The ultimate outcome of these suits cannot be ascertained at this time. The description of our the Welker v. MiMedx, et. Al case case contained in Note 13, 12, "Commitments and Contingencies," to the unaudited condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report, is incorporated herein by reference.

#### Item 1A. Risk Factors

There have been no material changes to the Company's risk factors included in its 2022 2023 Form 10-K.

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

(a) None.

(b) None.

(c) None.

### Item 3. Defaults Upon Senior Securities

Not applicable.

### Item 4. Mine Safety Disclosures

Not applicable.

### Item 5. Other Information

In March 2024, the Company made annual grants of restricted stock units (“**RSUs**”), performance stock units (“**PSUs**”) and stock options to its executive officers other than Joe Capper, its Chief Executive Officer. The forms of grant agreements are included as exhibits to this Quarterly Report. The following is a summary of certain of the key provisions of these agreements.

The RSUs granted to our executive officers in March 2024 vest on a “cliff” basis at the end of a three-year period and require the recipient to provide continuous service through the end of such period.

The PSUs granted to our executive officers other than Mr. Capper in March 2024 vest based on and to the extent that stipulated revenue targets for the year ended December 31, 2026 are achieved. Achievement of the performance goals allows for vesting of 50%, 100% and 150% (based on threshold, target or excellence performance) of the PSUs granted. If performance is below threshold, the PSUs do not vest. The PSUs also include a modifier on payments if the Company’s relative total shareholder return (“**TSR**”) percentile ranking over the three-year performance period is at or below the 50<sup>th</sup> percentile ranking, in which case vesting is limited to the target level, regardless of actual achievement against the stipulated revenue targets. In addition, vesting may increase if the Company’s relative TSR percentile ranking over the three-year performance period is above the 50<sup>th</sup> percentile ranking, up to a maximum of 20% if the Company’s relative TSR percentile ranking over the three-year performance period is at the 75<sup>th</sup> percentile ranking or above. The PSUs require recipients to continue employment with the Company through the vesting date, which will occur upon approval of the results with respect to the established targets by the Company’s Compensation Committee after December 31, 2026, but no later than March 15, 2027. The TSR is calculated as the average trading price of the Company’s common stock during the final 20 trading days of 2026, adjusted for dividends paid on the Company’s common stock, less the average trading price during the final 20 trading days of 2023, and the Company’s relative TSR percentile ranking is as compared to the TSR achieved by the Russell 2000 Index during the same period.

The stock options granted to our executive officers in March 2024 vest ratably annually over a period of four years and require the recipient to provide continuous service through the end of each applicable vesting period.

#### **Insider trading arrangements Trading Arrangements and policies Policies**

During the three months ended September 30, 2023 March 31, 2024, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

#### **Item 6. Exhibits**



<b>Exhibit Number</b>	<b>Description</b>
10.1*10.1#	<a href="#">Offer Letter</a> <a href="#">Form of Restricted Stock Unit Agreement under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan.</a>
10.2#	<a href="#">Form of Performance Stock Unit Agreement under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan.</a>
10.3#	<a href="#">Form of Nonqualified Stock Option Agreement under the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan.</a>
10.4#	<a href="#">Credit Agreement, dated June 30, 2023 as of January 19, 2024, among MIMEDX GROUP, INC., a Florida corporation, as the Borrower, MIMEDX TISSUE SERVICES LLC, as a Guarantor, MIMEDX PROCESSING SERVICES, LLC, as a Guarantor, MIMEDX SUPPLY LLC, as a Guarantor, BANK OF AMERICA, NATIONAL ASSOCIATION, as a Lender and CITIZENS BANK, N.A., as Administrative Agent, the L/C Issuer, the Swingline Lender, and as a Lender.</a>
10.5*	Fourth Amendment to Lease made as of January 26, 2024 between the Company Georgia RE Fields, LLC, successor in interest to HUB Properties GA, LLC, and Doug Rice CPVF II West Oak LLC, and MiMedx Group, Inc., dated January 26, 2024 ( <a href="#">incorporated by reference to Exhibit 10.1 10.2D to the Registrant's Current Annual Report on Form 8-K 10-K filed on July 5, 2023 February 28, 2024</a> ).
10.2*	Key Employee Retention and Restrictive Covenant Agreement dated July 5, 2023, between the Company and Doug Rice ( <a href="#">incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on July 5, 2023</a> ).
10.3*	Inducement Performance Stock Unit Agreement dated June 30, 2023, between the Company and Doug Rice ( <a href="#">incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on July 5, 2023</a> ).
10.4*	Inducement Restricted Stock Unit Agreement dated June 30, 2023, between the Company and Doug Rice ( <a href="#">incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed on July 5, 2023</a> ).
10.5*	Inducement Stock Option Agreement dated June 30, 2023, between the Company and Doug Rice ( <a href="#">incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed on July 5, 2023</a> ).
10.6#	<a href="#">Separation Agreement and General Release between MiMedx Group, Inc. and Robert Stein</a> , dated as of July 1, 2023.
10.7#	<a href="#">Separation Agreement and General Release between MiMedx Group, Inc. and Peter Carlson</a> , dated as of July 14, 2023.
31.1 #	<a href="#">Certification of Chief Executive Officer</a> pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2 #	<a href="#">Certification of Chief Financial Officer</a> pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1 #	<a href="#">Certification of Chief Executive Officer</a> pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2 #	<a href="#">Certification of Chief Financial Officer</a> pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS #	XBRL Instance Document
101.SCH #	XBRL Taxonomy Extension Schema Document
101.CAL #	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF #	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB #	XBRL Taxonomy Extension Label Linkbase Document
101.PRE #	XBRL Taxonomy Extension Presentation Linkbase Document

\* Previously filed and incorporated herein by reference

# Filed or furnished herewith

## 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.

October April 30, 2023 2024

MIMEDX GROUP, INC.

By: /s/ Doug Rice

Doug Rice

Chief Financial Officer

Principal Financial Officer and Authorized Signatory

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EXHIBIT 10.1

**MIMEDX GROUP, INC.**  
**2016 EQUITY AND CASH INCENTIVE PLAN**

**June 20, 2023 Amended and Restated through May 2, 2023**

**Robert Stein**

\*\*\* Form of Restricted Stock Unit Agreement

Re: Confidential Separation Agreement THIS RESTRICTED STOCK UNIT AGREEMENT (this "Agreement") dated as of the 202\_, between MiMedx Group, Inc. (the "Company") and General Release Participant Name (the "Participant"), is made pursuant and subject to the provisions of the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan, as amended and restated through May 2, 2023 (the "Plan"), a copy of which is attached hereto. Unless otherwise defined herein, all terms used herein that are defined in the Plan have the same meaning given them in the Plan.

Dear Bob,

As discussed, your employment relationship with MIMEDX Group, Inc. ("MIMEDX") has ended, effective July 1, 2023. In recognition 1. Grant of your service Restricted Stock Units. Pursuant to MIMEDX, however, you are being offered separation benefits if you elect the Plan, the Company, on 202\_ (the "Date of Grant"), granted to sign the enclosed Confidential Separation Agreement Participant, subject to the terms and General Release conditions of the Plan and subject further to the terms and conditions set forth herein, this Restricted Stock Unit Award for Restricted Stock Units ("Agreement" RSUs). You have 60 days Each RSU represents the right to consider receive one share of common stock, par value \$0.001 per share (the "Common Stock"), of the Company (a "Share") subject to the terms of this Agreement. If you wish The RSUs will vest as set forth in Section 2 below. The RSUs will vest as set forth in Section 2 below and, upon vesting, will be settled as set forth in Section 3.

2. Vesting of the RSUs. Subject to accept earlier expiration, termination or vesting as provided herein, the Agreement, please return your signed Agreement RSUs will become vested and nonforfeitable as follows:

(a) Vesting. The RSUs will become vested and nonforfeitable on the third anniversary of the Date of Grant, provided the Participant has been continuously employed by, or providing services to, Kate Surdez at ksurdez@mimedx.com (301.660.0592), the Company or an Affiliate from the Date of Grant until such date.

Regardless

(b) Change in Control. Notwithstanding the foregoing, upon the occurrence of whether you sign the Agreement, you must return any company issued property a Change in your possession Control prior to my attention. If you have any personal belongings in your office, you can contact me to arrange a mutually convenient time to retrieve those items.

You will receive your final pay deposit at the end of July. You will also receive information regarding your Company benefits, as well as information regarding the Consolidated Omnibus Budget Reconciliation Act applicable vesting period, any outstanding RSUs shall be treated in accordance with and governed by Section 14.05 of 1985.

If you have any questions regarding this matter, please contact me at the number listed above. Plan.

Sincerely,(c) Death and Disability. Additionally, if the Participant's employment with the Company and its Affiliates is terminated on account of the Participant's death or Disability prior to the end of the applicable vesting period, the RSUs shall become fully vested and nonforfeitable upon termination of the Participant's employment with the Company and its Affiliates on account of the Participant's death or Disability.

/s/ Kate Surdez3. Settlement of RSUs.

Kate Surdez

(a) Timing and Amount. Except as otherwise required by applicable law or as set forth below or in the Plan, the Company shall cause one Share to be issued to the Participant for each vested RSU, with such Shares to be delivered to the Participant upon the applicable vesting date.

(b) Stock Holding Requirements. Notwithstanding any other provision of this Agreement, the Shares that are issued may not be sold, transferred or otherwise disposed of until the level of ownership provided in the Company's Stock Ownership Guidelines is met, to the extent

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EXHIBIT 10.1

## **SEPARATION AGREEMENT AND GENERAL RELEASE**

This Separation Agreement and General Release (the "Agreement") is hereby entered into by and between Robert Stein applicable to the Participant. All Shares acquired hereunder ("Employee") and MIMEDX Group, Inc. ("Company"). Employee and Company may be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Company employed Employee most recently net" shares acquired in the position of President, Regenerative Medicine and Biologics Innovation in Marietta, GA;

WHEREAS, Company and Employee seek to separate from their employment relationship under the mutually agreed upon terms and conditions set forth in this Agreement;

WHEREAS, Company offers Employee the separation benefits described under this Agreement;

WHEREAS, the Parties wish to resolve, finally and completely, and with prejudice, any and all issues, disputes or matters between them, without admitting liability; and

NOW THEREFORE, in consideration of the promises and covenants set forth below, the Parties, each intending to be legally bound, hereby agree as follows:

### **1. Separation Date; Final Paycheck; and Termination of Employment Benefits.**

(a) Employee's employment with Company completely and permanently terminated, effective July 1, 2023 (the "Separation Date"). This Agreement will be effective only if Employee signs it on or after the Separation Date. After the Separation Date, Employee will not represent himself as being an employee, agent or representative of Company for any purpose, nor will he engage or attempt to engage, directly or indirectly, in any business on Company's behalf or otherwise act in a manner that might bind Company.

(b) In accordance with Company's normal payroll practices, the Company will tender Employee a final payment for all unpaid wages that Employee earned through the Separation Date, including without limitation payment for accrued, but unused vacation benefits, subject to all applicable taxes and deductions, by mailing a check to Employee for that amount or, if Employee elected to be paid by direct deposit during Employee's employment with Company, by causing that amount to be direct deposited into Employee's designated bank account. Employee acknowledges that, other than the final pay described under this subsection 1(b), Company owes Employee no other wages, benefits, leave (paid or unpaid), overtime, bonuses, compensation, or other payment case of any kind.

(c) If Employee enrolled in the group medical, dental and/net exercise or vision benefits plan for which Employee was eligible during his Company employment, Employee's coverage under said plans will continue until the last day withholding of the month in which the Separation Date occurs. Thereafter, Employee may shares) shall be eligible subject to elect continued coverage of such insurance benefits after said extended coverage period expires, pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). Employee will receive appropriate notice and forms regarding such coverage under COBRA. Employee will be solely responsible for electing and enrolling in COBRA continuation coverage in an appropriate and timely manner and for any and all required payments, including any premium payments, relating to such COBRA coverage, except as outlined in Section 2 of the Agreement.

(d) After the Separation Date, Employee shall no longer participate in, be covered by, or be eligible under any of the employee benefit plans, policies or programs offered

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by Company, unless otherwise provided under the terms and conditions of the Company's Stock Ownership Guidelines, as they may be amended from time to time.

(c) *Insider Trading Restrictions; Market Abuse Laws.* Participant acknowledges that Participant may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, including but not limited to Participant's country and the country or countries in which the Shares are or may be listed, which may affect his or her ability, directly or indirectly, to acquire, sell or attempt to sell or otherwise dispose of shares of Common Stock or rights to shares of Common Stock, under the Plan during such employee benefit plans, policies times as Participant is considered to have "inside information" regarding the Company. Furthermore, Participant understands that he or programs or by governing law. Nothing in this Agreement shall constitute a waiver of any right that Employee she may have be prohibited from (i) disclosing the inside information to any vested benefit third party, including fellow employees, and (ii) "tipping" third parties by sharing with them Company inside information, or otherwise causing third parties to buy or sell Company securities. Any restrictions under such employee benefit programs these laws or plans regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and Participant should consult with his or her personal legal advisor on this matter.

4. *Forfeiture of Company the Shares.* RSUs that are not vested pursuant to Sections 2(a), (b) or (c) as of the date of termination of Participant's employment by the Company and its Affiliates will be forfeited automatically at the close of business on that date (immediately upon notice of termination for Cause). In no event may the RSUs become vested, in whole or in part, after forfeiture pursuant to this Section 4.

5. *Agreement to Terms of the Plan and this Agreement.* The Participant has received a copy of the Plan, has read and understands the terms of such employee benefit programs or plans the Plan and governing law.

## 1. **Consideration.**

(a) **Separation Payment and COBRA Subsidy Payment.** In accordance with the Agreement and in consideration for Employee's execution of this Agreement, and the promises, covenants, agreements, agrees to be bound by their terms and general release of all claims set forth herein, conditions. All decisions and interpretations made by the Company agrees or the Committee with regard to pay to Employee or on his behalf, and the Employee agrees to accept the following:

(i) The gross total sum nine hundred ninety four thousand five hundred dollars (\$994,500) ("Separation Payment"). Employee acknowledges that the Separation Payment is equal to 15 months of his current salary and 15 months bonus at target. The Separation Payment, less applicable taxes and deductions, will be deposited into Employee's bank account. This amount will be subject to tax withholdings and will be reported on an IRS Form W-2; and

(ii) If Employee provides Company with documentation showing to Company's satisfaction that he timely and properly enrolled for COBRA coverage for the medical plan, dental plan, and vision plan, Employee will continue participation in these plans at the current "active" employee contribution rate for Employee and his eligible dependents (where applicable) and the Company will pay the "employer" share of the coverage payments, less applicable taxes and deductions for a maximum of 15 months (the "COBRA Subsidy Payment"). The COBRA Subsidy Payment will be tendered directly to Company's third-party provider of COBRA coverage on his behalf; provided, that if participation in such plans cannot be maintained beyond the period permitted for COBRA, the Company will pay the COBRA Subsidy Payment directly to Employee.

(b) **Timing and Conditions of Separation Payment and COBRA Subsidy Payment.** Assuming Employee returns to Company a copy of this Agreement, and does not revoke the Agreement pursuant to Section 20, Company will provide Employee with the consideration described in Section 2(a) on the sixty-fifth (65<sup>th</sup>) day following the Separation Date. Employee acknowledges and agrees that no payment or benefit provided any question arising under this Agreement including the consideration described in Section 2(a), will be owed to Employee unless binding and until he returns the signed Agreement to conclusive on the Company without revocation.

(c) **Tax Consequences.** Employee agrees and acknowledges that he shall be solely responsible for all taxes, assessments, interest, Participant and penalties determined to be due by any federal, state or local government, agency or any other tax authority, court or tribunal, in connection with the aforementioned settlement payment including, without limitation, person who has any federal, state and local withholding taxes and Social Security taxes, except for Company's original contributions to FICA that would have been required at the time of payment. Employee covenants that he has not relied on Company for advice regarding any tax liabilities or consequences.

(d) **Adequate Consideration.** Employee understands, agrees and covenants that the consideration set forth in Section 2(a) exceeds what Employee is otherwise entitled to receive upon separation from his Company employment, and that Employee would not receive said consideration but for Employee's entering this Agreement. Employee accepts the consideration set forth in Section 2 as adequate and as the full, final, and complete settlement of all possible claims that Employee might have against Company as described in Section 4.

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Employee expressly understands, agrees and covenants that Company will not be required to make any payment, for any reason whatsoever, including, without limitation, any payment of attorneys' fees or costs and any payment to Employee or any person, heir, estate, attorney, representative, successor, assign, or agent acting on Employee's behalf in connection with any claim or right that might possibly be asserted by his or on his behalf.

**2. Released Parties.** As used in this Agreement, "Released Parties" means:

(a) MIMEDX Group, Inc., and any and all of its past, present and future predecessors, successors, affiliates, parents, subsidiaries, divisions, and related companies, including, without limitation MIMEDX Group, Inc. Severance Plan; and

(b) Any and all past or present predecessors, subsidiaries, affiliates and benefit plans, and each of their past, present and future officers, directors, trustees, members, administrators, agents, attorneys, employees and insurance carriers, as well as the heirs, successors and assigns of any of such persons or such entities related to MIMEDX Group, Inc. and MIMEDX Group, Inc. Severance Plan;

(c) Any and all past, present and future partners, shareholders, directors, officers, trustees, managers, employees, attorneys, agents, benefit plans (and their sponsors, fiduciaries and administrators), insurers, reinsurers, members and servants of any of the entities described in Section 3(a) or (b).

**3. General Release of All Claims.** In exchange for the consideration described in Section 2, Employee, for himself and on behalf of his heirs, estate, representatives, successors, assigns, and agents, hereby expressly and unconditionally releases and forever discharges Company and all other Released Parties from any and all claims arising at any time through the date of Employee's execution of this

Agreement, including, without limitation, all possible claims arising out of or in any way relating to Employee's employment by Company, or the termination of that employment.

(a) This general release of claims covers, without limitation:

(i) any and all claims under any possible legal, equitable, contract, or tort theory including, without limitation, claims for wrongful discharge, employment termination in violation of public policy, negligent hiring, negligent supervision, infliction of emotional distress, fraud, promissory estoppel, breach of contract (except breach of this Agreement), breach of any other legal, equitable or fiduciary obligation, interference with contract or prospective economic advantage, false imprisonment, assault, battery, defamation, negligence, personal injury and invasion of privacy;

(ii) any and all claims under any possible statutory theory, including, without limitation, the following statutes, as amended: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, the Immigration Reform and Control Act, the Americans with Disabilities Act, the Rehabilitation Act, the Equal Pay Act, the Lilly Ledbetter Fair Pay Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act; the Pregnancy Discrimination Act, the Genetic Information Nondiscrimination Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, Employee Retirement Income Security Act, the Sarbanes Oxley Act, the Dodd-Frank Act, the National Labor Relations Act, the Workers Adjustment and Retraining Notification Act, the Uniformed Services Employment and Reemployment Rights Act, the Health Insurance and Portability Accountability Act, the Fair Credit Reporting Act, Employee Polygraph Protection Act, and any state, or local law, statute, ordinance, regulation or executive order prohibiting employment discrimination based on any legally protected characteristic,

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prohibiting retaliation for "whistleblowing" or any other legally protected activity, relating to leaves of absence, or otherwise governing Employee's employment with, or separation of employment with, Company;

(iii) any and all claims of any kind or nature that Employee had, has, or may have, whether known or unknown, against Company or any of the Released Parties arising on or before the date of Employee's execution of this Agreement, including, without limitation, any continuing effects; and

(iv) any and all claims for costs, expenses and fees of any and all attorneys who have at any time or are presently representing Employee in connection with this Agreement or any other claim or right released by him **rights** under this Agreement.

(b) This Agreement shall not waive, or be construed to waive: (i) any claim or right of Employee that cannot be waived under the law; (ii) any claim or right Employee might have to unemployment compensation benefits relating to Employee's separation from employment with Company; (iii) any claim or right Employee might have to any vested benefits for which Employee may be eligible under any employee benefit program or plan of Company; (iv) any claim or right that arises after the date of Employee's execution of this Agreement; (v) any claim related to the enforcement of this Agreement;; and (vi) any right or claim for indemnification of Employee for third party claims arising out of or related to Employee's service as an employee, officer and director of the Company and its subsidiaries under those entities' certificates of incorporation and bylaws, any indemnification agreement to which Employee is a party and any insurance policies held by the Company or subsidiaries providing indemnification coverage (subject to and accordance with the terms of such documents, agreements and policies).

(c) The Parties understand that nothing in this Agreement prohibits Employee from filing an administrative charge or complaint or otherwise reporting any possible violations of federal law or regulation or making other disclosures that are protected under the whistleblower provisions of federal law or regulation to any governmental agency or entity, including, without limitation, the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Justice, the Securities and Exchange



Commission, Congress, or any agency Inspector General, or participating or cooperating in any investigation by any such federal, state or local administrative agency of such charge or reported violation of law. Employee, however, waives his right to monetary, injunctive, or other relief to which Employee might be entitled should any federal, state or local administrative agency or any other third party pursue any claims on Employee's behalf arising out of or relating to his employment by Company or the termination of that employment. This means that by executing this Agreement, Employee will have waived any right to obtain a recovery if an administrative agency or any other person or entity pursues a claim against Company or any of the other Released Parties based on any actions taken by them up to the date of Employee's execution of this Agreement, and that Employee will have released Company and the other Released Parties of any and all claims described under this Section 4 arising up to the date of his execution of this Agreement.

**4. Affirmations.** Employee affirms that: (a) Employee has neither filed or caused to be filed nor is presently a party to any claim, complaint, grievance, or action against Company or any of the other Released Parties in any form or forum; (b) other than the payments described under Section 2(a), Company owes Employee no leave (paid or unpaid), compensation, wages, bonuses, commissions, or other payment or benefit of any kind; (c) Company in no way has interfered with Employee's exercise of any rights or denied Employee any benefit or entitlement provided under the Employee Retirement Income Security Act, the Family and Medical Leave Act, the National Labor Relations Act, the Fair Labor Standards Act or the Uniformed Services

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Employment and Reemployment Rights Act; (d) Employee suffered no on-the-job injuries or illnesses for which Employee has not already filed a workers' compensation claim; and (e) prior to signing this Agreement, Employee engaged in no conduct that would violate Section 7, 8, 10 or 11 of this Agreement. Employee acknowledges and understands that the truthfulness and accuracy of the foregoing affirmations are a material term of this Agreement, without which Company would not have entered this Agreement.

**5. No Admission of Wrongdoing.** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Company or by Employee of liability or unlawful conduct of any kind, or evidence of any liability or unlawful conduct of any kind. Nothing in the preceding sentence shall preclude introduction of this Agreement by Company to establish that Employee's claims have been resolved and/or released, or by either Party to establish a breach of this Agreement.

**6. Confidentiality Agreement Tax Consequences.** Subject to Section 4(c) and except as otherwise required by law, Employee agrees The Participant acknowledges (i) that he will not disclose, disseminate, there may be adverse tax consequences upon acquisition or publicize, or cause or permit to be disclosed, disseminated, or publicized, directly or indirectly, specifically or generally, to any person, corporation, association, governmental agency, or other entity, (i) the existence of this Agreement; (ii) the terms and conditions of this Agreement, including that any sums were paid to Employee; and (iii) the content of any and all settlement discussions related to this Agreement; (iii) any non-public information regarding Employee's employment with the Company; or (iv) any claims or allegations of wrongdoing, or the basis for any such claims or allegations, which were or could have been made or asserted against the Company or any disposition of the Released Parties, except Shares received upon vesting of the RSUs and (ii) that Participant should consult a tax adviser prior to such information may be disclosed: (a) to Employee's accountant, attorneys, domestic partner, and/acquisition or spouse, provided that, disposition. The Participant is solely responsible for determining the tax consequences of the Restricted Stock Unit Award and for satisfying the Participant's tax obligations with respect to the maximum extent permitted by applicable law, rule, code, or regulation, they agree to maintain the confidentiality of the Agreement; (b) to the extent necessary to report income to appropriate taxing authorities; (c) in response to an order of a court of competent jurisdiction or a subpoena issued under authority thereof; (d) in response to any subpoena issued by a state or federal governmental agency; or (e) as otherwise required by law. To the extent that Employee is subpoenaed by any person or entity Restricted Stock Unit Award (including, but not limited to, any government agency) income or excise tax as resulting from the application of Code Sections 409A or 4999 or related interest and penalties), and the Company and its Affiliates shall not be liable if this grant is subject to give testimony Code Sections 409A, 280G or produce documents (in 4999. The Company's obligation to issue Shares is subject to the Participant's satisfaction of any applicable federal, state and local income and employment tax and withholding requirements in a deposition, court proceeding, manner and form satisfactory to the Company. The Committee, to the extent applicable law permits, may allow the Participant to pay any such amounts as provided in the Plan.

7. *Fractional Shares.* Fractional shares shall not be issuable hereunder, and when any provision hereof may entitle the Participant to a fractional share such fractional share shall be disregarded.

EXHIBIT 10.1

8. *Change in Common Stock.* The RSUs are subject to adjustment as provided in Article XVI of the Plan.

9. *Notice.* Any notice or otherwise which other communication given pursuant to this Agreement, or in any way relates with respect to Employee's employment the Shares, shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Company: MiMedx Group, Inc.  
1775 West Oak Commons Ct. NE  
Marietta, Georgia 30062  
Attn: General Counsel

If to the Participant: The most current address of record on file with the Company.

10. *Shareholder Rights; Dividend Equivalents.* Except as provided below, Participant shall have no rights as a Shareholder of the Company with respect to shares underlying the RSUs unless and until Shares are delivered to Participant in respect of such RSUs upon vesting. The RSUs will be entitled to accrue Dividend Equivalents, which will be subject to all conditions and restrictions applicable to the underlying RSUs to which they relate, and which may not be paid until and unless the underlying RSUs have vested. Dividend Equivalents will accrue prior to the issuance of Shares with respect to the RSUs or their earlier forfeiture. Dividend Equivalents will be earned only for RSUs that are earned or deemed earned under this Agreement. With respect to RSUs that are not earned (because the applicable vesting restrictions do not lapse or otherwise), Dividend Equivalents that were accrued for those RSUs will be cancelled and forfeited along with the RSUs and underlying Shares, without payment therefor by the Company and/or any Affiliate. Dividend Equivalents will be paid at such time as the underlying RSUs to which they relate are paid.

11. *No Right to Continued Employment or Service.* Neither the Plan, the granting of the RSUs nor any other action taken pursuant to the Plan or this Agreement constitutes or is evidence of any agreement or understanding, expressed or implied, that the Company or any Affiliate shall retain the Participant as an employee or other service provider for any period of time or at any particular rate of compensation.

12. *Binding Effect.* Subject to the limitations stated above and in the Plan, this Agreement shall be binding upon and inure to the benefit of the legatees, distributees, and personal representatives of the Participant and the successors of the Company.

13. *Conflicts.* In the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of the Plan shall govern. All references herein to the Plan shall mean the Plan as in effect on the date hereof.

14. *Counterparts.* This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

15. *Miscellaneous.* The parties agree to execute such further instruments and take such further actions as may be necessary to carry out the intent of the Plan and this Agreement. This Agreement and the Plan shall constitute the entire agreement of the parties with respect to the subject matter hereof.

EXHIBIT 10.1

16. *Section 409A.* Notwithstanding any of the Released Parties and/or provisions of this Agreement, Employee it is intended that the RSUs granted pursuant to this Agreement be exempt from Section 409A of the Code as short-term deferrals, pursuant to Treasury regulation §1.409A-1(b)(4), or otherwise comply with Section 409A of the Code. Notwithstanding the preceding, neither the Company nor any Affiliate shall be liable to the Participant or



any other person if the Internal Revenue Service or any court or other authority have any jurisdiction over such matter determines for any reason that the RSUs are subject to taxes, penalties or interest as a result of failing to be exempt from, or comply with, Section 409A of the Code. For the avoidance of doubt, the provisions of this Agreement shall be construed and interpreted consistent with Article XXII of the Plan.

17. *Non-transferability and non-alienation.* The Participant shall not assign or transfer any RSUs while such RSUs remain forfeitable, other than by will **except** or the laws of descent and distribution. No right or interest of Participant or any transferee in the RSUs or Shares subject to the RSUs shall be subject to any lien or any obligation or liability of the Participant or any transferee.

18. *Compensation Recoupment Policy.* This Restricted Stock Unit Award shall be subject to the Company's Compensation Recoupment Policy, any similar policy that the Company may adopt and applicable law related to compensation recoupment.

19. *Governing Law.* This Agreement shall be governed by the governing laws applicable to the Plan.

[Signature Page to Follow]

EXHIBIT 10.1

IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by a duly authorized officer, and the Participant has affixed the Participant's signature hereto.

COMPANY:  
MIMEDX GROUP, INC.

Name: Joseph H. Capper  
Title: Chief Executive Officer

ATTEST:

Name: William "Butch" Hulse  
Title: General Counsel and Chief Administrative Officer

PARTICIPANT:

[Participant's Name]

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EXHIBIT 10.2

MIMEDX GROUP, INC.  
2016 EQUITY AND CASH INCENTIVE PLAN  
*Amended and Restated through May 2, 2023*  
Form of Performance Stock Unit Agreement

THIS PERFORMANCE STOCK UNIT AGREEMENT (this "Agreement") dated as **provided for in** of \_\_\_\_\_, between MIMEDX Group, Inc. (the "Company") and \_\_\_\_\_ (the "Participant"), is made pursuant and subject to **Section 4(c)** the provisions of the MiMedx Group, Inc. 2016

Equity and Cash Incentive Plan, as amended and restated through May 2, 2023 (the "Plan"). Unless otherwise defined herein, all terms used herein that are defined in the Plan have the same meaning given them in the Plan.

1. **Grant of Performance Stock Units.** Pursuant to the Plan, the Company, on \_\_\_\_\_, \_\_\_\_ (the "Date of Grant"), granted to the Participant, subject to the terms and conditions of the Plan and subject further to the terms and conditions set forth herein, this Award of Performance Stock Units ("PSUs") in a target amount equal to \_\_\_\_\_ of common stock, par value \$0.001 (the "Common Stock"), of the Company (the "Shares") subject to the terms of this **Agreement**. The PSUs will vest as set forth in **Section 2** below and will be settled as set forth in **Section 3** below. A Participant shall have no right to exchange the PSUs for cash, Common Stock or **as prohibited by the order of court or government agency, give prompt notice of such request to William F. Hulse, Esq., or his successor at the Company.**

The parties acknowledge any other benefit and agree that this **Section 7** shall be an unsecured creditor of the **Agreement shall Company** with respect to such PSUs and any future rights to benefits.

2. **Vesting of the PSUs.** Subject to earlier expiration, termination or vesting as provided herein, the PSUs will become vested and may be **in addition to**, earned based on achieving performance levels against pre-determined performance goals, and **shall** satisfying the conditions of employment, as described herein, and are forfeited if defined performance levels or conditions of employment are not **be considered** achieved or **construed as** superseding or in conflict with, any other obligation, whether contractual or otherwise, that Employee owes or may owe to the Company

The Parties acknowledge and agree that this **Section 7** is a material provision of this Agreement, and that any breach of this **Section 7** shall be a material breach of this Agreement. **satisfied.**

7. (a) **Non-Disparagement Agreement Performance Condition and Required Employment.** Subject to **Section 4(c) 4**, the total number of PSUs that may be earned by a Participant will be based on both (i) \_\_\_\_\_ Revenue, as described on **Annex I**, (the "Performance Condition", with references to "Threshold," "Target" and **except "Excellence"** as otherwise required by law, Employee will refrain from directly or indirectly making any comment, engaging included therein), limited as provided below and in **publicity**, or taking any other action that reflects adversely upon Company or any other **Annex I**, and (ii) satisfaction of the **Released Parties**. condition of employment, as set forth below.

(b) **Applying Performance & Employment Conditions – Payout Formula.** The **Parties acknowledge** PSUs will vest on \_\_\_\_\_, 202\_ (the "Performance Measurement Date") in accordance with the following payout formula, provided that the Participant continues to be actively employed by the Company on the Payment Date and **agree that this Section 8** the Performance Condition is **a material provision** otherwise satisfied as follows: 50% of **this Agreement**, target number of Shares will be awarded at Threshold performance; 100% of target number of Shares will be awarded at Target performance; 150% of target number of Shares will be awarded at Excellence level; and **that any breach** 0% of **this Section 8 shall** target number of Shares will be **a material breach** awarded at performance below Threshold (the "Payout Formula"). Results between Threshold and Target and Target and Excellence will be prorated. Notwithstanding the foregoing, the Payout Formula may be modified based on the Company's performance against the TSR Performance Condition (as described in **Annex I**).

3. **Settlement of this Agreement. PSUs and Restricted Stock Units.**

(a) **Timing and Amount.** Following the Performance Measurement Date, the Compensation Committee will determine the extent to which the applicable Performance Condition has

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The parties acknowledge been achieved, as may be limited by the TSR Performance Condition (as described in **Annex I**). Vested PSUs, and **agree** if issued pursuant to **Section 4(a)** below, Restricted Stock Units, earned by a Participant will be settled and paid in Shares as soon as practicable following the Performance Measurement Date on a date determined in the Company's discretion, provided that **this** the Participant continues to be actively employed on such date, subject to **Section 8 4**, and in no event later than the last day of the "applicable 2½ month period" specified in Treas. Reg. §1.409A-1(b)(4) (the "Payment Date").

(b) **Stock Holding Requirements.** Notwithstanding any other provision of this Agreement, the Shares that are issued may not be sold, transferred or otherwise disposed of until the level of ownership provided in the Company's Stock Ownership Guidelines is met, to the extent applicable to the Participant. All Shares acquired hereunder ("net" Shares acquired in case of any net exercise or withholding of Shares) shall be subject to the terms and conditions of the Company's Stock Ownership Guidelines, as they may be amended from time to time.

(c) **Insider Trading Restrictions; Market Abuse Laws.** Participant acknowledges that Participant may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, including but not limited to Participant's country and the country or countries in which the Shares are or may be listed, which may affect his or her ability, directly or indirectly, to acquire, sell or attempt to sell or otherwise dispose of shares of Common Stock or rights to shares of Common Stock (e.g., PSUs), under the Plan during such times as Participant is considered to have "inside information" regarding the Company. Furthermore, Participant understands that he or she may be prohibited from (i) disclosing the inside information to any third party, including fellow employees, and (ii) "tipping" third parties by sharing with them Company inside information, or otherwise causing third parties to buy or sell Company securities. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and Participant should consult with his or her personal legal advisor on this matter.

4. **Forfeiture of the Shares.** PSUs and/or Restricted Stock Units or other payments are forfeited and no amounts shall be paid to any employee whose services are terminated for any reason prior to Payment Date, as applicable, except for Participants whose employment is terminated without "Cause" or for "Good Reason" within two years following the occurrence of a Change in Control, or Participants who die or whose employment is terminated due to Disability before the end of the Performance Period (as defined in [Annex I](#)), each as set forth below.

(a) **Change in Control.** Notwithstanding the foregoing, upon the occurrence of a Change in Control prior to the end of the Performance Period, any outstanding PSUs shall be treated in accordance with and governed by Section 14.05 of the Plan. For PSUs which are then outstanding hereunder, the Target level of performance set forth with respect to the Performance Condition for such units shall be deemed to have been attained (or, if higher, the actual level of performance attained), and such Shares or units shall be converted into and remain outstanding as Restricted Stock Units, subject to forfeiture unless the Participant continues to be actively employed by the Company through the end of the original Performance Period, but subject to exception in the case of a termination of employment by the Company without Cause or, in the case of a Participant with an effective Key Employee Retention and Restrictive Covenant Agreement at the time of termination, a termination by the Participant with Good Reason, in either case during the two-year period following the Control Change Date.

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(b) **Death and Disability.** If the Participant's employment with the Company and its Affiliates is terminated on account of the Participant's death or Disability prior to the end of the Performance Period, a pro-rata portion of the PSUs shall vest in proportion to the number of days the Participant was employed in relation to the number of days in the Performance Period, reduced by the number of Restricted Stock Units issued to the Participant for the Performance Period, which PSUs may be earned subject to and based on the degree of attainment of the Performance Condition as may be limited by the TSR Performance Condition (as described in [Annex I](#)). Such vesting and payment of PSUs will occur after completion of the Performance Period as provided in [Section 3\(a\)](#).

5. **Agreement to Terms of the Plan and this Agreement.** The Participant has received a copy of the Plan, has read and understands the terms of the Plan and this Agreement, and agrees to be bound by their terms and conditions. All decisions and interpretations made by the Company or the Committee with regard to any question arising under this Agreement will be binding and conclusive on the Company and Participant and any other person who has any rights under this Agreement.

6. **Tax Consequences.** The Participant acknowledges (i) that there may be adverse tax consequences upon acquisition or disposition of the Shares received upon vesting of the PSUs and/or Restricted Stock Units and (ii) that Participant should consult a tax adviser prior to such acquisition or disposition. The Participant is solely responsible for determining the tax consequences of the Performance Stock Unit Award and for satisfying the Participant's tax obligations with respect thereto (including, but not limited to, any income or excise tax as resulting from the application of Code Sections 409A or 4999 or related interest and penalties), and the Company and its Affiliates shall not be liable if this grant is subject to Code Sections 409A, 280G or 4999. The Company's obligation to issue Shares is subject to the Participant's satisfaction of any applicable federal, state and local income and

employment tax and withholding requirements in a manner and form satisfactory to the Company. The Committee, to the extent applicable law permits, may allow the Participant to pay any such amounts as provided in the Plan.

7. **Fractional Shares.** Fractional Shares shall not be issuable hereunder, and when any provision hereof may entitle the Participant to a fractional share such fractional share shall be disregarded.

8. **Change in Common Stock.** The PSUs and Restricted Stock Units are subject to adjustment as provided in Article XVI of the Plan.

9. **Notice.** Any notice or other communication given pursuant to this Agreement, or in any way with respect to the Shares, shall be in addition to, writing and shall not be considered personally delivered or construed as superseding mailed by United States registered or in conflict with, any other obligation, whether contractual or otherwise, that Employee owes or may owe certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Company: MIMEDX Group, Inc.  
1775 West Oak Commons Ct. NE  
Marietta, Georgia 30062  
Attn: General Counsel

If to the Participant: The most current address of record on file with the Company.

## 8.3

10. **Cooperation Shareholder Rights; Dividend Equivalents.** Except as provided for in and subject to Section 4(c) of this Agreement, Employee agrees that he will reasonably cooperate with the Company regarding any investigation, or the defense or prosecution of any claims, proceedings, arbitrations, or actions now pending or in existence, or which may be brought in the future, against or on behalf below, Participant shall have no rights as a Shareholder of the Company with respect to Shares underlying the PSUs and Restricted Stock Units unless and until Shares are delivered to Participant in respect of such PSUs or Restricted Stock Units. The PSUs and Restricted Stock Units will be entitled to accrue Dividend Equivalents, which relate will be subject to events or occurrences that transpired during his employment with the Company. Employee's cooperation shall include, but not necessarily be limited to: (i) attending meetings with all conditions and truthfully answering questions posed by representatives and/or attorneys of the Company; (ii) providing or producing documents relevant to such claim, proceeding, arbitration, or action, as restrictions applicable to the extent that such documents underlying PSUs and Restricted Stock Units to which they relate, and which may not be paid until and unless the underlying PSUs and Restricted Stock Units are in Employee's possession, custody, or control vested, earned and as may be requested, from time to time, by representatives and/or attorneys of the Company; (iii) executing truthful and complete declarations or affidavits; and (iv) appearing as a witness at depositions, trials, arbitration hearings, or other proceedings without the necessity of a subpoena and testifying truthfully and completely. The Company agrees to reimburse Employee for all of his reasonable, out-of-pocket expenses associated with such cooperation, including reasonable travel expenses, in accordance with any applicable Company policy as in effect from time to time, so long as Employee provides advance written notice of his request for reimbursement and provide satisfactory documentation of the expenses. Nothing in this provision shall be construed or applied so as to obligate Employee to violate any law or legal obligation. Nothing herein is intended to unduly interfere with Employee's other business or personal activities, and the Company shall use reasonable efforts to ensure any cooperation requested thereby does not unduly interfere with any subsequent employment and, paid. Dividend Equivalents will accrue prior to the extent that such cooperation does unreasonably interfere issuance of Shares with Employee's subsequent employment, it respect to the PSUs and Restricted Stock Units or their earlier forfeiture. Dividend Equivalents will be requested earned only if, upon a good faith determination for PSUs and Restricted Stock Units that are earned or deemed earned under this Agreement. With respect to PSUs and Restricted Stock Units that are not earned (because the applicable vesting restrictions do not lapse or otherwise), Dividend Equivalents that were accrued for those units will be cancelled and forfeited along with the PSUs, Restricted Stock Units and underlying Shares, without payment therefor by the Company it is reasonably necessary.

9. **Return of Company Property.** Employee represents and warrants that he has returned all Company-issued property, including, without limitation, credit cards, keys, laptops, mobile and other computing devices, including all related peripheral equipment such

as batteries and power cords, computer software, files, manuals, letters, notes, records, drawings, notebooks, reports and any other documents and tangible items that Employee received, acquired, prepared, used or maintained in connection with conducting business for or on behalf of Company, whether maintained at Employee's office, home or any other location, Affiliate. Dividend Equivalents will be paid at such time as the underlying PSUs and in all forms, including electronic form and expressly including documents and tangible items containing confidential information. Employee will not retain, disclose or make any further use, directly or indirectly, of any such Company property.

**10. Existing Post-Employment Obligations.** Employee acknowledges and agrees that nothing in this Agreement shall in any way limit, restrict, diminish, waive or otherwise reduce any post-employment obligation owed by Employee Restricted Stock Units to Company under any agreement entered by Employee prior to this Agreement, any established policy of Company and/or governing law, including, without limitation, the Severance Agreement, MIMEDX Confidentiality and Non-Solicitation Agreement, MIMEDX Employee Inventions Assignment Agreement, and MIMEDX Non-Competition Agreement, which they relate are paid.

**11. No Right to Reemployment/Continued Employment or Service.** Employee acknowledges that neither Company Neither the Plan, the granting of the PSUs or any Restricted Stock Units nor any other action taken pursuant to the Plan or this Agreement constitutes or is evidence of any agreement or understanding, expressed or implied, that the Company or any Affiliate shall retain the Participant as an employee or other Released Parties will ever be obligated to employ service provider for any period of time or reemploy Employee after he signs this Release.

6 at any particular rate of 9

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compensation.

**12. Amendment Binding Effect.** This Agreement may not be modified, altered or changed except Subject to the limitations stated above and in a writing executed by both Parties wherein specific reference is made to the Plan, this Agreement and to which a copy of this Agreement is attached.

**13. Entire Agreement.** This Agreement represents and contain the entire understanding between the Parties in connection with the subject matter therein. The Parties expressly acknowledge and recognize that there are no oral agreements, understandings or representations between them other than those contained in this Agreement, and any such prior agreements or understandings are hereby specifically terminated. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, legatees, distributees, and personal representatives heirs, and/or successors and assigns of the Parties. Participant and the successors of the Company.

**13. Conflicts.** In the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of the Plan shall govern. All references herein to the Plan shall mean the Plan as in effect on the date hereof.

**14. Severability Counterparts.** This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

**15. Miscellaneous.** The parties agree to execute such further instruments and take such further actions as may be necessary to carry out the intent of the Plan and this Agreement. This Agreement and the Plan shall constitute the entire agreement of the parties with respect to the subject matter hereof.

**16. Section 409A.** Notwithstanding any of the provisions of this Agreement, it is intended that the PSUs and Restricted Stock Units granted pursuant to this Agreement be exempt from Section 409A of the Code as short-term deferrals, pursuant to Treasury regulation §1.409A-1(b)(4), or otherwise comply with Section 409A of the Code. Notwithstanding the preceding, neither the Company nor any Affiliate shall be liable to the Participant or any other person if the Internal Revenue Service or any court or other authority have any jurisdiction over such matter determines for any reason that the PSUs or Restricted Stock Units are subject to taxes, penalties or interest as a result of failing to be exempt from, or comply with, Section 409A of the Code. For the avoidance of doubt, the provisions of this Agreement shall be construed and interpreted consistent with Article XXII of the Plan including, without limitation, the Key Employee Rule set forth in Section 1.07 thereunder.

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17. *Non-transferability and non-alienation.* The Participant shall not assign or transfer any PSUs or Restricted Stock Units while such units remain forfeitable, other than by will or the laws of descent and distribution. No right or interest of Participant or any transferee in the PSUs, Restricted Stock Units or Shares subject to the units shall be subject to any lien or any obligation or liability of the Participant or any transferee.

18. *Compensation Recoupment Policy.* This Award of PSUs shall be subject to the Company's Compensation Recoupment Policy, any similar policy that the Company may adopt and applicable law related to compensation recoupment.

19. *Governing Law.* This Agreement shall be governed by the governing laws applicable to the Plan.

[Signature Page to Follow]

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IN WITNESS WHEREOF, the Company has caused this Agreement to be signed by a duly authorized officer, and the Participant has affixed the Participant's signature hereto.

COMPANY:

COMPANY:

MIMEDX GROUP, INC.

Name: Joseph H. Capper

Title: Chief Executive Office

ATTEST:

Name: William "Butch" Hulse

Title: General Counsel and Chief Administrative Officer

PARTICIPANT:

[Signature Page to PSU Award Agreement]

ACTIVE 693716423v6

## Annex I

Threshold, Target and Excellence Levels			
\$(000)			
	Threshold (50% Payout)	Target (100% Payout)	Excellence (150% Payout)
Total Revenue – Fiscal year ended December 31, ____	\$X	\$X	\$X

The number of PSUs earned determined based on the immediately preceding table may increase by up to 20% based on the Company's Relative TSR Percentile Rank as follows:

- (a) if the Company's Relative TSR Percentile Ranking is at the 50th percentile, then the TSR Modifier Percentage will be 100%; and
- (b) if the Company's Relative TSR Percentile Ranking is at or above the 75th percentile, then the TSR Modifier Percentage will be 120%.

To the extent that the Company's Relative TSR Percentile Ranking ranks in a percentile between the 50<sup>th</sup> and 75<sup>th</sup> percentile, then the TSR Modifier Percentage will be prorated between the corresponding TSR Modifier Percentages listed above.

Notwithstanding the foregoing, in order for PSUs to be earned (and Shares to be awarded) above the Target performance level and up to the Excellence performance level, the Company's Relative TSR Percentile Ranking for the Performance Period must be at or above the 50<sup>th</sup> percentile.

For purposes of the above:

"\_\_\_\_ Revenue" means the Company's total reported revenue for the year ended December 31, \_\_\_\_.

"Relative TSR Percentile Ranking" means the percentile ranking of the Company's Total Shareholder Return from January 1, \_\_\_\_ through December 31, \_\_\_\_ (the "Performance Period") as compared to the Total Shareholder Return achieved by the Russell 2000 Index during such Performance Period.

"Total Shareholder Return" means, with respect to any corporation, the increase in its stock price over the Performance Period plus reinvested dividends, divided by its stock price at the beginning of the Performance Period. For purposes of this definition, the beginning stock price will be the average closing price over the twenty (20) trading days up to and including January 1, \_\_\_\_ and the ending stock price will be the average closing price over the twenty (20) trading days up to and including December 31<sup>st</sup> \_\_\_\_.

ACTIVE 693716423v6

EXHIBIT 10.3

## MIMEDX GROUP, INC. Form of Nonqualified Stock Option Agreement

THIS NONQUALIFIED STOCK OPTION AGREEMENT (this "Agreement") dated as of \_\_\_\_ (the "Date of Grant"), between MiMedx Group, Inc. (the "Company"), and \_\_\_\_ (the "Participant"), is made pursuant and subject to the provisions of the MiMedx Group, Inc. 2016 Equity and Cash Incentive Plan, as amended and restated through May 2, 2023 (the "Plan"). Unless otherwise defined herein, all terms used herein that are defined in the Plan have the same meaning given them in the Plan.



1. *Grant of Option.* Pursuant to, and subject to the terms and conditions of, the Plan and subject to the terms and conditions set forth herein, the Participant is hereby granted this Award of an option to purchase from the Company all or any part of an aggregate of \_\_\_\_\_ shares of common stock of the Company, par value \$0.001 per share ("Common Stock"), at the closing price per share of Common Stock on \_\_\_\_\_ (this "Option"). The Option is subject to adjustment as provided in Article XVI of the Plan. No part of the Option granted hereby is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended.

2. *Terms and Conditions.* This Option is subject to the following terms and conditions:

(a) *Expiration Date.* This Option shall expire at 11:59 p.m. on \_\_\_\_\_, 203\_ (the "Expiration Date") or such earlier time as set forth in this Agreement. In no event shall the Expiration Date be later than seven (7) years after the Date of Grant.

(b) *Vesting of Option.* This Option shall be vested and exercisable, in whole or in part, according to the following vesting schedule:

Twenty-five percent (25%) of the shares subject to the Option shall vest on the one (1) year anniversary of the Date of Grant, and twenty-five percent (25%) of the shares subject to the Option shall vest on each of the following three anniversaries thereafter, subject to Participant continuing to be an employee through each such date. On each vesting date, the number of shares vesting shall be rounded down to the nearest whole share, with the balance vesting on the last vesting date.

(c) *Change in Control.* Upon the occurrence of a Change in Control, any outstanding Option shall be treated in accordance with and governed by Section 14.05 of the Plan, as if granted thereunder, and the terms provided in this Agreement.

(d) *Method of Exercise and Payment for Shares.* To the extent then vested and exercisable, the Participant may exercise the Option by delivering written notice of exercise, along with the exercise price for the portion of the Option being exercised, to the attention of the Company's Secretary at the Company's address specified in Section 8 below. Notwithstanding the foregoing, no single exercise of the Option may be for less than 100 shares of Common Stock unless, at the time of

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exercise, the maximum number of shares of Common Stock available for purchase under the Option is less than 100 shares, in which event the Option may be exercised, if at all, only for all of the shares of Common Stock then available for purchase. The exercise date shall be the date of the notice. The Participant shall pay the exercise price in cash or cash equivalent acceptable to the Committee. However, the Committee in its discretion may, but is not required to, allow the Participant to pay the exercise price (i) by surrendering shares of Common Stock the Participant already owns, (ii) by a cashless exercise through a broker, (iii) by means of a "net settlement" procedure, (iv) by such other medium of payment as the Committee shall authorize or (v) by any combination of the allowable methods of payment set forth herein. If payment is in the form of shares of Common Stock, then the certificate or certificates representing those shares must be duly executed in blank by the Participant or accompanied by a stock power duly executed in blank suitable for purposes of transferring those shares to the Company. Fractional shares of Common Stock will not be accepted in payment of the exercise price of the Option. The Company will not issue the shares of Common Stock until full payment of the exercise price for them has been made. As soon as administratively practicable upon the Company's receipt of the exercise price, subject to the other terms of the Option, the Company shall direct the issuance of the applicable shares of Common Stock so purchased. In the case of the Participant's death, the Option, to the extent vested and exercisable, may be exercised by the executor or administrator of the Participant's estate or by any term, condition, clause, person or persons who have acquired the Option directly from the Participant by bequest or inheritance.

(e) *Non-Transferability of Option.* The Participant shall not assign or transfer the Option, other than by will or the laws of descent and distribution. During the Participant's lifetime, only the Participant (or, in the event of legal incapacity or incompetency, the Participant's guardian or legal representative) may exercise the Option. No right or interest of the Participant or any transferee in this Option shall be liable for, or subject to, any lien, obligation or liability of the Participant or any transferee.

(f) *Stock Holding Requirements.* Notwithstanding any other provision of this Agreement, Shares of Common Stock acquired pursuant to this Option may not be sold, transferred or otherwise disposed of until the level of ownership provided in the Company's Stock Ownership Guidelines is determined met, to the extent applicable to the Participant. All shares of Common Stock acquired hereunder ("net" shares acquired in case of any net



exercise or withholding of shares) shall be subject to the terms and conditions of the Company's Stock Ownership Guidelines, as they may be amended from time to time.

(g) *Insider Trading Restrictions; Market Abuse Laws.* Participant acknowledges that Participant may be subject to insider trading restrictions and/or market abuse laws in applicable jurisdictions, including but not limited to Participant's country and the country or countries in which the shares of Common Stock acquired pursuant to this Option may be listed, which may affect his or her ability, directly or indirectly, to acquire, sell or attempt to sell or otherwise dispose of shares of Common Stock or rights to shares of Common Stock, under the Plan during such times as Participant is considered to have "inside information" regarding the Company. Furthermore, Participant understands that he or she may be prohibited from (i) disclosing the inside information to any third party, including fellow employees, and (ii) "tipping" third parties by sharing with them Company inside information, or otherwise causing third parties to buy or sell Company securities. Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any

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applicable Company insider trading policy. Participant acknowledges that it is his or her responsibility to comply with any applicable restrictions as well as any applicable Company insider trading policy, and Participant should consult with his or her personal legal advisor on this matter.

### 3. *Termination of Option.*

a. *Exercise in the Event of Death or Disability.* This Option shall be exercisable for the number of shares of Common Stock subject to the Option only to the extent that the Participant is entitled to purchase pursuant to Section 2 as of the date of termination of the Participant's employment by, or provision of services to, the Company and its Affiliates, reduced by the number of shares for which the Participant previously exercised the Option, and to the extent the Participant's rights have not otherwise been terminated under this Agreement, if the Participant's employment by, or provision of services to, the Company and its Affiliates terminates on account of the Participant's death or Disability, and the balance of the Option shall be forfeited with no consideration. In that event, to the extent exercisable, this Option may be exercised by the Participant, the Participant's estate, or the person or persons to whom the Participant's rights under this Option shall pass by will or the laws of descent and distribution (to the extent applicable), for the remainder of the period preceding the Expiration Date or until the date that is twelve (12) months after the Participant's Termination Date due to death or Disability, whichever period is shorter.

b. *Exercise after a Change of Control.* This Option shall be exercisable for the number of shares of Common Stock subject to the Option only to the extent that the Participant is entitled to purchase pursuant to Section 2 as of the date of termination of the Participant's employment by, or provision of services to, the Company and its Affiliates on or after a Change in Control, reduced by the number of shares for which the Participant previously exercised the Option, and to the extent the Participant's rights have not otherwise been terminated under this Agreement, if the Participant's employment by, or provision of services to, the Company and its Affiliates terminates on or after a Change in Control (other than as described in Section 3(a) above), and the balance of the Option shall be forfeited with no consideration. In that event, to the extent exercisable the Participant may exercise this Option for the remainder of the period preceding the Expiration Date or until the date that is twelve (12) months after the Participant's Termination Date, whichever period is shorter.

c. *Exercise after other Termination of Employment or Service.* This Option shall be exercisable for the number of shares of Common Stock subject to the Option only to the extent that the Participant is entitled to purchase pursuant to Section 2 as of the date of termination of the Participant's employment by, or provision of services to, the Company and its Affiliates, reduced by the number of shares for which the Participant previously exercised the Option, and to the extent the Participant's rights have not otherwise terminated under this Agreement, if the Participant's employment by, or provision of services to, the Company and its Affiliates terminates other than under any of the circumstances set forth in Sections 3(a) or (b) of this Agreement, for the remainder of the period preceding the Expiration Date or until the date that is twelve (12) months after the Participant's Termination Date, whichever period is shorter. The balance of the Option shall be forfeited with no consideration upon such Termination Date.

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d. *Termination.* The Option or portion thereof not either terminated or exercised at such time will terminate automatically and without further notice at the time the Option can no longer be exercised as set forth above.

e. *For Cause.* Notwithstanding any other provision of this Agreement, the Option will terminate automatically upon the termination of the Participant's employment by, or provision of services to, the Company and its Affiliates for Cause, as defined in the Participant's Key Employee Retention Agreement, immediately upon notice of such termination (including any portion of the Option that may have become vested and exercisable previously).

4. *Agreement to Terms.* The Participant has read and understands the terms of this Agreement, including the applicable provisions of the Plan, as if the Option was granted thereunder, and agrees to be bound by their terms and conditions. All decisions and interpretations made by the Company or the Committee with regard to any question arising under this Option will be binding and conclusive on the Company and the Participant and any other person entitled to exercise the Options as provided for in this Agreement.

5. *Tax Consequences.* The Participant acknowledges (i) that there may be adverse tax consequences upon acquisition or disposition of the shares of Common Stock received upon exercise of this Option and (ii) that Participant should consult a tax adviser prior to such acquisition or disposition. The Participant is solely responsible for determining the tax consequences of the Option and for satisfying the Participant's tax obligations with respect to the Option (including, but not limited to, any income or excise tax as resulting from the application of Code Sections 409A or 4999 or related interest and penalties), and the Company and its Affiliates shall not be liable if this Option is subject to Code Sections 409A, 280G or 4999. The Company's obligation to deliver shares of Common Stock upon exercise of the Option is subject to the Participant's satisfaction of any applicable federal, state and local income and employment tax and withholding requirements in a manner and form satisfactory to the Company. The Committee, to the extent applicable law permits, may allow the Participant to pay any such amounts (but only for the minimum required withholding or such other amounts as will not otherwise have negative accounting consequences) (i) by surrendering (actual or by attestation) shares of Common Stock that the Participant already owns; (ii) by a court cashless exercise through a broker, (iii) by means of competent jurisdiction a "net exercise" procedure or (iv) by such other medium of payment as the Committee in its discretion shall authorize.

6. *Fractional Shares.* Fractional shares shall not be issuable hereunder, and when any provision hereof may entitle the Participant to be invalid or unenforceable under the law, then only that term, condition, clause, or provision a fractional share such fractional share shall be stricken from disregarded.

7. *Change in Capital Structure.* The terms of this Option shall be adjusted in the same manner as adjustments are made as set forth in Article XVI of the Plan as the Committee determines is

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equitably required in the event the Company effects one or more stock dividends, stock splits, subdivisions or consolidations of shares or other similar changes in capitalization.

8. *Notice.* Any notice or other communication given pursuant to this Agreement, or in any way with respect to this Option, shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Company: MiMedx Group, Inc.  
1775 West Oak Commons Ct. NE  
Marietta, Georgia 30062  
Attn: General Counsel

If to the Participant: At the Participant's address on the Company's records or such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

9. *Shareholder Rights.* The Participant shall not have any rights as a shareholder with respect to shares of Common Stock subject to this Option until the issuance of the shares of the Common Stock upon exercise of the Option.

10. *No Right to Continued Employment or Service.* Neither the Plan, the granting of this Option nor any other action taken pursuant to the Plan or this Option constitutes or is evidence of any agreement or understanding, expressed or implied, that the Company or any Affiliate shall retain the Participant as an employee or other service provider for any period of time or at any particular rate of compensation.

11. *Binding Effect.* Subject to the limitations stated above and in the Plan, this Agreement shall remain in full force be binding upon and effect in all other respects, inure to the benefit of the legatees, distributees, and personal representatives of the Participant and the successors of the Company.

12. *provided Conflicts, however, if.* In the general release event of all claims in Section 4 is deemed to be invalid or unenforceable, Employee agrees to enter into a valid general release any conflict between the provisions of all claims against the Released Parties that is drafted by Plan and satisfactory to Company. Further, if a court should determine that any portion the provisions of this Agreement, is overbroad or unreasonable, such provision the provisions of the Plan shall be given effect govern. All references herein to the maximum extent possible by narrowing or enforcing Plan shall mean the Plan as in part that aspect of effect on the provision found to be overbroad or unreasonable. date hereof.

15. *13Construction. Counterparts.* This Agreement was negotiated between may be executed in a number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the Parties same instrument.

14. *Miscellaneous.* The parties agree to execute such further instruments and take such further actions as may be necessary to carry out the intent of this Agreement. This Agreement, and any

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provisions referenced herein, shall not constitute the entire agreement of the parties with respect to the subject matter hereof.

15. *Section 409A.* Notwithstanding any of the provisions of this Agreement, it is intended that the Option be construed against exempt from Section 409A of the Code. Notwithstanding the preceding, neither the Company nor any Party. Affiliate shall be liable to the Participant or any other person if the Internal Revenue Service or any court or other authority have any jurisdiction over such matter determines for any reason that the Option is subject to taxes, penalties or interest as a result of failing to be exempt from, or comply with, Section 409A of the Code.

16. *Compensation Recoupment Policy.* This Award of the Option shall be subject to the Company's Compensation Recoupment Policy, any similar policy that the Company may adopt and applicable law related to compensation recoupment.

17. *Governing Law.* This Agreement shall be governed and construed in accordance with by the governing laws of Georgia, without reference to principles of conflicts of laws.

17. **Consultation with Attorney; Voluntary Release.** Employee acknowledges that he has been advised to consult with an attorney and provided a fair and reasonable opportunity to do so before executing this Agreement. Employee further acknowledges that he has carefully read and fully understands all of the provisions of this Agreement, and that he has executed it of his own free will, act and deed, without coercion, and with full knowledge of the nature and consequences thereof.

18. **Consideration Period.** Employee acknowledges that he has been given the opportunity to consider this Agreement for a period of sixty (60) days (the "Consideration Period"), which is a reasonable period of time. If Employee executes this Agreement prior applicable to the expiration of the Consideration Period, Employee will thereby waive the remainder of the Consideration Period. Plan.

**19. Revocation Period.** Employee has a period of seven (7) calendar days following Employee's execution of this Agreement in which to revoke this Agreement (the "Revocation Period"). For a revocation to be valid, Employee must deliver written notice that he has revoked this Agreement to Kate Surdez at ksurdez@mimedx.com by the expiration of the Revocation Period. If Employee revokes this Agreement as provided under this Section, Company shall have no obligations under this Agreement, including making any payments described under Section 2. If Employee does not revoke this Agreement as provided under this Section, then this Agreement shall take effect

[Signatures continued on the eighth (8th) day following Employee's execution of this Agreement (the "Effective Date").next page]

**20. Knowing and Voluntary Waiver of Age Discrimination Claims.** Employee acknowledges that he enters this Agreement and waives any and all age discrimination claims

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under IN WITNESS WHEREOF, the Age Discrimination in Employment Act on Company has caused this Agreement to be signed by a "knowing and voluntary" basis, as set forth in 29 U.S.C. § 626(f).

**21. Execution in Counterparts.** This Agreement may be executed in two or more counterparts, which together shall constitute one duly authorized officer, and the same instrument. Participant has affixed the Participant's signature hereto.

**22. Electronic Copies.** The Parties acknowledge and agree that an electronic copy of this Agreement, executed by both Parties, shall constitute an original of same.

SIGNATURES ON NEXT PAGE COMPANY:

MIMEDX GROUP, Inc.

Name: Joseph H. Capper

Title: CEO

PARTICIPANT:

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EXHIBIT 10.4

Execution Version

#### CREDIT AGREEMENT

dated as of 9 January 19, 2024

among

MIMEDX GROUP, INC.,  
as the Borrower,

THE LENDERS PARTY HERETO,

CITIZENS BANK, N.A.,  
as Administrative Agent,

and

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

CITIZENS BANK, N.A. and BANK OF AMERICA, N.A.  
as Joint Lead Arrangers and Joint Bookrunners

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7517-  
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EMPLOYEE SWEARS THAT HE HAS CAREFULLY READ THE FOREGOING AGREEMENT, THAT EMPLOYEE UNDERSTANDS COMPLETELY ITS CONTENTS, THAT EMPLOYEE UNDERSTANDS THE SIGNIFICANCE AND CONSEQUENCES OF SIGNING IT, AND THAT EMPLOYEE HAS HAD A FULL AND FAIR OPPORTUNITY TO HAVE AN ATTORNEY EXPLAIN ALL OF ITS CONTENTS AND RAMIFICATIONS.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE PAYMENTS AND OTHER BENEFITS SET FORTH IN THIS AGREEMENT, EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS THAT EMPLOYEE HAS OR MIGHT HAVE AGAINST COMPANY.

IN WITNESS WHEREOF, Employee and Company knowingly and voluntarily executed this Agreement as of the date(s) set forth below: SCHEDULES:

For Employee:	Schedule 2.1	Commitments
	Schedule 4.1(f)	Collateral Documents and Related Requirements
	Schedule 5.6	Disclosed Matters
	Schedule 5.13	Subsidiaries; Equity Interests
	Schedule 5.14	Insurance
	Schedule 5.16(a)	UCC Filing Offices
	Schedule 5.19	Healthcare and Regulatory Matters
	Schedule 7.1	Existing Indebtedness
	Schedule 7.2	Existing Liens
	Schedule 7.4	Existing Investments
	Schedule 7.10	Existing Restrictions
	Schedule 10.1	Notice Information

EXHIBITS:

/s/ Robert Stein  
Robert Stein  
for himself Exhibit A

Exhibit B-1

For MIMEDX Group, Inc.: Exhibit B-2

/s/ Kate Surdez  
(Signature)  
Exhibit C-1

Kate Surdez CHROExhibit C-2

Exhibit C-3

Exhibit D

Exhibit E

Exhibit F-1

Exhibit F-2

Form of Assignment and  
his heirs, estate,  
representatives,  
successors, assigns, and  
agents  
Dated: July 1,  
2023  
Assumption

Form of Committed Loan  
Notice

Dated: June 28,  
2023

Form of Swingline Loan  
Notice

Form of Revolving Loan  
Note

Form of Term Loan Note  
Form of Swingline Loan  
Note  
Form of Compliance  
Certificate  
Form of Subsidiary  
Joinder Agreement  
Form of U.S. Tax  
Compliance Certificate  
For Foreign Lenders That  
Are Not Partnerships For  
U.S. Federal Income Tax  
Purposes  
Form of U.S. Tax  
Compliance Certificate  
For Foreign Participants  
That Are Not  
Partnerships For U.S.  
Federal Income Tax  
Purposes

Exhibit F-3

Exhibit F-4

Exhibit G

Exhibit H

Exhibit I

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Form of U.S. Tax  
Compliance Certificate  
For Foreign Participants  
That Are Partnerships  
For U.S. Federal Income  
Tax Purposes  
Form of U.S. Tax  
Compliance Certificate  
For Foreign Lenders That  
Are Partnerships For U.S.  
Federal Income Tax  
Purposes  
Form of Master  
Intercompany Note  
Form of Solvency  
Certificate  
Form of Secured  
Obligation Designation  
Notice

## SEPARATION CREDIT AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release CREDIT AGREEMENT, dated as of January 19, 2024, among MIMEDX GROUP, INC., a Florida corporation (the "Borrower"), the other Loan Parties party hereto, the LENDERS party hereto and CITIZENS BANK, N.A., as Administrative Agent.

### RECITALS

A. The Borrower has requested that the Lenders make loans and other financial accommodations to the Borrower as more fully set forth herein.

B. The Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### Article 1

#### DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions. As used in this Credit Agreement, the following terms have the meanings specified below:

"ABR Borrowing" means, as to any Borrowing, the ABR Loans comprising such Borrowing.

"ABR Loan" means a Loan bearing interest based on the Alternate Base Rate.

"Acquired EBITDA" means, with respect to any Acquired Entity or Business for any period, the historical Consolidated EBITDA of such Acquired Entity or Business for such period as certified by a Responsible Officer of the Borrower, which historical Consolidated EBITDA shall be calculated in a manner consistent with the definition of Consolidated EBITDA herein and to be based on financial statements for such Acquired Entity or Business

prepared in accordance with GAAP (subject to the absence of footnote disclosures and year-end audit adjustments with respect to financial statements that are not annual audited financial statements), provided that when such Acquired EBITDA is included in Consolidated EBITDA it shall be on a Pro Forma Basis.

"Acquired Entity or Business" means, for any period, any Person, property, business or asset acquired by the Borrower or any of its Subsidiaries in a Permitted Acquisition, to the extent not subsequently sold, transferred or otherwise Disposed of during such period.

"Acquisition" means any transaction or series of related transactions resulting, directly or indirectly, in: (a) the acquisition by any Person of (i) all or substantially all of the assets of another Person or (ii) all or substantially all of any business line, unit or division of another Person, (b) the acquisition by any Person (i) of in excess of 50% of the Equity Interests of any other Person, or (ii) otherwise causing any other Person to become a subsidiary of such Person, or (c) a merger, amalgamation consolidation, or any other combination of any Person with another Person (other than a Person that is a Loan Party or a Subsidiary of a Loan Party) in which a Loan Party or any of its Subsidiaries is the surviving Person.

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"Administrative Agent" means Citizens Bank, in its capacity as administrative agent for the Lenders or any successor thereto.

"Administrative Agent's Payment Office" means the Administrative Agent's office located at 28 State Street, Boston, Massachusetts 02109, or such other office as to which the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a 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 a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Parties" has the meaning assigned to such term in Section 10.1(d)(iii).

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% per annum and (c) the Daily SOFR Rate on such day plus 1.00% per annum, provided that the Alternate Base Rate shall at no time be less than the Floor. If the Administrative Agent shall have determined (which determination shall be conclusive absent clearly manifest error) that it is unable to ascertain the Federal Funds Rate or the Daily SOFR Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition of the term Federal Funds Rate, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Daily SOFR Rate, as applicable, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the Daily SOFR Rate, as applicable, respectively.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Loan Parties or their respective Subsidiaries from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Laws" has the meaning assigned to such term in Section 5.18(c).

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

"Applicable Lending Office" means for any Lender, such Lender's office, branch or affiliate designated for SOFR Loans, ABR Loans, Swingline Loans or Letters of Credit or participations therein, as applicable, as notified to the Administrative Agent, any of which offices may be changed by such Lender.

"Applicable Margin" means with respect to the Term Loans, the Revolving Loans, the Swingline Loans, L/C Participation Fees and Commitment Fees, during the applicable periods set forth below: in the case of (i) ABR Revolving Borrowings, the percentage set forth in the following table under the



heading “ABR Margin”, (ii) SOFR Revolving Borrowings, Swingline Loans, and the L/C Participation Fees, the percentage set forth in the following table under the heading “SOFR Margin and L/C Participation Fee”,

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and (iv) Commitment Fees, the percentage set forth in the following table under the heading “Commitment Fees”:

Pricing Level	Consolidated Total Net Leverage Ratio	ABR Margin	SOFR Margin and L/C Participation Fee	Commitment Fees
I	Greater than or equal to 3.00:1.00	2.50%	3.50%	0.50%
II	Greater than or equal to 2.50:1.00 but less than 3.00:1.00	2.00%	3.00%	0.375%
III	Greater than or equal to 2.00:1.00 but less than 2.50:1.00	1.75%	2.75%	0.25%
IV	Greater than or equal to 1.50:1.00 but less than 2.00:1.00	1.50%	2.50%	0.25%
V	Less than 1.50:1.00	1.25%	2.25%	0.25%

The Applicable Margin shall be determined and adjusted quarterly on the date (each a “Margin Determination Date”) that is hereby five (5) Business Days after receipt by the Administrative Agent of the Compliance Certificate pursuant to [Section 6.1\(c\)](#) for the most recently ended fiscal quarter of the Borrower (but in any event, not later than the 45<sup>th</sup> day after the end of each of the first three quarterly periods of each Fiscal Year or the 90<sup>th</sup> day after the end of each Fiscal Year, as the case may be); provided that (a) the Applicable Margin shall be based on Pricing Level IV until the Margin Determination Date for the first full fiscal quarter ending after the Closing Date, (b) if the Borrower fails to deliver the Compliance Certificate as required by [Section 6.1\(c\)](#) for the most recently ended fiscal quarter preceding the applicable Margin Determination Date, the Applicable Margin from such Margin Determination Date shall be based on Pricing Level I until the fifth Business Day after an appropriate Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Total Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Margin Determination Date. The Applicable Margin shall be effective from one Margin Determination Date until the next Margin Determination Date. Any adjustment in the Applicable Margin shall be applicable to all Loans then existing or subsequently made during the applicable period for which the relevant Applicable Margin applies. Notwithstanding the foregoing, in the event that any financial statement delivered pursuant to [Section 6.1\(a\)](#) or [\(b\)](#) or any Compliance Certificate delivered pursuant to [Section 6.1\(c\)](#) is inaccurate (regardless of whether (i) this Credit Agreement is in effect, or (ii) any of the Commitments are in effect, or (iii) any Loans or Letters of Credit are outstanding when such inaccuracy is discovered or such financial statement or Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall immediately deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Total Net Leverage Ratio in the corrected Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall immediately pay to the Administrative Agent the accrued additional

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interest and fees 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 2.8](#). Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to [Section 3.1](#) and [Section 8.1](#).

Notwithstanding the foregoing, the Applicable Margin in respect of any Class of Other Term Loans shall be the applicable percentages per annum set forth in the relevant Incremental Assumption Agreement.

"[Applicable Percentage](#)" means, at any time (a) with respect to any Lender with a Commitment of any Class, the percentage equal to a fraction the numerator of which is the amount of such Lender's Commitment of such Class and the denominator of which is the aggregate amount of all Commitments of such Class of all Lenders ([provided](#) that if the Commitments under the Revolving Facility have terminated or expired, the Applicable Percentages of the Lenders under the Revolving Facility shall be determined based upon the Revolving Exposure at such time of the determination pursuant to clause (b) below) and (b) with respect to the Loans of any Class, a percentage equal to a fraction the numerator of which is such Lender's Outstanding Amount of the Loans of such Class and the denominator of which is the aggregate Outstanding Amount of all Loans of such Class.

"[Appropriate Lenders](#)" means, at any time, (a) with respect to the Revolving Facility, the Revolving Lenders, (b) with respect to any Letters of Credit, the L/C Issuer and the Revolving Lenders, (c) with respect to any Swingline Loans, the Swingline Lender and the Revolving Lenders, and (d) with respect to the Term Facility, the Term Lenders, and (e) with respect to any Incremental Term Facility, the applicable Incremental Term Lenders.

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

"[Approved Line of Business](#)" means, collectively, (a) those lines of business in which the Borrower and its Subsidiaries operate on the Closing Date (after giving effect to the Transactions occurring on the Closing Date) and (b) any business or activity that is the same, similar or otherwise reasonably related, ancillary, complementary or incidental thereto.

"[Arranger](#)" has the meaning assigned to such term in [Section 9.7](#).

"[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 10.4](#)) and accepted by the Administrative Agent, in substantially the form of [Exhibit A](#) or any other form acceptable to the Administrative Agent.

"[Attorney Costs](#)" means with respect to (a) the Administrative Agent, all reasonable and documented fees and reasonable and documented out-of-pocket expenses, charges, disbursements and other charges of one law firm (and one local counsel in each relevant jurisdiction and one special or regulatory counsel for each relevant subject matter to the extent reasonably necessary) and (b) each Credit Party other than the Administrative Agent, all reasonable and documented fees and reasonable and documented out-of-pocket expenses, charges, disbursements and other charges of one counsel to each such Credit Party.

"[Attributable Indebtedness](#)" means, at any date, (a) in respect of any Finance Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would

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appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Finance Lease, and (c) all Synthetic Debt of such Person.

"[Audit and Restatement](#)" means (i) the investigation by the audit committee of the board of directors of the Borrower related to allegations of certain sales and distribution practices of the Borrower and other related matters, (ii) the restatement of the Borrower's consolidated financial statements filed in their annual report for the Fiscal Year ended December 31, 2016 and certain unaudited condensed consolidated financial data as of and for the Fiscal Years ended December 31, 2015 and December 31, 2014 and (iii) directly related litigation.

"**Audited Financial Statements**" means the Form 10-K containing the audited consolidated balance sheet of the Borrower and its Subsidiaries for the Fiscal Year ended December 31, 2022 and the related audited consolidated statements of income, comprehensive income, cash flows and shareholders' equity of the Borrower and its Subsidiaries for the Fiscal Year ended December 31, 2022.

"**Auto-Renewal Letter of Credit**" has the meaning assigned to such term in [Section 2.4\(b\)\(iii\)](#).

"**Availability Period**" means, with respect to the Revolving Facility, the period from and including the Closing Date to but excluding the earlier of the Maturity Date with respect to the Revolving Facility and, if different, the date of the termination of the Revolving Commitments in accordance with the provisions of this Credit Agreement.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Credit Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Credit Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to [Section 3.8\(d\)](#).

"**Back-to-Back Letter of Credit**" means a letter of credit, in form and substance reasonably satisfactory to the L/C Issuer and issued by an issuer reasonably satisfactory to the L/C Issuer.

"**Backstopped**" means, in respect of any Letter of Credit that remains outstanding on the applicable date, that the L/C Issuer shall have received (a) a Back-to-Back Letter of Credit and/or (b) cash or Cash Equivalents, provided that (i) the sum of the maximum drawable amount of such Back-to-Back Letter of Credit plus the amount of such cash and Cash Equivalents shall not be less than the Minimum Collateral Amount of the maximum drawable amount of such Letter of Credit, (ii) the arrangements with respect to such cash, Cash Equivalents and drawings on any Back-to-Back Letter of Credit allow the L/C Issuer to apply the same to reimburse itself with respect to drawings on, and other sums owing with respect to, such Letter of Credit, and (iii) the requirements under clauses (i) and (ii) of this defined term are reasonably satisfactory to the L/C Issuer.

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

"**Bail-In Legislation**" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of

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the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankruptcy Code**" means Title 11 of the United States Code or any similar federal or state law for the relief of debtors.

"**Benchmark**" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to [Section 3.8\(a\)](#). Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"**Benchmark Replacement**" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate and an adjustment as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;

provided, that any such Benchmark Replacement shall be administratively feasible as determined by the Administrative Agent in its sole discretion.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Credit Agreement and the other Loan Documents.

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

"Benchmark Replacement Date" means a date and time determined by Administrative Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

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

(d) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

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

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

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

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

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

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"Benchmark Unavailability Period" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.8 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.8.

"Beneficial Ownership Certification" means, with respect to the Borrower, a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, which certification shall be substantially in the form provided by Administrative Agent or such other form reasonably satisfactory to the Administrative Agent.

"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 Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"Bona Fide Debt Fund" means any bona fide debt fund, investment vehicle, regulated bank entity or unregulated lending entity that is primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business for financial investment purposes which is managed, sponsored or advised by any Person controlling, controlled by or under common control with (a) any Disqualified Institution or (b) any Affiliate of such Disqualified Institution, but, in each case, with respect to which no personnel involved with any investment in such Person or the management, control or operation of such Person directly or indirectly makes, has the right to make or participates with others in making any investment decisions, or otherwise causing the direction of the investment policies, with respect to such debt fund, investment vehicle, regulated bank entity or unregulated entity.

"Borrower" has the meaning assigned to such term in the Preamble.

"Borrowing" means a borrowing consisting of simultaneous Loans of the same Class, Type and, in the case of a SOFR Borrowing, having the same Interest Period, made by the Lenders.

"Borrowing Minimum" means (a) in the case of a SOFR Borrowing (other than a Swingline Loan), \$1,000,000, (b) in the case of an ABR Borrowing, \$500,000, and (c) in the case of a Swingline Loan, \$500,000.

"Borrowing Multiple" means (a) in the case of a SOFR Borrowing (other than a Swingline Loan), \$100,000, (b) in the case of an ABR Borrowing, \$50,000, and (c) in the case of a Swingline Loan, \$50,000.

"Business Day" means any day other than a Saturday, Sunday or day on which banks in New York City, New York are authorized or required by law to close.

"Capital Expenditures" means, for any period, with respect to any Person, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability) by such Person and its subsidiaries for the acquisition or leasing (pursuant to a Finance Lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries (it being understood that "Capital Expenditures" shall not include any portion of the purchase

price of a Permitted Acquisition that is required to be capitalized under GAAP); provided that "Capital Expenditures" shall not include expenditures (a) in respect of normal replacements and maintenance which are properly charged to current operations, (b) made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced or (c) made as a tenant as leasehold improvements during such period to the extent reimbursed by the landlord during such period.

"Cash Collateralize" means to deposit in a Controlled Account or to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if each of the Administrative Agent and the L/C Issuer shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer. "Cash Collateral", "Cash Collateralized" and "Cash Collateralization" shall have a meaning analogous to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means each of the following to the extent, except with respect to items described in clause (f) below:

- (h) Dollars or money in foreign currencies received in the ordinary course of business that are readily convertible into Dollars;
- (i) debt obligations maturing within one year from the date of acquisition thereof to the extent the principal thereof and interest thereon is backed by the full faith and credit of the United States;
- (j) commercial paper maturing within 180 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or Moody's;
- (k) certificates of deposit, banker's acceptances and time deposits maturing within 270 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States or any state, commonwealth or other political subdivision thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000 or, to the extent not otherwise included, any Lender, and which is rated at least A-2 by S&P and P-2 by Moody's in the note or commercial paper rating category;
- (l) repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) of this definition and entered into with a financial institution satisfying the criteria described in clause (c) of this definition;
- (m) money market mutual funds, substantially all of the investments of which are in cash or investments contemplated by clauses (a), (b) and (c) of this definition; and
- (n) with respect to any Foreign Subsidiary, investments denominated in the currency of the jurisdiction in which such Subsidiary is organized or has its principal place of business which are similar and of comparable credit quality to the items specified in clauses (b) through (f) above.

"Cash Management Obligations" means all obligations of the Loan Parties in respect of any Cash Management Services provided to any Loan Party or its Subsidiaries (whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) that are (a) owed to the Administrative Agent or any of its Affiliates, (b) owed on the

Closing Date to a Person that is a Lender or an Affiliate of a Lender as of the Closing Date or (c) owed to a Person that is a Lender or an Affiliate of a Lender at the time such obligations are incurred or becomes a Lender or an Affiliate of a Lender after it has incurred such obligations, provided that any such provider of Cash Management Services (other than the Administrative Agent or its Affiliates) executes and delivers a Secured Obligation Designation Notice to the Administrative Agent.

"Cash Management Services" means, collectively, (a) commercial debit or credit cards, merchant card processing and other services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including cash pooling arrangements, controlled disbursement, netting, overdraft, lockbox and electronic or automatic clearing house fund transfer services, return items, sweep and interstate depository network services, foreign check clearing services), and (c) any other demand deposit or operating account relationships or other cash management services.

"Casualty Event" means any event that (a) gives rise to the receipt by any Loan Party or any of its Subsidiaries of any insurance proceeds or condemnation awards arising from any damage to, destruction of, or other casualty or loss involving, or any seizure, condemnation, confiscation or taking under power of eminent domain of, or requisition of title or use of or relating to or in respect of any equipment, fixed assets or Real Property (including any improvements thereon) of such Loan Party or any of its Subsidiaries, and (b) provides Net Cash Proceeds in the aggregate in excess of \$10,000,000 received by the Loan Parties and their Subsidiaries in any Fiscal Year; provided, that "Casualty Event" shall in no event include any event or circumstance which gives rise to the D&O Insurance Payment or the Petit Payment.

"CEA Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority or the compliance therewith by any Credit Party (or, for purposes of Section 3.4(b), by any Applicable Lending Office of such Credit Party or such Credit Party's holding company, if any); provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives thereunder or issued in connection therewith or in the implementation thereof and (ii) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means an event or series of events by which (a) any Person or group (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the Closing Date) shall own directly or indirectly, beneficially or of record, shares representing more than 35% of the aggregate ordinary voting power or economic interests represented by the issued and outstanding Equity Interests of

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the Borrower on a fully diluted basis, (b) a majority of the seats (other than vacant seats) on the board of directors (or equivalent governing body) of the Borrower shall at any time be occupied by Persons who were neither (i) nominated, approved or appointed by the board of directors (or equivalent governing body) of the Borrower nor (ii) nominated, approved or appointed by individuals so nominated, approved, or appointed, (c) the Borrower shall fail to own, directly or indirectly, free and clear of all Liens or other encumbrances (other than Liens created pursuant to any Loan Document), 100% of the aggregate ordinary voting power and economic interests represented by the issued and outstanding Equity Interests of each of its Subsidiaries (or such lesser percentage as may be owned, directly or indirectly, as of the Closing Date or the later acquisition thereof) except where such failure is as a result of a transaction permitted by the Loan Documents or (d) any change in control (or similar event, however denominated) with respect to any Loan Party or any of its Subsidiaries shall occur under and as defined in any indenture or agreement in respect of Indebtedness in an outstanding principal amount in excess of the Threshold Amount to which any Loan Party or any of its Subsidiaries is a party.

"Citizens Bank" means Citizens Bank, N.A., a national banking association.

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



"Closing Date" means January 19, 2024.

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

"Collateral" means all the "Collateral" as defined in the Collateral Documents and all other property of whatever kind and nature pledged or charged, or purported to be pledged or charged, as collateral under any Collateral Document. For the avoidance of doubt, the assets of Excluded Subsidiaries shall not constitute "Collateral."

"Collateral and Guarantee Requirement" means, at any time, the requirement that:

(o) the Administrative Agent shall have received each Collateral Document required to be delivered on the Closing Date pursuant to Section 4.1 or Section 6.12, duly executed by each Loan Party that is a party thereto;

(p) all Secured Obligations shall have been unconditionally guaranteed jointly and severally on a senior basis by each of the Guarantors;

(q) except to the extent otherwise provided hereunder or under any Collateral Document, the Secured Obligations shall have been secured by a perfected first priority (subject to Liens expressly permitted pursuant to Section 7.2) security interest in, substantially all tangible and intangible assets of each Loan Party (including (i) accounts receivable, (ii) deposit accounts, commodity accounts and security accounts which shall be Controlled Accounts except that no Excluded Account be required to be a Controlled Account, (iii) inventory, (iv) machinery and equipment, (v) investment property, (vi) cash, (vii) Intellectual Property, (viii) other general intangibles, (ix) Pledged Debt, Pledged Debt Securities and Pledged Equity Interests (as such terms are defined in the Security Agreement), (x) motor vehicles (provided that no action shall be required to be taken to perfect the security interest therein other than the filing of a UCC financing statement) and (xi) the proceeds of the foregoing), it being understood that in the case of the pledge of Equity Interests, the Administrative Agent shall have received all stock certificates or other instruments (if any) representing such Equity Interests, together with stock powers or

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other instruments of transfer with respect thereto endorsed in blank; provided that the pledge of any shares in respect of any Subsidiaries that are not Wholly-Owned Subsidiaries shall be limited to the shares actually owned by the applicable pledgor;

(r) the Secured Obligations shall have been secured by a first priority security interest in (i) all Indebtedness of the Borrower and each of its Subsidiaries that is owing to any Loan Party which shall be evidenced by a Master Intercompany Note and (ii) all other Indebtedness owed to a Loan Party, which if evidenced by a promissory note or other instrument, shall, to the extent required by the Security Agreement, have been pledged to the Administrative Agent, and in each case under clauses (i) and (ii), the Administrative Agent shall have received such Master Intercompany Note and such other promissory notes and other instruments together with note powers or other instruments of transfer with respect thereto endorsed in blank;

(s) none of the Collateral shall be subject to any Lien other than Liens expressly permitted by Section 7.2; and

(t) the Administrative Agent shall have received a Perfection Certificate from the Borrower with respect to each Loan Party.

The foregoing definition shall not require the creation or perfection of pledges of or security interests in particular assets, including the delivery of Foreign Pledge Agreements, if and for so long as the Administrative Agent and the Borrower agree in writing that the cost, burden, or consequences (including adverse tax consequences) of creating or perfecting such pledges or security interests in such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

The Administrative Agent may grant extensions of time for the perfection of security interests in and the other requirements pursuant to this definition with respect to particular assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines (and without the consent of any other Secured Party), that, except as may be required by law, perfection or other requirements cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Credit Agreement or the Collateral Documents.



Notwithstanding the foregoing provisions of this definition or anything in this Credit Agreement or any other Loan Document to the contrary, (a) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth herein and in the Collateral Documents and, to the extent appropriate in the applicable jurisdiction, as agreed between Peter Carlson the Administrative Agent and the Borrower, (b) in no event shall the Collateral include any Excluded Assets and (c) notwithstanding anything to the contrary included in this definition, delivery of only the Collateral Documents required to be delivered by Section 4.1 shall be a condition precedent to the Credit Extensions on the Closing Date.

"Collateral Documents" means, collectively, the Security Agreement, each Control Agreement, each Foreign Pledge Agreement, each Copyright Security Agreement, each Patent Security Agreement, each Trademark Security Agreement, each Perfection Certificate, each agreement creating or perfecting rights in Cash Collateral and each other security agreement, instrument or other document executed or delivered pursuant to the Collateral and Guarantee Requirement, Section 6.12 or the Security Agreement to secure any of the Secured Obligations.

"Commitment" means with respect to any Lender, such Lender's Revolving Commitment, Term Loan Commitment and Incremental Term Loan Commitment (if any).

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"Commitment Fee" has the meaning assigned to such term in Section 3.2(a).

"Committed Loan Notice" means a notice of a Borrowing (other than a Swingline Borrowing), a conversion of Loans from one Type to the other, or a continuation of SOFR Loans pursuant to Section 2.2(a), which, if in writing, shall be substantially in the form of Exhibit B-1.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) and any successor statute.

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or any L/C Issuer by means of electronic communications pursuant to Section 10.1, including through the Platform.

"Competitor" means any Person that competes with the Borrower or any of its Subsidiaries.

"Compliance Certificate" means a certificate, substantially in the form of Exhibit D.

"Conforming Changes" means, with respect to either the use or administration of the Benchmark, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including, for example and not by way of limitation or prescription, changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "Interest Period" or any similar or analogous definition, the definition of "Government Securities Business Day," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.5, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate in connection with the use or administration of the Benchmark or to reflect the adoption and implementation of any Benchmark Replacement or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Credit Agreement and the other Loan Documents).

"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 Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees or costs, capitalized expenditures, customer acquisition costs and incentive payments, conversion costs and contract acquisition costs, the amortization of original issue discount, amortization of favorable or unfavorable lease assets or liabilities, and amortization, impairment, or write-off of intangibles of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period:

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(u) increased (without duplication of any addbacks set forth herein or in the definition of Pro Forma Basis) by the following, in each case, to the extent deducted (and not added back) in computing Consolidated Net Income for such Person for such period:

(i) provision for all taxes (whether or not paid, estimated, or accrued) based on income, profits, or capital and, without duplication, the aggregate amount of Permitted Tax Distributions made during such period; plus

(ii) Consolidated Interest Expense of such Person and its Subsidiaries to the extent paid or payable in cash or otherwise; plus

(iii) Impairment charges, asset write-off charges, and Consolidated Depreciation and Amortization Expense of such Person and its Subsidiaries; plus

(iv) non-cash losses and non-cash charges (excluding any non-cash charges that constitute an accrual of or a reserve for future cash charges or are reasonably likely to result in a cash outlay in a future period); plus

(v) in the case of the Borrower, reasonable and customary one-time, non-recurring fees, expenses and costs relating to the Transactions incurred within three months of the Closing Date; plus

(vi) one-time costs incurred in connection with (a) the severance, restructuring, termination and disbandment of the Borrower's Regenerative Business Unit, (b) the Audit and Restatement, and (c) Permitted Acquisitions (including cash expenses relating to Earn-Out Obligations and similar obligations (in each case whether or not consummated)); provided that costs added back pursuant to this clause (vi) shall not exceed, in any twelve-month period when combined with any costs added back pursuant to clause (viii) below, 20% of Consolidated EBITDA determined before giving effect to this clause (vi); and provided further, that solely for the last twelve-month periods ending December 31, 2023 and March 31, 2024, the addbacks pursuant to this clause (vi) may exceed 20% of Consolidated EBITDA, but may not exceed \$15,000,000 or \$11,500,000, respectively, for each such twelve-month period; plus

(vii) the amount of any equity-based or non-cash compensation charges or expenses, including any such charges or expenses arising from grants of stock appreciation or similar rights, restricted stock units, performance stock units, stock options, restricted stock or other rights; plus

(viii) the amount of pro forma "run rate" cost savings, operating expenses, reductions, synergies and Consolidated EBITDA pursuant to contracted pricing (at the highest contracted rate) related to mergers and other business combinations, acquisitions, investments, dispositions, divestitures, restructuring, operating improvements, cost saving initiatives and other similar transaction or initiatives (including the modification and renegotiation of contracts and other arrangements) that are reasonably identifiable and factually supportable and projected by the Borrower or its Subsidiaries in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in each case, including any steps or actions taken in whole or in part prior to the Closing Date or the applicable consummation date of such transaction, initiative or event) or are expected to be taken (in the good faith determination of the Borrower or its Subsidiaries) within twelve (12) months after any such transaction, initiative or event is consummated, net of the amount of actual benefits realized during such period from such actions, calculated on a pro forma basis as though such cost savings, operating expense,

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reductions, synergies and Consolidated EBITDA pursuant to contracted pricing (at the highest contracted rate) had been realized on the first day of such period for which Consolidated EBITDA is being determined as if such cost savings, operating expense reductions, synergies and Consolidated EBITDA Pursuant to contracted pricing were realized on the first day the applicable period for the entirety of such period; provided that no cost savings, operating expense reductions, synergies and Consolidated EBITDA pursuant to contracted pricing shall be added pursuant to this clause (viii) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period and provided further that addbacks pursuant to this clause (viii) shall not, when combined with any addbacks pursuant to clause (vi) above, exceed, in any twelve-month period, 20% of Consolidated EBITDA determined before giving effect to this clause (viii); plus

(ix) any net losses, charges, expenses, costs or other payments (including all fees, expenses or charges related thereto) (a) from closed, disposed, abandoned or discontinued operations, (b) in respect of facilities no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries and any losses on disposal of abandoned, closed or discontinued operations and (c) attributable to business dispositions or asset dispositions (other than in the ordinary course of business); plus

(x) other add backs and adjustments reflected in any quality of earnings report made available to the Administrative Agent by (a) a nationally recognized accounting firm or (b) any other accounting firm that shall be reasonably acceptable to the Administrative Agent; and

(v) decreased (without duplication) by the following, in each case, to the extent taken into account (or added back) in computing Consolidated Net Income for such Person for such period:

(i) interest income to the extent received in cash or otherwise during such period; plus

(ii) any gain realized in connection with the sale or Disposition of assets (including Dispositions pursuant to Sale and Leaseback transactions) other than in the ordinary course of business or the Disposition of any securities or the extinguishment of any Indebtedness; plus

(iii) proceeds from the D&O Insurance Payment or the Petit Payment during such period.

For purposes of determining the Consolidated Total Net Leverage Ratio, (a) there shall be included in determining Consolidated EBITDA of the Borrower and its Subsidiaries for any period, without duplication, (i) the Acquired EBITDA of any Acquired Entity or Business on a Pro Forma Basis and (b) there shall be excluded in determining Consolidated EBITDA of the Borrower and its Subsidiaries for any period, the Disposed EBITDA of any Sold Entity or Business on a Pro Forma Basis. Notwithstanding the foregoing, but subject to any adjustment set forth above with respect to any transactions occurring after the Closing Date, Consolidated EBITDA shall be \$7,312,000, \$5,543,000, \$14,101,000 and \$17,596,000 for the fiscal quarters ended December 31, 2022, March 31, 2023, June 30, 2023, and September 30, 2023, respectively.

"Consolidated Fixed Charge Coverage Ratio" means, with respect to any Measurement Period, the ratio of (a) the result of (i) the Consolidated EBITDA of the Borrower and its Subsidiaries, minus (ii) the aggregate amount of all Capital Expenditures of the Borrower and its Subsidiaries made in cash

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(except to the extent financed with the proceeds of Indebtedness (other than a Revolving Borrowing)), minus (iii) federal, state, local and foreign income and franchise taxes paid in cash by the Borrower and its Subsidiaries determined on a consolidated basis to (b) Consolidated Fixed Charges of the Borrower and its Subsidiaries.

"Consolidated Fixed Charges" means, for the Borrower and its Subsidiaries for any period, the sum, without duplication, of each of the following with respect to the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP:

(a) Consolidated Interest Expense of the Borrower and its Subsidiaries for such period, plus

(b) the aggregate of all scheduled principal amounts that become payable during such period in respect of Indebtedness of the Borrower and its Subsidiaries (excluding the repayment of loans in connection with the Existing Credit Agreement Refinancing made on the Closing Date but including the principal portion of Finance Lease Obligations)

For purposes of this definition, "scheduled principal amounts" shall (i) be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period, (ii) be deemed to include the Attributable Indebtedness and (iii) not include any voluntary or mandatory prepayments.

"**Consolidated Interest Expense**" means, with respect to any Person and its Subsidiaries for any period, the sum of (a) consolidated total interest expense of such Person and its Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including (without duplication), amortization of debt issuance costs and original issue discount, premiums paid to obtain payment, financial assurance or similar bonds, interest capitalized during construction, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments under Finance Leases and the implied interest component of Synthetic Lease Obligations (regardless of whether accounted for as interest expense under GAAP), all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptances and net costs in respect of any obligations under any Swap Agreements constituting interest rate swaps, collars, caps or other arrangements requiring payments contingent upon interest rates of such Person and its Subsidiaries), plus (b) all cash dividends paid or payable on preferred stock during such period other than to such Person or a Loan Party, plus or minus, as applicable, to the extent they would otherwise be included in interest expense under GAAP, unrealized gains and losses arising from derivative financial instruments issued by such Person for the benefit of such Person or its Subsidiaries, in each case determined on a consolidated basis for such period.

"**Consolidated Net Income**" means, for any Person (the "first Person") for any period, the sum of net income (or loss) for such period of such first Person and its subsidiaries determined on a consolidated basis in accordance with GAAP, excluding, without duplication, to the extent included in determining such net income (or loss) for such period: (a) any income (or loss) of any other Person (the "second Person") if such second Person is not a subsidiary of such first Person, except that such first Person's equity in the net income of any second Person for such period shall be included in the determination of Consolidated Net Income up to the aggregate amount of cash actually distributed by such second Person during such period to such first Person or any of its subsidiaries as a dividend or other distribution, (b) the income (or loss) of any second Person accrued prior to the date it became a subsidiary of such first Person or is merged into or consolidated with such first person or any of its subsidiaries or such second Person's assets are acquired by such first person or any of its subsidiaries, (c) non-recurring gains (or losses), (d) the income of any subsidiary of such first Person to the extent that the declaration or payment of

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dividends or similar distributions by such subsidiary of that income is prohibited by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such subsidiary, and (e) all non-cash adjustments made to translate foreign assets and liabilities for changes in foreign exchange rates made in accordance with ASC 830.

"**Consolidated Total Debt**" means, with respect to any Person and its Subsidiaries at any time and as determined on a consolidated basis and without duplication, an amount equal to the sum of Indebtedness of the type set forth in clauses (a), (b), (c), (e), (g), (h) and (k) of the definition thereof.

"**Consolidated Total Net Leverage Ratio**" means, with respect to any Measurement Period, the ratio of (a) Consolidated Total Debt of the Borrower and its Subsidiaries as of the last day of such Measurement Period minus an aggregate amount of Qualified Cash not to exceed \$20,000,000 to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such Measurement Period.

"**Contested in Good Faith**" means, with respect to any matter, that such matter is being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP.

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

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

"**Controlled Account**" means, as the context may require, a commodities account, deposit account and/or securities account that is subject to a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent and, with respect to Cash Collateral, the L/C Issuer.

"**Control Agreement**" has the meaning assigned to such term in the Security Agreement.

"Copyright Security Agreement" has the meaning assigned to such term in the Security Agreement.

"Credit Agreement" means this Credit Agreement.

"Credit Extension" means the making of a Loan or a L/C Credit Extension.

"Credit Facilities" means the Revolving Facility, the Term Facility and any Incremental Term Facility; each, a "Credit Facility".

"Credit Parties" means the Administrative Agent, the Swingline Lender, the L/C Issuer and the Lenders.

"D&O Insurance Payment" means the cash or Cash Equivalent proceeds of any insurance payment received by the Borrower or its Subsidiaries as part of any director and officer's insurance policy in connection with the litigation proceedings and investigation existing as of the Closing Date involving former CEO, Parker Petit, and other former members of management of the Borrower.

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"Daily Simple SOFR" means, for any day, a rate per annum equal to the greater of (a) the sum of (i) SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion plus (ii) the Daily Simple SOFR Adjustment, and (b) the Floor.

"Daily Simple SOFR Adjustment" means 0.10000%.

"Daily SOFR Loan" means a Loan bearing interest based on the Daily SOFR Rate.

"Daily SOFR Rate" means, for any day, a rate per annum equal to Term SOFR in effect on such day for a one-month Interest Period (subject to the Floor referred to in the definition of "Term 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.

"Debtor Relief Plan" means a plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws.

"Default" means any event or condition which constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Rate" means (a) when used with respect to the outstanding principal balance of any Loan, the sum of (i) the rate of interest otherwise applicable thereto plus (ii) 2.00% per annum, and (b) when used with respect to any L/C Borrowing or any interest, fee or other amount payable under the Loan Documents which shall not have been paid when due, the sum of (i) the Alternate Base Rate plus (ii) the Applicable Margin applicable to ABR Revolving Borrowings plus (iii) 2.00% per annum.

"Defaulting Lender" means, subject to Section 2.9(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the L/C Issuer or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or

public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, or, to the extent an L/C Issuer has outstanding L/C obligations owed to it at such time, such L/C Issuer, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, such L/C Issuer or the Borrower,

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or (d) has, or has a direct or indirect holding company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect holding 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 shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.9(b)) upon delivery of written notice of such determination to the Borrower, the L/C Issuer, the Swingline Lender and each Lender.

"Disclosed Matters" means the actions, suits, proceedings and environmental matters disclosed in Schedule 5.6.

"Disposed EBITDA" means, with respect to any Sold Entity or Business for any period, the historical Consolidated EBITDA of such Sold Entity or Business for such period as certified by a Responsible Officer of the Borrower, which historical Consolidated EBITDA shall be calculated in a manner consistent with the definition of Consolidated EBITDA herein and to be based on financial statements for such Sold Entity or Business prepared in accordance with GAAP (subject to the absence of footnote disclosures and year-end audit adjustments with respect to financial statements that are not annual audited financial statements), provided that when such Disposed EBITDA is excluded from Consolidated EBITDA it shall be on a Pro Forma Basis).

"Disposition" means, with respect to any Person, the sale, transfer, license, lease or other disposition (including by way of Division, Sale Leaseback or any sale or issuance of Equity Interests by way of a merger or otherwise) by such Person to any other Person, with or without recourse, of (a) any notes or accounts receivable or any rights and claims associated therewith, (b) any Equity Interests of any Subsidiary (other than directors' qualifying shares), or (c) any other assets (other than Equity Interests of the Borrower), provided, however, that none of the following shall constitute a Disposition: (i) any sale, transfer, license, lease or other disposition by (A) a Loan Party to another Loan Party or (B) a Non-Loan Party Subsidiary to another Non-Loan Party Subsidiary, in each case, on terms which are no less favorable than are obtainable from any Person which is not one of its Affiliates, (ii) the collection of accounts receivable and other obligations in the ordinary course of business, (iii) sales of inventory in the ordinary course of business, (iv) dispositions of substantially worn out, damaged, uneconomical, surplus or obsolete equipment, equipment that is no longer useful in the business of the Borrower or its Subsidiaries, and (v) sales, transfers, licenses, leases or other Dispositions resulting in aggregate Net Cash Proceeds not exceeding \$10,000,000 during any Fiscal Year. Each of the terms "Dispose" and "Disposed" when used as a verb shall have an analogous meaning.

"Disqualified Equity Interest" means, with respect to any Person, any Equity Interest of such Person which, by its terms, or by the terms of any security or other Equity Interests 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 Equity Interests and cash in lieu of fractional shares of such Equity Interests) pursuant to a sinking fund obligation or otherwise (except as a result of a change in control or asset sale so long as any rights of the holders thereof upon the occurrence

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of a change in control or asset sale event shall be subject to the prior occurrence of the Termination Date), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date at the time such Equity Interests are issued.

**"Disqualified Institution"** means (a) any Person designated by the Borrower as a "Disqualified Institution" by written notice delivered to the Administrative Agent on or prior to the date that is at least five (5) days prior to the Closing Date, (b) any other Person that is a Competitor of the Borrower or any of its Subsidiaries, which Person has been designated by the Borrower as a "Disqualified Institution" by written notice delivered to the Administrative Agent from time to time and (c) as to any entity referenced in either of clauses (a) and (b) above (the **"Primary Disqualified Institution"**), any of such Primary Disqualified Institution's Affiliates designated by the Borrower by written notice delivered to the Administrative Agent from time to time or otherwise reasonably identifiable as an Affiliate of a Primary Disqualified Institution solely on the basis of the similarity of such Affiliate's name to the name of any entity set forth on the DQ List, but excluding any Bona Fide Debt Fund.

**"Division"** means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons, whether pursuant to a "plan of division" or similar arrangement pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any similar provision under the laws of any other applicable jurisdiction and pursuant to which the Dividing Person may or may not survive.

**"Dollars" or "\$"** refers to the lawful money of the United States.

**"Domestic Subsidiary"** means a Subsidiary incorporated or organized under the laws of the United States, or any state, commonwealth or other political subdivision thereof (including, for the avoidance of doubt, the District of Columbia).

**"DQ List"** has the meaning assigned to such term in [Section 10.4\(f\)\(iv\)](#).

**"Earn-Out Obligations"** means, with respect to any Person, obligations of such Person that are recognized under GAAP as a liability of such Person, payable in cash or which may be payable in cash at the seller's or obligee's option arising from the acquisition of a business or a line of business (whether pursuant to an acquisition of Equity Interests or assets, the consummation of a merger or consolidation or otherwise) and payable to the seller or sellers thereof.

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

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

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

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**"Effective Yield"** means, with respect to any Term Facility existing as of any date of determination, the sum of (a) the higher of (i) Term SOFR for an Interest Period closest to one month and (ii) the applicable Floor with respect thereto as of such date, (b) the Applicable Margin (or other applicable margin) as of such date for SOFR Loans (or other loans that accrue interest by reference to a similar reference rate) and (c) the amount of original issue discount and upfront fees thereon (converted to yield assuming the lesser of (x) a four year average life and (y) the remaining life to maturity, and without any present value discount), but excluding the effect of any arrangement, structuring, underwriting and syndication fees and other fees payable in connection therewith that are neither shared with nor generally paid to all Lenders.

**"Eligible Assignee"** means any Person that meets the requirements to be an assignee under [Section 10.4\(b\)\(iii\)](#), [\(v\)](#) and [\(vi\)](#) (subject to such consents, if any, as may be required under [Section 10.4\(b\)\(iii\)](#)). For the avoidance of doubt, any Disqualified Institution is subject to [Section 10.4\(f\)](#).



"**Engagement Letter**" means the Engagement Letter dated December 1, 2023, between the Borrower and Citizens Bank, as may be amended, restated, modified, supplemented or replaced from time to time.

"**Environmental Claims**" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of liability, non-compliance or violation, investigations, proceedings, settlements, consent decrees, consent orders, consent agreements and all costs and liabilities relating to or arising from or under any Environmental Law, including (a) any and all claims by Governmental Authorities for enforcement, investigation, corrective action, cleanup, removal, response, remedial or other actions, cost recovery, damages, natural resource damages or penalties pursuant to or arising under any Environmental Law, (b) any and all claims by any one or more Persons seeking damages, contribution, restitution, indemnification, cost recovery, compensation or injunctive relief directly or indirectly resulting from, based upon or arising under Environmental Law, pertaining to Hazardous Materials or, solely with respect to exposure to Hazardous Material, an alleged injury or threat of injury to human health, safety, natural resources, or the indoor or outdoor environment, and (c) all liabilities contingent or otherwise, expenses, obligations, losses, damages, fines and penalties arising under any Environmental Law.

"**Environmental Law**" means, collectively and individually any and all federal, state, local, or foreign statute, rule, regulation, code, guidance, ordinance, order, judgment, directive, decree, injunction or common law as now or previously in effect and regulating, relating to or imposing liability or standards of conduct concerning: the environment; protection of the environment and natural resources; air emissions; water discharges; noise emissions; the Release, threatened Release or discharge into the environment and physical hazards of any Hazardous Material; the generation, handling, management, treatment, storage, transport or disposal of any Hazardous Material or otherwise concerning pollution or the protection of the outdoor or indoor environment, preservation or restoration of natural resources, employee or human health or safety with respect to protection from Hazardous Materials only, and potential or actual exposure to or injury from Hazardous Materials.

"**Environmental Liability**" means, in respect of any Person, any statutory, common law or equitable liability, contingent or otherwise of such Person directly or indirectly resulting from, arising out of or based upon (a) the violation of any Environmental Law or Environmental Permit, or (b) an Environmental Claim.

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"**Environmental Permit**" means any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any Environmental Law.

"**Equity Interests**" means, with respect to any Person, (a) shares of capital stock of (or other ownership or profit interests in) such Person, (b) warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, (c) securities (other than Indebtedness) convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and (d) all other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, and the rules and regulations issued thereunder.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Sections 302 and 303 of ERISA and Sections 412 and 430 of the Code, is treated as a single employer under subsection (b), (c), (m) or (o) of Section 414 of the Code.

"**ERISA Event**" means (a) any "reportable event", as defined in Section 4043(c) of ERISA with respect to a Pension Plan (other than an event for which the 30-day notice period referred to in Section 4043 of ERISA is waived); (b) the existence with respect to any Pension Plan of a non-exempt "prohibited transaction," as defined in Section 406 of ERISA or Section 4975(c)(1) of the Code; (c) any failure of any Pension Plan to satisfy the "minimum funding standard" applicable to such Pension Plan under Section 412 or Section 430 of the Code or Section 302 or Section 303 of ERISA, whether or not waived; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, the failure to make by its due date a required installment under Section 430(j)(3) of the Code with respect to any Pension Plan or the failure of any Loan Party or ERISA Affiliate to make any required contribution to any Multiemployer Plan; (e) a determination that any Pension Plan is, or is expected to be, in "at-risk" status (as defined in Section 430(i)(4) of the Code or Section 303(i)(4) of ERISA; (f) the incurrence by any Loan



Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Pension Plan including the imposition of any Lien in favor of the PBGC or any Pension Plan (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA); (g) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or Section 4041A of ERISA, the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a Pension Plan administrator of any notice relating to an intention to terminate any Pension Plan or Pension Plans or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA or the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA or the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) any limitations under Section 436 of the Code become applicable; (i) the incurrence by any Loan Party or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan or Multiemployer Plan; (j) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (k) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any

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notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or in endangered or critical status within the meaning of Section 432 of the Code or Section 305 or Title IV of ERISA; or (l) the imposition on any Loan Party or any ERISA Affiliate of any tax under Chapter 43 of Subtitle D of the Code, or the assessment of a civil penalty on any Loan Party or any ERISA Affiliate under Section 502(c) of ERISA.

"Erroneous Payment" has the meaning assigned to such term in Section 9.13(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to such term in Section 9.13(d)(i).

"Erroneous Payment Impacted Class" has the meaning assigned to such term in Section 9.13(d)(i).

"Erroneous Payment Return Deficiency" has the meaning assigned to such term in Section 9.13(d)(i).

"Erroneous Payment Subrogation Rights" has the meaning assigned to such term in Section 9.13(e).

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

"Event of Default" has the meaning assigned to such term in Section 8.1.

"Excluded Account" has the meaning assigned to such term in the Security Agreement.

"Excluded Assets" has the meaning assigned to such term in the Security Agreement.

"Excluded CEA Swap Obligation" means, with respect to any Guarantor, any CEA Swap Obligation if, and only to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such CEA Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof), including by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (after giving effect to Section 10.20 and any other "keepwell", support or other agreement for benefit of such Guarantor and any and all guarantees of such Guarantor's CEA Swap Obligations by other Loan Parties) and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such CEA Swap Obligation. If a CEA Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such CEA Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Collateral" has the meaning assigned to such term in the Security Agreement.

"Excluded Subsidiary" means (a) any Subsidiary that is prohibited by Applicable Law, rule or regulation or by any contractual obligation (to the extent such contractual obligation is existing (i) on the Closing Date or (ii) at the time of acquisition of such Subsidiary so long as the prohibition or

restriction in such contract is not entered into in contemplation thereof) from providing a Guarantee of the Secured Obligations or which would require governmental (including regulatory or any other Governmental

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Authority's) consent, approval, license or authorization to provide such a Guarantee unless such consent, approval, license or authorization has been received, (b) any Foreign Subsidiary (other than a Material Foreign Subsidiary), (c) any captive insurance company, (d) any other Subsidiary with respect to which the Borrower and the Administrative Agent reasonably determine in writing the cost, burden or other consequences (including adverse tax consequences) of providing such a Guarantee shall be excessive in view of the benefits of such Guarantee to be afforded to the Lenders therefrom and (e) any Immaterial Domestic Subsidiary.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a 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 Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Commitment or L/C Borrowing pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Commitment (other than pursuant to an assignment request by the Borrower under Section 3.7(b)) or L/C Borrowing or (ii) such Lender changes its Applicable Lending Office, except in each case to the extent that, pursuant to Section 3.6, 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 Applicable Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.6(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means the Credit Agreement, dated as of June 30, 2020, among the Borrower, the lenders party thereto and Hayfin Services LLP, as agent (as amended, amended and restated, supplemented or otherwise modified prior to the date hereof), and all guarantees, notes and other documents, agreements and instruments entered into in connection therewith.

"Existing Credit Agreement Refinancing" means the payment in full of all principal, premium, if any, interest, fees and other amounts due or outstanding under the Existing Credit Agreement, the termination of commitments thereunder and the discharge and release of all Guarantees and Liens existing in connection therewith.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Credit 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 agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FDA" means the United States Food and Drug Administration and any successor agency or entity thereof or any analogous agency or entity in any other jurisdiction.

"Federal Funds Rate" means, for any day, a rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next

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preceding Business Day as so published on the next succeeding Business Day, (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it and (c) if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Credit Agreement.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States.

"Finance Lease Obligations" means, at the time any determination thereof is to be made, the amount of the liabilities in respect of Finance Leases that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

"Finance Leases" means all leases that are required to be capitalized in accordance with GAAP.

"Financial Covenants" means the covenants set forth in Sections 7.12(a) and (b).

"Financial Officer" means, with respect to any Person, the chief financial officer, principal accounting officer, treasurer, comptroller, or controller of such Person (or such other financial officer as is acceptable to the Administrative Agent in its sole discretion).

"Fiscal Year" means the four fiscal quarter period of the Borrower ending on December 31 of each calendar year.

"Floor" means 0.00% per annum.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender or L/C Issuer that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender or L/C Issuer that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"Foreign Plan" means any employee pension benefit plan or arrangement (a) maintained or contributed to by any Loan Party or Subsidiary that is not subject to the laws of the United States, or (b) mandated by a government other than the United States for employees of any Loan Party or Subsidiary.

"Foreign Pledge Agreement" means, collectively each local law pledge agreement executed and delivered by a Loan Party and the Administrative Agent to grant a security interest in the Equity Interests of a Material Foreign Subsidiary, each in form and substance reasonably satisfactory to the Administrative Agent.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's L/C Exposure other than such Defaulting Lender's L/C Exposure that has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender's Swingline Exposure other than such Defaulting Lender's Swingline Exposure that has been reallocated to other Lenders.

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

"GAAP" means generally accepted accounting principles in effect from time to time in the United States.

"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 (or any successor thereto) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Governmental Approval" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

**"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 department, commission, board, bureau, agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

**"Guarantee Agreement"** means the Guarantee Agreement, dated as of the date Closing Date, among the Loan Parties and the Administrative Agent.

**"Guarantees"** of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guaranteed" has a meaning analogous thereto. The amount of any Guarantee at any time shall be deemed to be an amount equal to the lesser at such time of (i) the stated or determinable amount of the primary obligation in respect of which such Guarantee is made (or, if not stated or determinable, the maximum reasonably anticipated amount of the obligations in respect of which such Guarantee is made) and (ii) the maximum amount for which the guarantor may be liable pursuant to the terms of the instrument embodying such Guarantee.

**"Guarantors"** means (a) each Subsidiary Guarantor, and (b) each other Person that becomes a party to the Guarantee Agreement as a Guarantor.

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**"Hazardous Materials"** means all substances, wastes, chemicals, pollutants, or other contaminants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, mold, infectious, pharmaceutical or medical wastes and all other substances of any nature that are now or hereafter regulated under any Environmental Law or are now or hereafter defined, listed, classified, considered or described as hazardous, dangerous or toxic by any Governmental Authority or under any Environmental Law; provided, however, that the term "Hazardous Materials" shall not include materials that otherwise would be included in such definition but that are of kinds and in amounts ordinarily and customarily used or stored in similar properties, including, without limitation substances used for the purposes of cleaning, maintenance, or operations, substances typically used in construction, and typical products used in properties like the Real Property and which are otherwise in compliance with all Environmental Laws.

**"Health Care Compliance Program"** has the meaning assigned to such term in [Section 5.19\(l\)](#).

**"Healthcare Law"** means the laws, codes, policies and guidelines of all Governmental Authorities relating to the production, manufacturing, preparation, propagation, compounding, conversion, pricing, marketing, promotion, sale, distribution, coverage, or reimbursement of a drug, device, biological or other medical item, supply or service, including, without limitation, the U.S. Food, Drug and Cosmetic Act of 1938 ("FD&C Act"), 21 U.S.C. Ch. 9, as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder, billing and collection practices relating to the payment for healthcare services, items or supplies, the federal False Claims Act (31 U.S.C. §§ 3729 et seq.), the federal healthcare program anti- kickback statute (42 U.S.C. § 1320a- 7b), the Stark law (42 U.S.C. § 1395nn), the Federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.) and the Federal Health Care Fraud Law (18 U.S.C. § 1347), the healthcare fraud, false statement and health information privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act ("Employee HIPAA"), the federal healthcare program civil money penalty and exclusion authorities 42 U.S.C. § 1320a-7a), the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), the statutes, regulations and binding directives of applicable federal healthcare programs of Medicare, Medicaid and other healthcare programs of other Governmental Authorities, including the Veterans

Health Administration and United States Department of Defense healthcare and contracting programs, the Federal Trade Commission Act, as amended, and its implementing regulations, and the analogous Requirements of Law of any other jurisdiction.

"HIPAA" has the meaning assigned to such term in the definition of Healthcare Laws.

"Immaterial Domestic Subsidiary" means, at any date of determination, any Domestic Subsidiary of a Loan Party which as of such date (a) holds assets representing less than 2.5% or less of the Loan Parties' consolidated total assets (excluding Investments in Subsidiaries and intercompany receivables that would be eliminated in consolidated financial statements, and goodwill) (determined in accordance with GAAP), (b) has generated less than 2.5% of the Loan Parties' consolidated total revenues (excluding any intercompany revenue that would be eliminated in consolidated financial statements) determined in accordance with GAAP for the four fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered pursuant to Section 6.1(b); provided that all Subsidiaries that are individually "Immaterial Subsidiaries" shall not have aggregate consolidated total assets (excluding Investments in Subsidiaries and intercompany receivables that would be eliminated in consolidated financial statements, and goodwill) that would represent 5.0% or more of the Loan Parties consolidated total assets as of such date or have generated 5.0% or more of the Loan Parties' consolidated total revenues (excluding any intercompany revenue that would be eliminated in consolidated financial statements) for such four fiscal quarter period, in each case determined in accordance with GAAP, and (c)

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owns no material Intellectual Property. No Person may be a Loan Party and simultaneously be an Immaterial Domestic Subsidiary.

"Incremental Assumption Agreement" means an Incremental Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, among the Borrower, the Administrative Agent and each Incremental Term Lender and/or existing or additional Revolving Lender party thereto.

"Incremental Commitments" has the meaning assigned to such term in Section 2.11(a).

"Incremental Term Facility" means a term loan credit facility evidenced by Incremental Term Loan Commitments, if any.

"Incremental Term Lender" means a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

"Incremental Term Loan Commitment" means the commitment of any Lender, established pursuant to Section 2.11, to make an Incremental Term Loan to the Borrower.

"Incremental Term Loan Maturity Date" means the final maturity date of any Incremental Term Loan, as set forth in the applicable Incremental Assumption Agreement, provided that if such date is not a Business Day, the Incremental Term Loan Maturity Date shall be the Business Day immediately preceding such day.

"Incremental Term Loan Repayment Date" means each date regularly scheduled for the payment of principal of any Incremental Term Loan, as set forth in the applicable Incremental Assumption Agreement.

"Incremental Term Loans" means term loans made by one or more Lenders to the Borrower pursuant to Section 2.1(c). Incremental Term Loans may be made in the form of additional Term Loans or, to the extent permitted by Section 2.11 and provided for in the relevant Incremental Assumption Agreement, Other Term Loans.

"Indebtedness" of any Person means, without duplication:

(c) all obligations of such Person for borrowed money;

(d) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, including seller paper;

(e) the maximum amount (after giving effect to any prior drawings or reductions which have been reimbursed) of all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, surety bonds, and similar instruments issued or created by or for the account of such Person;

(f) the Swap Termination Value of each Swap Agreement (to the extent reflecting an amount owed by such Person or an amount that would be owing were such Swap Agreement terminated);

(g) the Attributable Indebtedness of such Person in respect of Finance Lease Obligations, Synthetic Debt and Synthetic Lease Obligations of such Person (regardless of whether accounted for as indebtedness under GAAP);

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(h) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business which are paid within 90 days of their respective due dates and (ii) any purchase price adjustments, earn out or similar obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and if not paid after becoming due and payable);

(i) indebtedness (excluding prepaid interest thereon) secured by a Lien (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by a Lien) on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(j) all Earn-Out Obligations due and owing of such Person, but only at such time as such Earn-Out Obligation becomes a liquidated obligation of a Loan Party on its financial statements;

(k) all obligations of such Person in respect of Disqualified Equity Interests;

(l) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted (e.g., take or pay obligations) or similar obligations and, without duplication, all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person; and

(m) all Guarantees by such Person of any of the foregoing.

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, company, 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 Indebtedness of any Person for purposes of clause (g) shall be deemed to be equal to the greater of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"**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 Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"**Indemnitee**" has the meaning assigned to such term in [Section 10.3\(b\)](#).

"**Information**" has the meaning assigned to such term in [Section 10.14\(b\)](#).

"**Information Memorandum**" means the Confidential Executive Summary, dated December 4, 2023, relating to the Borrower, its Subsidiaries and the Transactions.

"**Intellectual Property**" has the meaning assigned to such term in the Security Agreement.

"**Interest Payment Date**" means (a) with respect to any ABR Loan, the last Business Day of each calendar month and the Maturity Date of the Credit Facility under which such ABR Loan was made, (b) with respect to any SOFR Loan (other than a Swingline Loan), the last day of the Interest Period

therefor and, in the case of any Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at a three-month interval after the first day of such Interest Period, and the Maturity Date of the Credit Facility under which such SOFR Loan was made and (c) with respect to

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any Swingline Loan, the last Business Day of each calendar month and the earlier of the maturity date selected therefor pursuant to Section 2.3(b)(iii) and the Revolving Maturity Date.

"Interest Period" means, with respect to any applicable Loan or Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability thereof), as specified in the applicable Committed Loan Notice; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section 3.8(d) shall be available for specification in such Committed Loan Notice. For purposes hereof, the date of a Loan or Borrowing initially shall be the date on which such Loan or Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan or Borrowing. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Investment" means, as to any Person, (a) any Acquisition by such Person, (b) any direct or indirect acquisition or investment by such Person in another Person, whether by means of the purchase or other acquisition of Equity Interests or debt or other securities of another Person (including any partnership or joint venture interest), or (c) any direct or indirect loan, advance or capital contribution to, Guarantee with respect to any Indebtedness or other obligation of, such other Person. For purposes of covenant compliance, the amount of any Investment on any date of determination shall be, in the case of any Investment in the form of (i) a loan or an advance, the principal amount thereof outstanding on such date, (ii) a Guarantee, the amount of such Guarantee as determined in accordance with the last sentence of the definition of such term, (iii) a transfer of Equity Interests or other property by the investor to the investee, including any such transfer in the form of a capital contribution, or the issuance of Equity Interests to such investor, the fair market value (as determined reasonably and in good faith by the Borrower) of such Equity Interests or other property as of the time of the transfer or issuance, without any adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment, and (iv) any Investment (other than any Investment referred to in clauses (i), (ii) or (iii) above) in the form of an Acquisition or a purchase or other acquisition for value of any evidences of Indebtedness or other securities of any other Person, the original cost of such Investment (including any Indebtedness assumed in connection therewith), plus the cost of all additions, as of such date, thereto, and minus the amount, as of such date, of any portion of such Investment repaid to the investor in cash as a repayment of principal or a return of capital, as the case may be, but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment.

"IRS" means the United States Internal Revenue Service.

"ISP" means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time of issuance).

"Latest Maturity Date" means, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time, including the latest Maturity Date of any Incremental

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Term Loan, in each case as extended in accordance with this Credit Agreement or pursuant to any other Loan Document from time to time.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"L/C Advance" has the meaning assigned to such term in Section 2.4(c)(iii).

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the applicable L/C Honor Date or refinanced as a Revolving Borrowing.

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

"L/C Disbursement" means a payment made by the L/C Issuer pursuant to a Letter of Credit.

"L/C Exposure" means, with respect to any Revolving Lender at any time, its Applicable Percentage of the L/C Obligations.

"L/C Fronting Fee" has the meaning assigned to such term in Section 3.2(b)(ii).

"L/C Honor Date" has the meaning assigned to such term in Section 2.4(c)(i).

"L/C Issuer" means Citizens Bank in its capacity as issuer of Letters of Credit hereunder.

"L/C Obligations" means, at any time, with respect to all of the Revolving Lenders, the sum, without duplication, of (a) the undrawn portion of all Letters of Credit plus (b) the aggregate of all Unreimbursed Amounts in respect of Letters of Credit (unless refinanced as a Revolving Borrowing), including all L/C Borrowings.

"L/C Participation Fee" has the meaning assigned to such term in Section 3.2(b)(i).

"L/C Sublimit" means an amount equal to the lesser of (a) \$10,000,000 and (b) the aggregate amount of the Revolving Commitments. The L/C Sublimit is a sublimit of the Revolving Commitments.

"Lead Arrangers" means Citizens Bank and Bank of America, N.A. in their capacities as joint lead arrangers and joint bookrunners of the credit facilities established under this Credit Agreement.

"Lenders" means (a) the financial institutions listed on Schedule 2.1 (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Assumption or pursuant to an Incremental Assumption Agreement. Unless the context clearly indicates otherwise, the term "Lenders" shall include the Swingline Lender but does not include the Administrative Agent or any L/C Issuer in their respective capacities as the Administrative Agent or as an L/C Issuer.

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"Letter of Credit" means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.



"Letter of Credit Documents" means, with respect to each Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any Letter of Credit Application and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or (b) any collateral for such obligations.

"Letter of Credit Expiration Date" means the day that is five (5) Business Days prior to the Maturity Date of the Revolving Facility (or, if such day is not a Business Day, the next preceding Business Day).

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, Finance Lease or title retention agreement relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Limited Condition Acquisition" means any Acquisition entered into after the Closing Date by the Borrower or one or more of its Subsidiaries permitted pursuant to the Loan Documents whose consummation is not conditioned on the availability of, or on obtaining, third party financing and which is consummated no more than one hundred eighty (180) days after the applicable Limited Condition Acquisition Agreement Signing Date.

"Limited Condition Acquisition Agreement" means the applicable acquisition agreement pursuant to which a Limited Condition Acquisition is, or is to be, consummated.

"Limited Condition Acquisition Agreement Signing Date" means the date the Limited Condition Acquisition Agreement is executed and effective.

"Limited Condition Election" has the meaning set forth in Section 1.11.

"Liquidity" means, as of any date of determination, (a) the aggregate amount of unrestricted and unencumbered (other than by Liens in favor of the Administrative Agent created by the Loan Documents or Liens permitted pursuant to clause (i) of the definition of "Permitted Encumbrances") cash and Cash Equivalents of the Borrower and its Domestic Subsidiaries maintained in the United States in Controlled Accounts plus (b) the amount available to be borrowed under the Revolving Facility without creating a Default or Event of Default.

"Loan" means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Term Loan, a Revolving Loan or a Swingline Loan (including any Incremental Term Loans).

"Loan Document Obligations" means the due and punctual payment and performance of all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party under or pursuant to each of the Loan Documents or otherwise with respect to any Loan or Letter of Credit and all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by

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assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, expenses and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding.

"Loan Documents" means, collectively, this Credit Agreement, the Notes, the Guarantee Agreement, each Incremental Assumption Agreement, each Letter of Credit Application, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.10, the Engagement Letter, the Collateral Documents and each other document entered into in connection herewith.

"Loan Parties" means, collectively, (a) the Borrower, and (b) the Guarantors.

"Margin Stock" has the meaning assigned to such term in Regulation U.

"Master Agreement" has the meaning assigned to such term in the definition of "Swap Agreement."

"Master Intercompany Note" means a promissory note substantially in the form of Exhibit G.

"**Material Adverse Effect**" means (a) a material adverse effect on the business, assets, operations, liabilities, or financial condition of the Loan Parties and their respective Subsidiaries, taken as a whole, (b) the condition that results when the legality, validity or enforceability of any Loan Document is affected in a manner that is material and adverse to the Lenders' rights and remedies, or (c) the condition that results when the ability of (i) the Borrower or (ii) the Loan Parties and their Subsidiaries, taken as a whole, to perform any of their obligations under any Loan Document is affected in a manner that is material and adverse to the Lenders.

"**Material Foreign Subsidiary**" means (a) any Foreign Subsidiary listed on [Schedule 5.13](#) and (b) each other Foreign Subsidiary of a Loan Party which, as of the last day of any fiscal quarter, satisfies any of the following tests:

(n) such Foreign Subsidiary's total tangible assets (after intercompany eliminations) exceeds 7.5% of consolidated total tangible assets of the Borrower and its Subsidiaries; or

(o) such Foreign Subsidiary's income (not to include losses) for the last twelve months ending as of the last day of such fiscal quarter from continuing operations before income taxes, extraordinary items and the cumulative effect of a change in accounting principles of such Foreign Subsidiary for such period exceeds 7.5% of the income (not to include losses) for the last twelve months ending as of the last day of such fiscal quarter from continuing operations before income taxes, extraordinary items and the cumulative effect of a change in accounting principles of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

"**Material Indebtedness**" means, as of any date, Indebtedness (other than Indebtedness under the Loan Documents) or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties or any of their Subsidiaries in an aggregate principal amount exceeding the Threshold Amount. For purposes of determining Material Indebtedness, the "principal amount" of the obligations in respect of any Swap Agreement at any time shall be its Swap Termination Value.

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"**Maturity Date**" means (a) with respect to the Revolving Facility, the Revolving Maturity Date, (b) with respect to the Term Loans, the Term Maturity Date, and (c) with respect to any Incremental Term Loan, the applicable Incremental Term Loan Maturity Date.

"**Measurement Period**" means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Borrower ending on or prior to such date for which financial statements have been or are required to be delivered pursuant to [Section 6.1\(a\)](#) or [Section 6.1\(b\)](#) or, prior to the first such requirement, the four-quarter period ended September 30, 2023. A Measurement Period may be designated by reference to the last day thereof (e.g. the June 30, 2023 Measurement Period refers to the period of four consecutive fiscal quarters of the Borrower ended June 30, 2023), and a Measurement Period shall be deemed to end on the last day thereof.

"**Minimum Collateral Amount**" means, with respect to any L/C Obligations at any time, an amount equal to 103% of such L/C Obligations at such time.

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

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"**Net Cash Proceeds**" means, with respect to any (a) Disposition or Casualty Event by any Loan Party or any of its Subsidiaries, the cash proceeds (including cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received and including all insurance settlements and condemnation awards from any single event or series of related events) net of the sum, without duplication, of (i) transaction expenses (including reasonable broker's fees or commissions, legal fees, accounting fees, investment banking fees and other professional fees, transfer and similar taxes and the Borrower's good faith estimate of income taxes paid or payable in connection with the receipt of such cash proceeds), (ii) amounts set aside as a reserve, in accordance with GAAP, including pursuant to any escrow arrangement, against any liabilities under any indemnification obligations associated with such Disposition (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (iii) in the case of insurance settlements and condemnation awards related to a Casualty Event, amounts previously paid by such Loan Party or such Subsidiary to replace or restore the affected property, and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the asset sold in such Disposition which is senior in priority to the

Liens securing Secured Obligations and is required to be repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset) ; provided, however, that if (A) the Borrower shall deliver a certificate of a Responsible Officer to the Administrative Agent at the time of receipt thereof setting forth the Borrower's intent to reinvest such proceeds in productive assets of a kind then used or usable in the business of the Borrower and its Subsidiaries (or to repair any property damaged in a Casualty Event) within 365 days of receipt of such proceeds and (B) no Default or Event of Default shall have occurred and shall be continuing at the time of such certificate or at the proposed time of the application of such proceeds, such proceeds shall not constitute Net Cash Proceeds except to the extent not so used at the end of such 365-day period, at which time such proceeds shall be deemed to be Net Cash Proceeds.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all or all affected Lenders in accordance with the terms of Section 10.2 and (b) has been acceptable to the Required Lenders and, in the case of amendments that require the approval of all or all affected Lenders of a particular Class, Required Class Lenders of such Class.

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

"Non-Loan Party Subsidiary" means any Subsidiary of the Borrower that is not a Loan Party.

"Nonrenewal Notice Date" has the meaning assigned to such term in Section 2.4(b)(iii).

"Notes" means, collectively, the Revolving Loan Notes, the Term Loan Notes and the Swingline Loan Notes.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control, and any successor thereto.

"Organizational Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-United States jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating or limited liability company agreement and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.7(b)).

"Other Term Loans" has the meaning assigned to such term in Section 2.11(a).

"Outstanding Amount" means (a) with respect to any Loan on any date, the outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments thereof (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Borrowings as a Revolving Borrowing) occurring on such date, and (b) with respect to any Letter of Credit, Unreimbursed Amount, L/C Borrowing or L/C Obligations on any date, the outstanding amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

"Participant" has the meaning assigned to such term in Section 10.4(d).

"Participant Register" has the meaning assigned to such term in Section 10.4(d).

"Patent Security Agreement" has the meaning assigned to such term in the Security Agreement.

"Payment Recipient" has the meaning assigned to such term in Section 9.13(a).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Pension Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 or Section 430 of the Code or Section 302 or Section 303 of ERISA, and in respect of which any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Perfection Certificate" means a perfection certificate in a form acceptable to the Administrative Agent.

"Permits" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, provider numbers, marketing authorizations, other authorizations, registrations, permits, consents and approvals of the Borrower and each of its Subsidiaries required under any Applicable Law applicable to the business of any Loan Party or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Applicable Law. Without limiting the generality of the foregoing, "Permits" includes all governmental authorizations and product authorizations of the Borrower and each of its Subsidiaries.

"Permitted Acquisitions" means, collectively, each Acquisition which satisfies each of the following conditions:

- (p) at the time of and immediately before and after giving Pro Forma Effect thereto, no Default or Event of Default shall have occurred and be continuing;
- (q) such Acquisition shall be consensual and, if applicable, has been approved by the Acquisition target's board of directors (or comparable governing body);
- (r) the Person, assets or business unit acquired in the Acquisition shall be engaged in an Approved Line of Business;
- (s) such Acquisition and all transactions related thereto shall be consummated in accordance with material laws, ordinances, rules, regulations and requirements of all Governmental Authorities;
- (t) the Borrower shall give the Administrative Agent at least ten (10) Business Days' prior written notice of any such acquisition;
- (u) the Borrower shall provide to the Administrative Agent as soon as available, but in any event not later than five (5) Business Days (or such longer period as may be acceptable to the Administrative Agent in its sole discretion) after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such acquisition and, to the extent required to be obtained under the terms of the purchase agreement or other similar agreement for such acquisition, the

applicable party under such acquisition agreements shall have received all required regulatory and third party approvals;

(v) if the consideration to be paid (or payable) in connection with such acquisition is greater than \$25,000,000, the Borrower shall have delivered to the Administrative Agent not later than five (5) Business Days prior to the date on which any such acquisition is to be consummated (or such shorter period as may be acceptable to the Administrative Agent in its sole discretion) (A) a copy of all applicable business and financial due diligence information reasonably available to the Borrower, and (b) a certificate of a Responsible Officer of the Borrower, certifying that such purchase, investment or acquisition constitutes a Permitted Acquisition and demonstrating compliance with clause (j) below;

(w) if (A) the consideration to be paid (or payable) in connection with such acquisition is greater than \$50,000,000 or (B) the person or assets being acquired has earnings before interest, taxes, depreciation and amortization of less than \$0.00 for the trailing twelve month period most recently ended prior to the consummation of such acquisition, the Borrower shall have delivered to the Administrative Agent, at least five (5) Business Days prior to the date on which such acquisition is to be consummated (or such longer period as may be acceptable to the Administrative Agent in its sole discretion), updated projections demonstrating projected compliance with each of the Financial Covenants set forth in Sections 7.12(a) and (b), at the time such Acquisition is consummated;

(x) the aggregate cash consideration (excluding any amounts paid for with equity contributions from any direct or indirect equity holder of any Loan Party or any of its Subsidiaries) paid by any Loan Party or any of its Subsidiaries in connection with all such Acquisitions shall not exceed \$75,000,000; and

(y) after giving Pro Forma Effect to such Acquisition and, if applicable, the making of a Credit Extension in connection with such Acquisition, the Consolidated Total Net Leverage Ratio shall not exceed 3.25:1.00 and (ii) Liquidity shall be at least \$15,000,000.

"Permitted Encumbrances" means:

(z) Liens imposed by law for taxes, assessments or other governmental charges that are not yet due or are being Contested in Good Faith, provided that enforcement of such Liens is stayed pending such contest;

(aa) landlords', vendors', carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being Contested in Good Faith, provided that enforcement of such Liens is stayed pending such contest;

(ab) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(ac) deposits to secure the performance of bids, trade contracts (other than contracts for the payment of money), leases (other than Finance Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(ad) judgment liens in respect of judgments that do not constitute an Event of Default under Section 8.1(k);

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(ae) easements, zoning restrictions, rights of way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligation and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Loan Parties and their respective Subsidiaries;

(af) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business, provided that the same do not in any material respect interfere with the business of the Loan Parties or their Subsidiaries or materially detract from the value of the relevant assets of the Loan Parties or its Subsidiaries;

(ag) licenses, sublicenses, leases or subleases with respect to any assets granted to third Persons in the ordinary course of business, provided that the same do not in any material respect interfere with the business of the Loan Parties or their Subsidiaries or materially detract from the value of the relevant assets of the Loan Parties or their Subsidiaries;

(ah) customary rights of set off, bankers' liens, refunds or charge backs, under deposit agreements, the Uniform Commercial Code or common law, of banks or other financial institutions where any Loan Party or any of such Loan Party's Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(ai) Liens on Margin Stock to the extent that a prohibition on such Liens would violate Regulation U;

(aj) Liens (i) on earnest money deposits made in cash by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted under this Credit Agreement or (ii) on amounts deposited as "security deposits" (or their equivalent) in the ordinary course of business in connection with actions or transactions not prohibited by this Credit Agreement;

(ak) Liens in favor of customs and revenue authorities arising in the ordinary course of business as a matter of law to secure payment of customs duties in connection with the importation of goods;

(al) Liens resulting from the filing of precautionary UCC-1 financing statements (or equivalent) with respect to operating leases;

(am) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Loan Party or any of its Subsidiaries in the ordinary course of business; and

(an) Liens incurred in the ordinary course of business imposed by law in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller or shipper of such goods or assets and only attach to such goods or assets; provided that the term "Permitted Encumbrance" shall not include any Lien securing Indebtedness.

"Permitted Tax Distributions" means, subject to the limitations and provisions herein, for each fiscal quarter (or portion thereof) of a Fiscal Year, a distribution by the Borrower to the holders of its Equity Interests in an amount of cash equal to (a) in the event that the Borrower is treated as an S corporation, partnership or disregarded entity for federal income tax purposes, the product of (i) the

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taxable net income reportable by the Borrower for federal income tax purposes during such fiscal quarter (or portion thereof), times (ii) the highest combined marginal federal, state, and local income tax rate (for clarification, excluding self-employment and similar taxes) that is applicable to a holder of the Equity Interests of Borrower or (b) in the event the Borrower is a member of an affiliated group that files a federal consolidated income tax return, the product of (i) the net federal, state and local income tax payable by the consolidated taxpayer of such affiliated group, times (ii) a fraction, the numerator of which is the taxable net income of the Borrower, and the denominator of which is aggregate taxable net income of each member of the affiliated group that had taxable net income (and excluding any net losses of any member of the affiliated group). With respect to any fiscal quarter in which the Borrower's federal reportable taxable net income is zero or a net loss (i) the Permitted Tax Distribution for such fiscal quarter shall be zero, and (ii) any such net loss shall reduce otherwise reportable taxable net income in subsequent fiscal quarters (whether in the same or a later calendar year) until all such net losses have been fully recouped by such reductions. If, upon the calculation of the annual reportable taxable net income or loss for any Fiscal Year of the Borrower, the aggregate Permitted Tax Distributions based on such annual reportable taxable net income or loss exceeds or is less than the aggregate Permitted Tax Distribution actually made with respect to such Fiscal Year, then the amount of Permitted Tax Distributions otherwise permitted for subsequent fiscal quarters shall be increased or reduced, as applicable, by the amount of such difference.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petit Payment" means any cash or Cash Equivalent proceeds of any settlement or other negotiation with former CEO of the Borrower, Parker Petit, as a result of the January 2021 litigation filed by the Borrower against Parker Petit and William Taylor.

"Platform" means DebtX, Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Prime Rate" means a rate per annum equal to the prime rate of interest announced from time to time by Citizens Bank or its parent company (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

"Pro Forma Basis" means, with respect to any transaction, that such transaction shall be deemed to have occurred as of the first day of the four-quarter period (or twelve month period, as applicable) ending as of the most recent quarter end (or month end, as applicable) preceding the date of such transaction for which financial statement information is available ;provided, however, with respect to any transaction occurring during the first fiscal quarter following the Closing Date, for purposes of determining whether the results of the Loan Parties and their Subsidiaries would be in compliance with the terms of this Credit Agreement on a Pro Forma Basis, compliance with each of the Financial Covenants set forth in Sections 7.12(a) and (b) shall be calculated based on the levels applicable at the end of the fiscal quarter ending September 30, 2023. Each of the terms "Pro Forma Compliance" and "Pro Forma Effect" shall have an analogous meaning.

"Product" means any current or future service or product researched, designed, developed, manufactured, licensed, marketed, sole, performed, distributed or otherwise commercialized by the Borrower or any of its Subsidiaries, and any such product in development or which may be developed.

"Protected Person" has the meaning assigned to such term in Section 10.3(d).

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

"Public Lender" has the meaning assigned to such term in Section 10.1(d)(i).

"Qualified Cash" means Unrestricted Cash held by the Loan Parties held in a Controlled Account.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Qualified Equity Interests" means, with respect to the Equity Interests of any Person, any Equity Interests other than Disqualified Equity Interests of such Person.

"Real Property" means, collectively, all right, title and interest in and to any and all parcels of or interests in real property owned or leased by any Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership thereof.

"Recipient" means the Administrative Agent, any Lender or the L/C Issuer, as applicable.

"Refinancing Indebtedness" means Indebtedness of any Loan Party or its Subsidiaries arising after the Closing Date issued in exchange for, or the proceeds of which are used to extend, refinance, refund, replace, renew, continue or substitute for other Indebtedness (such extended, refinanced, refunded, replaced, renewed, continued or substituted Indebtedness, the "Refinanced Obligations"; provided that (a) the principal amount of such Refinancing Indebtedness shall not exceed the principal amount of the Refinanced Obligations (plus any interest capitalized in connection with such Refinanced Obligations, the amount of prepayment premium, if any, original issue discount, if any, and reasonable fees, costs, and expenses incurred in connection therewith), (b) such Refinancing Indebtedness shall have a final maturity that is no earlier than the final maturity date of such Refinanced Obligations, (c) such Refinancing Indebtedness shall have a Weighted Average Life to Maturity not less than the weighted average life to maturity of the Refinanced Obligations, (d) such Refinancing Indebtedness shall rank in right of payment no more senior than, and be subordinated (if subordinated) to the Secured Obligations on terms, taken as a whole, not materially less favorable to the Secured Parties than the Refinanced Obligations, (e) [reserved], (f) if the Refinanced Obligations or any Guarantees thereof are unsecured, such Refinancing Indebtedness and any Guarantees thereof shall be unsecured, (g) if the Refinanced Obligations or any Guarantees thereof are secured, (1) such Refinancing Indebtedness and any Guarantees thereof shall be secured by substantially the same or less collateral, taken as a whole, as secured such Refinanced Obligations or any Guarantees thereof, on terms, taken as a whole, not materially less favorable to the Secured Parties , (2) the Liens to secure such Refinancing Indebtedness shall not have a priority, taken as a whole, more senior than the Liens securing the Refinanced Obligations and if subordinated to any other Liens on such property, shall be subordinated, taken as a whole, to the Administrative Agent's Liens on terms and conditions, taken as a whole, not materially less favorable to the Secured Parties, and (3) such Refinancing Indebtedness and any Guarantees thereof shall be subject to an intercreditor agreement reasonably acceptable to the



Administrative Agent, (h) the obligors in respect of the Refinanced Obligations immediately prior to such refinancing, refunding, extending, renewing, continuing, substituting or replacing thereof shall be the only obligors on such Refinancing Indebtedness, and (i) the terms and conditions (excluding as to pricing, premiums and optional prepayment or redemption

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provisions) of any such Refinancing Indebtedness, taken as a whole, are not materially less favorable to the Loan Parties than the terms and conditions of the Refinanced Obligations.

"Regenerative Business Unit" means the regenerative medicine segment of the Borrower's business that acts as a research and development arm for the Borrower's placental biologics platform.

"Register" has the meaning assigned to such term in Section 10.4(c).

"Regulation T, U or X" means Regulation T, U or X, respectively, of the Federal Reserve Board.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, members, directors, officers, employees, agents, trustees, administrators, managers, advisors, attorneys-in-fact and representatives, including accountants, auditors and legal counsel, of such Person and of such Person's Affiliates.

"Release" means any actual or threatened releasing, spilling, leaking, pumping, pouring, leaching, seeping, emitting, migration, emptying, discharging, injecting, escaping, depositing, disposing, or dumping of Hazardous Materials into the indoor or outdoor environment, including the movement of any Hazardous Material through the air, soil, surface water, groundwater or property and any other conditions resulting in potential or actual human exposure to Hazardous Materials within a structure.

"Relevant Governmental Body," means the Federal Reserve Board 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.

"Removal Effective Date" has the meaning assigned to such term in Section 9.6(b).

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Loans (other than Swingline Loans), a Committed Loan Notice, (b) with respect to a L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

"Required Class Lenders" means, at any time with respect to any Class of Loans or Commitments, two or more unaffiliated Lenders having Total Credit Exposures with respect to such Class representing more than 50% of the Total Credit Exposures of all Lenders of such Class. The Total Credit Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, at any time, two or more unaffiliated Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Resignation Effective Date" has the meaning assigned to such term in Section 9.6(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, vice president, chief financial officer, treasurer, assistant treasurer, principal accounting officer, comptroller or other similar officer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or

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other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means, as to any Person, (a) any dividend or other distribution by such Person (whether in cash, securities or other property) with respect to any Equity Interests of such Person, (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the holders of Equity Interests of such Person, (c) the acquisition for value by such Person of any Equity Interests issued by such Person or any other Person that Controls such Person, (d) any payment with respect to any Earn-out Obligation, and (e) with respect to clauses (a) through (d) any transaction that has a substantially similar effect.

"Revolving Borrowing" means a Borrowing consisting of Revolving Loans of the same Type made, converted or continued on the same date and, in the case of SOFR Loans, having the same Interest Period.

"Revolving Commitment" means, with respect to each Revolving Lender, the commitment hereunder of such Revolving Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans in an aggregate outstanding amount not exceeding the amount of such Revolving Lender's Revolving Commitment as set forth on Schedule 2.1 or in the Assignment and Assumption pursuant to which such Revolving Lender shall have assumed its Revolving Commitment in accordance with Section 10.4(b), as applicable, as such Revolving Commitment may be adjusted from time to time pursuant to Section 2.5 or Section 2.11 or pursuant to assignments by or to such Revolving Lender pursuant to Section 10.4. The initial aggregate amount of the Revolving Commitments on the Closing Date is \$75,000,000.

"Revolving Exposure" means, as to any Lender at any time, the sum of (a) the Outstanding Amount of its Revolving Loans, plus (b) its L/C Exposure, plus (c) its Swingline Exposure.

"Revolving Facility" means the credit facility established hereunder and evidenced by the Revolving Commitments.

"Revolving Lender" means a Lender having a Revolving Commitment or, if the Revolving Commitments have expired or terminated, having Revolving Exposure.

"Revolving Loan" means a loan referred to in Section 2.1(a) and made pursuant to Section 2.2.

"Revolving Loan Note" means with respect to a Revolving Lender, a promissory note evidencing the Revolving Loans of such Lender payable to the order of such Lender (or, if required by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit C-1.

"Revolving Maturity Date" means the fifth anniversary of the Closing Date, provided that if such day is not a Business Day, the Revolving Maturity Date shall be the Business Day immediately preceding such day.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc.

"Sale and Leaseback" means any transaction or series of related transactions pursuant to which any Loan Party or any of its Subsidiaries (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or

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leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

"Sanctioned Country" means any country, territory or region which is itself the subject or target of any comprehensive Sanctions (including, as of the date of this Credit Agreement, Cuba, Iran, North Korea, Syria, and the so-called Donetsk People's Republic, so-called Luhansk People's Republic, and

Crimea regions of Ukraine).

"**Sanctioned Person**" means (a) any Person or group listed in any Sanctions related list of designated Persons maintained by OFAC, including the List of Specially Designated Nationals and Blocked Persons, or the U.S. Department of State, the United Nations Security Council, the European Union, any EU member state or His Majesty's Treasury of the United Kingdom, (b) any Person subject to any law that would prohibit all or substantially all financial or other transactions with that Person or would require that assets of that Person that come into the possession of a third-party be blocked (c) any legal entity organized or domiciled in a Sanctioned Country, (d) any agency, political subdivision or instrumentality of the government of a Sanctioned Country, (e) any natural person ordinarily resident in a Sanctioned Country, or (f) any Person 50% or more owned, directly or indirectly, individually or in the aggregate by any of the above.

"**Sanctions**" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or any European Union member state, His Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"**SEC**" means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Obligation Designation Notice**" means a notice substantially in the form of Exhibit I executed and delivered to the Administrative Agent by a counterparty (other than the Administrative Agent and its Affiliates) to a Swap Agreement or an agreement to provide Cash Management Services in order that the obligations in respect thereof constitute Swap Agreement Obligations or Cash Management Obligations.

"**Secured Obligations**" means, collectively, (a) the Loan Document Obligations, (b) the Cash Management Obligations, (c) the Swap Agreement Obligations, and (d) the Erroneous Payment Subrogation Rights.

"**Secured Parties**" means, collectively, (a) the Administrative Agent, (b) each Lender, (c) each L/C Issuer, (d) each Person to whom any Cash Management Obligations are owed, (e) each counterparty to any Swap Agreement the obligations under which constitute Swap Agreement Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the permitted successors and assigns of each of the foregoing.

"**Security Agreement**" means the Pledge and Security Agreement, dated as of the Closing Date, among the Loan Parties and the Administrative Agent.

"**SOFR**" means a rate equal to the secured overnight financing rate as published by the SOFR Administrator on the website of the SOFR Administrator, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time).

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"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**SOFR Borrowing**" means, as to any Borrowing, the SOFR Loans or Daily SOFR Loans comprising such Borrowing, as applicable.

"**SOFR Loan**" means a Loan that bears interest at a rate based on Term SOFR, other than pursuant to clause (c) of the definition of "Alternate Base Rate" or the definition of "Daily SOFR Rate".

"**Sold Entity or Business**" means any Person or any property or assets constituting a line of business or a division of a Person Disposed of in a transaction permitted hereunder by the Borrower or any of its Subsidiaries.

"**Solvency Certificate**" means a certificate, substantially in the form of Exhibit H.

"**Solvent**" and "**Solvency**:" means, with respect to any Person on any date of determination, that on such date (a) the fair value of the present assets of such Person and its Subsidiaries, taken as a whole, is not less than the sum of the debt (including contingent liabilities) of such Person and its Subsidiaries, taken as a whole, (b) the present fair salable value of the assets of such Person and its Subsidiaries, taken as a whole, is not less than the

amount that will be required to pay the probable liabilities (including contingent liabilities) of such Person and its Subsidiaries, taken as a whole, on their debts as they become absolute and matured, (c) such Person and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and (d) such Person and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital; provided that the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.20).

"Specified Transaction" means any Investment, Disposition, incurrence or repayment of Indebtedness, Restricted Payment, Incremental Commitments incurred pursuant to Section 2.11(a) that by the terms of this Credit Agreement requires a test to be calculated on a "Pro Forma Basis", be given in "Pro Forma Compliance" with, or after giving "Pro Forma Effect"; provided that any increase in the Revolving Commitments above the amount of Revolving Commitments in effect on the Closing Date, for purposes of this definition, shall be deemed to be fully drawn.

"Subordinated Debt" means Indebtedness incurred by a Loan Party that is subordinated in right of payment to the prior payment of the Loan Document Obligations of such Loan Party and contains subordination and other terms acceptable to the Administrative Agent.

"Subordinated Debt Documents" means any agreement, indenture or instrument pursuant to which any Subordinated Debt is issued, in each case as amended to the extent permitted under the Loan Documents.

"Subsequent Transaction" has the meaning set forth in Section 1.11.

"subsidiary" means, with respect to any Person ("Topco"), as of any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be

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consolidated with those of Topco in Topco's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power is or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by Topco or one or more subsidiaries of Topco.

"Subsidiary" means any direct or indirect subsidiary of the Borrower or a Loan Party, as the context may require.

"Subsidiary Guarantors" means each Subsidiary that executes and delivers the Guarantee Agreement and each other Subsidiary of the Borrower that becomes party thereto in by the execution and delivery of a Subsidiary Joinder Agreement, and the permitted successors and assigns of each such Person.

"Subsidiary Joinder Agreement" means a Subsidiary Joinder Agreement, substantially in the form of Exhibit E, pursuant to which a Subsidiary (other than an Excluded Subsidiary) becomes a party to the Guarantee Agreement, to the Security Agreement and to each other applicable Loan Document.

"Swap Agreement" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Agreement Obligations" means all obligations of the Loan Parties under each Swap Agreement to which any Loan Party or its Subsidiary is a party and that that (a) is with a counterparty that is the Administrative Agent or any of its Affiliates, (b) is in effect on the Closing Date with a counterparty that is a Lender or an Affiliate of a Lender as of the Closing Date or (c) is entered into after the Closing Date with any counterparty that is a Lender or an Affiliate of a Lender at the time such Swap Agreement is entered into or becomes a Lender or an Affiliate of a Lender after it has entered into such agreement, provided that any such counterparty (other than the Administrative Agent or its Affiliates) executes and delivers a Secured Obligation Designation Notice to the Administrative Agent and, provided, further, that Swap Agreement Obligations shall not include, with respect to any Guarantor, Excluded CEA Swap Obligations of such Guarantor.

"Swap Termination Value" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap 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 Swap Agreements, as determined based upon one or more mid-market or other readily available quotations

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provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

"Swingline Exposure" means, with respect to any Revolving Lender at any time, its Applicable Percentage of the Outstanding Amount of the Swingline Loans.

"Swingline Lender" means Citizens Bank in its capacity as lender of Swingline Loans.

"Swingline Loan" means a loan referred to and made pursuant to Section 2.3.

"Swingline Loan Note" means with respect to the Swingline Lender, a promissory note evidencing the Swingline Loans of such Lender payable to the order of such Lender (or, if required by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit C-3.

"Swingline Loan Notice" means a notice of a Swingline Borrowing pursuant to Section 2.3(b), which, if in writing, shall be substantially in the form of Exhibit B-2.

"Swingline Sublimit" means \$10,000,000. The Swingline Sublimit is a sublimit of the Revolving Commitments.

"Synthetic Debt" means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of "Indebtedness" or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP).

"Synthetic Lease Obligation" means the monetary obligation of a Person at any time of determination under (i) a so called synthetic, off balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property, in each case, creating obligations that do not appear on the balance sheet of such Person but which could be characterized as the indebtedness of such Person (without regard to accounting treatment) (other than operating leases arising as a result of Sale and Leaseback transactions).

"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 Facility" means, the credit facility evidenced by the Term Loan Commitment. Unless the context shall otherwise require, the term "Term Facility" shall include Incremental Term Facilities.

"Term Lender" means a Lender with a Term Loan Commitment or, if the Term Loan Commitments have expired or terminated, outstanding Term Loans. Unless the context shall otherwise require, the term "Term Lenders" shall include Incremental Term Lenders.

"Term Loan" means a loan referred to in [Section 2.1\(b\)](#) and made pursuant to [Section 2.2](#). Unless the context shall otherwise require, the term "Term Loans" shall include any Incremental Term Loans.

"Term Loan Borrowing" means a Borrowing consisting of Term Loans of the same Type made, converted or continued on the same date and, in the case of SOFR Loans, having the same Interest Period.

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"Term Loan Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make a single Term Loan on the Closing Date pursuant to [Section 2.1\(b\)](#) in an aggregate amount not exceeding the amount of such Term Lender's Term Loan Commitment as set forth on [Schedule 2.1](#) or in the Assignment and Assumption pursuant to which such Term Lender shall have assumed its Term Loan Commitment, in accordance with [Section 10.4\(b\)](#), as applicable, as such Term Loan Commitment may be adjusted from time to time pursuant to [Section 2.5](#) or [Section 2.11](#) or pursuant to assignments by or to such Term Lender pursuant to [Section 10.4](#). The aggregate amount of the Term Loan Commitments on the Closing Date is \$20,000,000. Unless the context shall otherwise require, after the effectiveness of any Incremental Term Loan Commitment, the term "Term Loan Commitment" shall include such Incremental Term Loan Commitment.

"Term Loan Note" means with respect to a Term Lender, a promissory note evidencing the Term Loans of such Lender payable to the order of such Lender (or, if required by such Lender, to such Lender and its registered assigns) substantially in the form of [Exhibit C-2](#).

"Term Maturity Date" means the fifth anniversary of the Closing Date, provided that if such day is not a Business Day, the Term Maturity Date shall be the Business Day immediately preceding such day.

"Term SOFR" means a rate per annum equal to the greater of (a) the sum of (i) Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Term SOFR Determination Day") that is two (2) Government Securities Business Days prior to the first day of such Interest Period; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and ~~MIMEDX~~ a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Government Securities Business Day is not more than three (3) Government Securities Business Days prior to such Term SOFR Determination Day plus (ii) the Term SOFR Adjustment, and (b) the Floor.

"Term SOFR Adjustment" means 0.10000%.

"Term SOFR Administrator" means CME Group Inc. ("Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"~~Company~~ Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR".

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR published by the Term SOFR Administrator and displayed on CME's Market Data Platform (or other commercially available source providing such quotations as may be selected by the Administrative Agent from time to time).

"Termination Date" means the date upon which all Commitments have terminated, no Letters of Credit are outstanding (or if Letters of Credit remain outstanding, the same are Backstopped), and the Loans and L/C Obligations (other than with respect to the undrawn portion of outstanding Letters of Credit), together with all interest and fees related thereto and other Loan Document Obligations (other than unasserted contingent indemnification and unasserted expense reimbursement obligations in each case not yet due and payable), have been indefeasibly paid in full in cash.

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"Threshold Amount" means \$10,000,000.

"Total Credit Exposure" means, as to any Lender at any time, the unused Commitments, Revolving Exposure and outstanding Term Loans of such Lender at such time.

"Total Revolving Outstandings" means at any time, the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and L/C Obligations at such time.

"Trade Date" has the meaning assigned to such term in Section 10.4(f)(i).

"Trademark Security Agreement" has the meaning assigned to such term in the Security Agreement.

"Transaction Expenses" means any fees or expenses incurred or paid by the Borrower, or any Subsidiary in connection with the Transactions, this Credit Agreement and the other Loan Documents and the transactions contemplated hereby and thereby in connection therewith.

"Transactions" means (a) the execution, delivery and performance by each Loan Party of each Loan Document to which it is a party, (b) the borrowing of the Loans and the issuance of the Letters of Credit, (c) the use of the proceeds of the Loans and the Letters of Credit, (d) the satisfaction of the Collateral and Guarantee Requirement, (e) the Existing Credit Agreement Refinancing and (f) the payment of Transaction Expenses.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to (i) Term SOFR or (ii) the Alternate Base Rate.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unaudited Financial Statements" means the Form 10-Q containing the unaudited consolidated balance sheets and related statements of income, comprehensive income, changes in equity and cash flows of the Borrower and its Subsidiaries, covering any of the first three fiscal quarters that have ended after the most recent Fiscal Year covered by the Audited Financial Statements and at least forty-five (45) days before the Closing Date.

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as in effect from time to time in

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such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning assigned to such term in Section 2.4(c)(i).

**"Unrestricted Cash"** means unrestricted and unencumbered (other than by Liens in favor of the Administrative Agent created by the Loan Documents or Liens permitted pursuant to clause (i) of the definition of "Permitted Encumbrances") cash and Cash Equivalents of the Loan Parties maintained in the United States in Controlled Accounts.

**"USA PATRIOT Act"** means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

**"U.S. Person"** means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**"U.S. Tax Compliance Certificate"** has the meaning assigned to such term in Section 3.6(g)(ii)(B)(3).

**"Voting Equity Interests"** means, with respect to any Person, shares of such Person's Equity Interests having the right to vote for the election of the members of the board of directors or other managing person of such Person under ordinary circumstances.

**"Weighted Average Life to Maturity"** means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

**"Wholly-Owned"** means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by Applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

**"Withdrawal Liability"** means a liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**"Withholding Agent"** means any Loan Party and the Administrative Agent.

**"Write-Down and Conversion Powers"** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that

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person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**"Yield Differential"** has the meaning assigned to such term in Section 2.11(c).

**Section 1.2 Classification of Loans and Borrowings.** For purposes of this Credit Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "SOFR Loan") or by Class and Type (e.g., a "SOFR Revolving Loan"). Employee Borrowings may also be classified and Company referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "SOFR Borrowing") or by Class and Type (e.g., a "SOFR Revolving Borrowing").

**Section 1.3 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." 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." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from



time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Credit Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Credit Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (f) 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 and (g) the words "renew", "renewal" and variations thereof as used herein with respect to a Letter of Credit mean to extend the term of such Letter of Credit or to reinstate an amount drawn under such Letter of Credit or both. Any terms used in this Credit Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

#### Section 1.4 Accounting Terms; GAAP.

(a) 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 Credit Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Credit Agreement with respect to any period during which any Specified Transaction occurs, Consolidated EBITDA, Consolidated Fixed Charge Coverage Ratio and Consolidated Total Net Leverage Ratio (and all component definitions of any of the foregoing) shall be

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calculated with respect to such period and all Specified Transactions occurring during such period on a Pro Forma Basis.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Credit 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. 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, individually and the determination of Indebtedness hereunder, shall be made without giving effect to Financial Accounting Standards Board (FASB) Standard ASC 842 (Leases) (or any other applicable financial accounting standard having a similar result or effect) and related interpretations, in each case, to the extent any lease (or similar arrangement conveying the right to use) would be required to be treated as a "Party" and collectively capital lease thereunder where such lease (or similar arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the "Parties." effectiveness of the ASC 842.

WHEREAS, Company employed Employee most recentlySection 1.5 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Credit 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 References to Time. Unless the context otherwise requires, references to a time shall refer to Eastern Standard Time or Eastern Daylight Savings Time, as applicable.

Section 1.7 Resolution of Drafting Ambiguities. Each Loan Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the position preparation and negotiation hereof and thereof and that any rule of Chief construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.



**Section 1.8 Status of Loan Document Obligations.** In the event that any Loan Party shall at any time issue or have outstanding any Subordinated Debt, the Borrower shall take or cause each other Loan Party to take all such actions as shall be necessary to cause the Loan Document Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Debt and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Debt. Without limiting the foregoing, the Loan Document Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of the Subordinated Debt Documents under which such Subordinated Debt is issued and are further given all such other designations as shall be required under the terms of any such Subordinated Debt in order that the Administrative Agent and the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Debt.

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**Section 1.9 Rates Generally.** The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) administration, construction, calculation, publication, continuation, discontinuation, movement, or regulation of, or any other matter related to, the Alternate Base Rate, the Benchmark, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), any component definition thereof or rates referred to in the definition thereof, including whether any Benchmark is similar to, or will produce the same value or economic equivalence of, any other rate or whether financial instruments referencing or underlying the Benchmark will have the same volume or liquidity as those referencing or underlying any other rate, (b) the impact of any regulatory statements about, or actions taken with respect to any Benchmark (or component thereof), (c) changes made by any administrator to the methodology used to calculate any Benchmark (or component thereof) or (d) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Alternate Base Rate, the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, such transactions. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate, the Benchmark, or any alternative, successor or replacement rate (including any Benchmark Replacement), in each case pursuant to the terms of this Credit Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**Section 1.10 Divisions.** For all purposes under the Loan Documents, in connection with Division: (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

**Section 1.11 Limited Condition Acquisitions.** Notwithstanding anything to the contrary contained herein, for purposes of (a) determining compliance with any provision of this Credit Agreement or any other Loan Document which requires the calculation of any ratio (other than actual compliance with the Financial Officer Covenants), (b) determining compliance with representations, warranties, Defaults or Events of Default contained herein or in Marietta, GA.

any other Loan Document (other than the requirements contained in WHEREAS, Employee Section 4.2 and Company whether an Event of Default has occurred and is continuing under Sections 8.1(a), (b), (h) or (i)) or (c) testing availability under baskets (including baskets measured as a percentage of Consolidated EBITDA), in each case, in connection with any Limited Condition Acquisition, at the election of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, a "Limited Condition Election"), the date of determination of whether any such action is permitted hereunder, shall be deemed to be the Limited Condition Acquisition Agreement Signing Date, and if, after giving pro forma effect thereto and the other transactions to be entered into in connection therewith the Borrower could have taken such action on the relevant test date in compliance with such ratio, test, basket or other condition, such ratio, test, basket or other condition shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made a Key Employee Retention Limited Condition Election and Restrictive Covenant any of the ratios, tests, baskets or other conditions for which compliance was determined or tested as of the Limited Condition Acquisition Agreement (the "Retention Agreement"); Signing Date are exceeded, or would not be complied with, at or prior to the consummation of the relevant Limited Condition Acquisition, such baskets,

tests, ratios or other conditions will not be deemed to have been exceeded or failed. If the Borrower has made a Limited Condition Election for any Limited Condition Acquisition, then in

WHEREAS, Company

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connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Restricted Payments or the making of any Investment (a "Subsequent Transaction") following the relevant Limited Condition Acquisition Agreement Signing Date and Employee seek prior to separate from their employment relationship the earliest of (x) the date on which such Limited Condition Acquisition is consummated, (y) the date that the relevant Limited Condition Acquisition Agreement is terminated or expires without consummation of such Limited Condition Acquisition or (z) the date that is one hundred eighty (180) days after the Limited Condition Acquisition Agreement Signing Date, for purposes of determining whether such Subsequent Transaction is permitted under this Credit Agreement, any such ratio, test or basket shall be required to be satisfied (A) on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (but excluding the mutually agreed upon Consolidated EBITDA of any acquisition target to be acquired in connection with such Limited Condition Acquisition unless and until such Limited Condition Acquisition is consummated) have been consummated and (B) in the case of any such ratio or basket related to a Restricted Payment, without giving effect to such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof).

Section 1.12 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

## Article 2

### THE CREDITS

#### Section 1.1 Commitments.

(a) Revolving Commitments. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Revolving Lender agrees, severally and not jointly, to make Revolving Loans to the Borrower in this Agreement Dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (i) such Revolving Lender's Revolving Exposure exceeding such Revolving Lender's Revolving Commitment or (ii) the Total Revolving Outstandings exceeding the aggregate Revolving Commitments. Within the foregoing limits and the Retention Agreement;

WHEREAS, Company offers Employee the separation benefits described under this Agreement, subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. Revolving Loans may be ABR Loans or SOFR Loans, as further provided herein.

(b) Term Loan Commitments. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Term Lender agrees, severally and not jointly, to make a single loan (each such loan, a "Term Loan") to the Borrower in Dollars on the Closing Date in a principal amount not exceeding such Term Lender's Term Loan Commitment. Term Loans which are prepaid or repaid, in whole or in part, may not be reborrowed. Term Loans may be ABR Loans or SOFR Loans, as further provided herein.

(c) Incremental Term Loan Commitments. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth, each Incremental Term Lender agrees, severally and not jointly, if such Incremental Term Lender has so committed pursuant to Section 2.11, to make Incremental Term Loans in Dollars to the Borrower in an aggregate principal amount not to exceed its Incremental Term Loan Commitment and otherwise on the terms and subject to

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the conditions set forth in Employee's Retention Agreement;

WHEREAS, the Parties wish Incremental Assumption Agreement to resolve, finally and completely, and with prejudice, any and all issues, disputes which such Lender is a party. Incremental Term Loans which are prepaid or matters between them, without admitting liability; and

NOW THEREFORE, repaid, in consideration of the promises and covenants set forth below, the Parties, each intending to whole or in part, may not be legally bound, hereby agree reborrowed. Incremental Term Loans may be ABR Loans or SOFR Loans, as follows: further provided herein.

1. Section 1.2 Separation Date; Final Paycheck; Borrowings, Conversions and Termination Continuations of Employment Benefits Loans.

(a) Employee's employment Each Borrowing (other than a Swingline Borrowing which shall be made in accordance with Company completely Section 2.3), each conversion of Loans from one Type to the other, and permanently terminated, effective July 7, 2023 (the "Separation Date"). This Agreement will each continuation of SOFR Loans shall be effective only if Employee signs it made upon the Borrower's irrevocable notice, to the Administrative Agent, which may be given by telephone. Each such notice must be made in writing (or in the case of telephonic notice, promptly confirmed in writing) substantially in the form of a Committed Loan Notice appropriately completed and signed by a Responsible Officer of the Borrower and received by the Administrative Agent (i) in the case of an ABR Borrowing, not later than 11:00 a.m. on the date of the proposed Borrowing, or after (ii) in the Separation Date. After case of any other Borrowing, not later than 11:00 a.m. three (3) Government Securities Business Days before the Separation Date, Employee will not represent himself as being an employee, agent or representative date of Company for any purpose, nor will he engage or attempt to engage, directly or indirectly, in any business on Company's behalf or otherwise act in a manner that might bind Company, the proposed Borrowing.

(b) In accordance with Company's normal payroll practices, Except as provided in Section 2.3(c) and Section 2.4(c), each Borrowing or conversion of Loans shall be in a principal amount of the Company will tender Employee Borrowing Minimum or a final payment for all unpaid wages that Employee earned through whole multiple of the Separation Date, including without limitation payment for accrued, Borrowing Multiple in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (A) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of SOFR Loans, (B) the requested date of the Borrowing, continuation or conversion, as the case may be (which shall be a Business Day), (C) the Class and unused vacation benefits, subject to all applicable taxes and deductions, by mailing a check to Employee for that principal amount or, if Employee elected of Loans to be paid by direct deposit during Employee's employment with Company, by causing that amount borrowed, continued or converted, (D) the Type of Loans to be direct deposited into Employee's designated bank account. Employee acknowledges that, other than borrowed or to which existing Loans are to be converted, (E) if applicable, the final pay described under duration of the Interest Period with respect thereto which shall be a period contemplated by the definition of the term "Interest Period", and (F) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.2. Notwithstanding anything in this subsection 1(b), Company owes Employee no other wages, benefits, leave (paid or unpaid), overtime, bonuses, compensation, or other payment of any kind. Credit Agreement to the contrary, if the Borrower:

(c) (i) If Employee is actively enrolled requests a Borrowing of, conversion to, or continuation of SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month; or

(ii) fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the group medical, dental and/applicable Loans shall be made as, continued as, or vision benefits plan, Employee's coverage under said plans will continue until converted to, ABR Loans.

For avoidance of doubt, the Borrower and Lenders acknowledge and agree that any conversion or continuation of an existing Loan shall be deemed to be a continuation of that Loan with a converted interest rate methodology and not a new Loan. Any automatic conversion or continuation as provided above shall be effective as of the last day of the month Interest Period then in which effect with respect to the Separation Date occurs. Thereafter, Employee applicable SOFR Loans. No Swingline Loan may be eligible converted into any Type of Loan other than a Daily SOFR Loan.

(c) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion or continuation described in Section 2.2(b). In the case of each Borrowing, each Appropriate Lender shall make (or cause its Applicable Lending Office to elect continued coverage make) the amount of such insurance benefits after said extended coverage period expires, pursuant its Loan available to the federal Consolidated Omnibus Budget Reconciliation Act Administrative Agent, by transfer in immediately available funds to the account of 1985 ("COBRA"). Employee will the Administrative

receive appropriate notice and forms regarding Agent, not later than 1:00p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.2 (and, if such coverage under COBRA. Employee will be solely responsible for electing and enrolling Borrowing is the initial Credit Extension, Section 4.1), the Administrative Agent shall make all funds so received available to the Borrower in COBRA continuation coverage like funds as received by transfer to the account of the Borrower designated in an appropriate and timely manner and for any and all required payments, including any premium payments, relating the Commitment Loan Notice the amount of such funds; provided that if, on the date the Committed Loan Notice with respect to such COBRA coverage, except Borrowing is given by the Borrower, there are Swingline Loans or L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied first, to the payment in full of any such L/C Borrowings, second, to the payment in full of any such Swingline Loans, and third, to the Borrower as outlined in Section 2 of the Agreement. provided above.

(d) After Except as otherwise provided herein, a SOFR Loan may be continued or converted only on the Separation last day of the Interest Period for such Loan unless the Borrower pays the amount due, if any, under Section 3.5 in connection therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that (i) no Loans may be requested as, converted to or continued as SOFR Loans or Daily SOFR Loans and (ii) unless repaid, (X) each SOFR Loan be converted to an ABR Loan at the end of the Interest Period applicable thereto and (Y) each Daily SOFR Loan be immediately converted into an ABR Loan.

(e) The Administrative Agent shall promptly notify the Borrower and the Appropriate Lenders of the interest rate applicable to any Interest Period for SOFR Loans upon determination of such interest rate.

(f) The failure of any Appropriate Lender to make any Loan required to be made by it shall not relieve any other Appropriate Lender of its obligations hereunder, provided that the Commitments of the Lenders are several, and no Lender shall be responsible for any other Lender's failure to make Loans as required. All Borrowings made on the Closing Date Employee must be made as ABR Borrowings unless the Borrower shall no longer participate have given a Committed Loan Notice requesting a SOFR Borrowing and provided an indemnity letter in form and substance reasonably satisfactory to the Administrative Agent extending the benefits of Section 3.5 to the Appropriate Lenders in respect of such Borrowings.

(g) Anything in clauses (a) through (d) above to the contrary notwithstanding, after giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans of the same Type, there shall not be covered more than six (6) Interest Periods in effect at any time for all Borrowings of SOFR Loans.

### Section 1.3 Swingline Loans.

(a) The Swingline. Subject to the terms and conditions hereof and relying upon the representations and warranties herein set forth and upon the agreements of the Revolving Lenders set forth in this Section 2.3, the Swingline Lender may in its sole discretion and without any obligation to do so make Swingline Loans to the Borrower in Dollars from time to time on any Business Day after the making of the initial Revolving Loans through the seventh Business Day preceding the Revolving Maturity Date; provided that after giving effect to each Swingline Loan, (i) the aggregate Outstanding Amount of Swingline Loans shall not exceed the Swingline Sublimit and (ii) the Total Revolving Outstandings shall not exceed the aggregate Revolving Commitments; provided, further, that the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.3, prepay under Section 2.7, and reborrow under this Section 2.3.

(b) Borrowing Procedures. Each Swingline Borrowing shall be made upon the Borrower's irrevocable notice to the Swingline Lender, which may be given by telephone. Each such notice must be received by the Swingline Lender not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum, (ii) the requested borrowing date, which shall be a Business Day and (iii) the maturity date of the requested Swingline Loan which shall be not later than seven Business Days after the making of such Swingline Loan. Each such telephonic notice must be confirmed promptly by hand delivery or facsimile (or transmitted by electronic communication, if arrangements for doing so have been acceptable to the Swingline Lender and the Administrative Agent) of a written Swingline Loan Notice to the Swingline Lender and the Administrative Agent, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swingline Lender of any telephonic Swingline Loan Notice, the Swingline Lender will, if it is willing to make the requested Swingline Loan and provided that all applicable conditions in Section 4.2 are satisfied or waived, not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of its Swingline Loan available to the Borrower by crediting the account of the Borrower maintained with the Swingline Lender and notify the Administrative Agent thereof in writing.

(c) Refinancing of Swingline Loans. (i) The Swingline Lender at any time in its sole and absolute discretion may request, and shall request at least weekly at any time when Swingline Borrowings are outstanding, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make an ABR Revolving Loan in Dollars in an amount equal to such Revolving Lender's Applicable Percentage of the amount of Swingline Loans then outstanding. Such request shall be eligible made in writing (which written request shall be deemed to be a Committed 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 ABR Loans. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds in Dollars for the account of the Swingline Lender at the Administrative Agent's Payment Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.3(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made an ABR Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(i) If for any reason any Swingline Loan cannot be refinanced by a Revolving Borrowing in accordance with Section 2.3(c)(i), the request for ABR Revolving Loans submitted by the Swingline Lender as set forth therein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders purchase for cash a risk participation in the relevant Swingline Loan in Dollars and each Revolving Lender hereby irrevocably and unconditionally agrees to make such purchase in an amount equal to the product of such Revolving Lender's Applicable Percentage multiplied by the amount of such Swingline Loan. Each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.3(c)(i) shall be deemed payment in respect of such participation.

(ii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.3(c), by the time specified in Section 2.3(c)(i), the Swingline Lender shall be entitled to recover from such Revolving 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

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available to the Swingline Lender at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iii) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.3(c) shall be absolute and unconditional and shall not be affected by any circumstance, provided that each Revolving Lender's obligation to make Revolving Loans (but not to purchase and fund risk participations in Swingline Loans) pursuant to this Section 2.3(c) is subject to the conditions set forth in Section 4.2. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations. (i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its

Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's risk participation was funded) in the same funds as those received by the Swingline Lender.

(i) 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 **employee** circumstances described in Section 10.11 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Percentage thereof on demand by the Administrative Agent, **plus** interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender.

(e) Interest for Account of Swingline Lender. Until each Revolving Lender funds its ABR Revolving Loan or risk participation pursuant to this Section 2.3 to refinance such Revolving 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 Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender and the Swingline Lender shall notify the Administrative Agent thereof.

#### Section 1.4 Letters of Credit.

(a) The Letter of Credit Commitment. (i) Subject to the terms and conditions hereof and of any additional Letter of Credit Documents required by the L/C Issuer and relying upon the representations and warranties herein set forth (A) based upon the agreements of the Revolving Lenders set forth in this Section 2.4, the L/C Issuer agrees (1) from time to time on any Business Day during the Availability Period to issue Letters of Credit denominated in Dollars for the account of the Borrower (**provided** that any Letter of Credit may be for the joint account of the Borrower and any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.4(b), and (2) to honor conforming drafts under the Letters of Credit and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.4; **provided** that the L/C Issuer shall not be obligated to make any L/C Credit Extension with respect to any Letter of

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Credit, and no Revolving Lender shall be obligated to participate in any such Letter of Credit if immediately after giving effect to such L/C Credit Extension, (w) the aggregate L/C Obligations would exceed the L/C Sublimit, (x) the Revolving Exposure of any Revolving Lender would exceed such Revolving Lender's Revolving Commitment, or (y) the Total Revolving Outstandings would exceed the aggregate Revolving Commitments.

(i) The L/C Issuer shall be under no obligation to issue any Letter of Credit (and, in the case of clauses (B), (C) or (D) below, shall not issue any Letter of Credit) if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or direct that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which the L/C Issuer is not otherwise compensated hereunder);

(B) subject to Section 2.4(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal;

(C) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date;

(D) [reserved];

(E) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit or any laws binding upon the L/C Issuer;



(F) the Letter of Credit is to be denominated in a currency other than Dollars;

(G) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.10(a)(iv)) with respect to such Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(H) the Letter of Credit is in an initial amount less than \$50,000 (or such lesser amount as agreed to by the L/C Issuer and the Administrative Agent).

(ii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit

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in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit. (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower hand delivered or sent by facsimile (or transmitted by electronic communication, if arrangements for doing so have been acceptable to the L/C Issuer) to the L/C Issuer (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 the Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 1:00 p.m. at least three (3) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the L/C Issuer may agree in a particular instance in its sole discretion. 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 L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day), (B) the amount thereof, (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, and (G) such other matters as the L/C Issuer may reasonably request. 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 L/C Issuer (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 the L/C Issuer may reasonably request.

(i) Subject to the terms and conditions set forth herein, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to have, and hereby irrevocably and unconditionally agrees to, acquire from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to such Revolving Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire risk participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments.

(ii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer shall agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit the L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Auto-Renewal Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the renewal of such Auto-Renewal Letter of Credit from time to time to an expiry date not later than the Letter of Credit Expiration Date; provided that the L/C Issuer shall not permit any such renewal if (A)

the L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of [Section 2.4\(a\)\(ii\)](#), or otherwise), or (B) it has received

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notice (which may be by telephone, followed promptly in writing, or in writing) on or before the day that is five (5) Business Days before the applicable Nonrenewal Notice Date from the Administrative Agent or any Revolving Lender, as applicable, or the Borrower that one or more of the applicable conditions specified in [Section 4.2](#) is not then satisfied.

(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 L/C Issuer will also deliver to the 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 L/C Issuer shall notify promptly the Borrower and the Administrative Agent thereof. On the Business Day on which the Borrower shall have received notice of any payment by the L/C Issuer under a Letter of Credit or, if the Borrower shall have received such notice later than 3:00 p.m. on any Business Day, on the succeeding Business Day (such applicable Business Day, the "[L/C Honor Date](#)"), the Borrower shall (regardless of whether or not such Letter of Credit shall be for the sole account of the Borrower or for the joint account of the Borrower and any Subsidiary) reimburse the L/C Issuer through the Administrative Agent in an amount equal to such drawing in Dollars. If the Borrower fails to so reimburse the L/C Issuer on the L/C Honor Date (or if any such reimbursement payment is required to be refunded to the Borrower for any reason), then (x) the Borrower shall be deemed to have requested a Borrowing of ABR Revolving Loans in the amount of such drawing, and (y) the Administrative Agent shall promptly notify each Revolving Lender of the L/C Honor Date, the amount of the unreimbursed drawing (the "[Unreimbursed Amount](#)"), and the amount of such Revolving Lender's Applicable Percentage thereof. Such Revolving Loans shall be made by the Revolving Lenders without regard to the Borrowing Minimums and Borrowing Multiples. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this [Section 2.4\(c\)\(i\)](#) 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. For the avoidance of doubt, if any drawing occurs under a Letter of Credit and such drawing is not reimbursed on the same day, the Unreimbursed Amount of such drawing shall, without duplication, accrue interest for each day until the date of reimbursement at (x) prior to the third Business Day following the L/C Honor Date, the rate per annum applicable to the outstanding principal balance of ABR Revolving Loans pursuant to [Section 3.1\(a\)](#), and (y) thereafter, a rate per annum equal to the Default Rate applicable to the outstanding principal balance of ABR Revolving Loans.

(i) Each Revolving Lender (including the Revolving Lender acting as the L/C Issuer) shall upon any notice pursuant to [Section 2.4\(c\)\(i\)](#) make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Payment Office in an amount equal to its Applicable Percentage of any Unreimbursed Amount in respect of a Letter of Credit in Dollars not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent. The Administrative Agent shall remit the funds so received to the L/C Issuer, and may apply Cash Collateral provided for this purpose to such Unreimbursed Amount.

(ii) Each Revolving Lender that makes funds available pursuant to [Section 2.4\(c\)\(ii\)](#) shall be deemed to have made an ABR Revolving Loan in Dollars to the Borrower in such amount, provided that in the event the conditions for Revolving Borrowings set forth in [Section 4.2](#) cannot be satisfied (and have not been waived) or for any other reason, then (A) the Borrower shall be deemed to have incurred from the L/C Issuer a L/C Borrowing in Dollars in the amount of the Unreimbursed Amount, which L/C Borrowing shall be due and

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payable on demand (together with interest) and shall bear interest at the Default Rate, and (B) such Revolving Lender shall be deemed to have purchased a participation in such L/C Borrowing in an amount equal to its Applicable Percentage thereof (a "L/C Advance").

(iii) Until each Revolving Lender funds its Revolving Loan or L/C Advance pursuant to this [Section 2.4\(c\)](#) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(iv) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this [Section 2.4\(c\)](#), shall be absolute and unconditional and shall not be affected by any circumstance; provided that each Revolving Lender's obligation to make Revolving Loans (but not L/C Advances) pursuant to this [Section 2.4\(c\)](#) is subject to the conditions set forth in [Section 4.2](#) (other than delivery by the Borrower of a Committed Loan Notice). No such making of a L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(v) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this [Section 2.4\(c\)](#) by the time specified in [Section 2.4\(c\)\(ii\)](#), the L/C Issuer shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this [Section 2.4\(c\)\(vi\)](#) shall be conclusive absent manifest error.

(vi) If, at any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Revolving Lender's L/C Advance in respect of such payment in accordance with this [Section 2.4\(c\)](#), the Administrative Agent receives for the account of such Revolving Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(vii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to [Section 2.4\(c\)](#) is required to be returned under any of the circumstances described in [Section 10.11](#), each Revolving Lender shall pay to the Administrative Agent 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 Revolving Lender, at a rate per annum equal to the Federal Funds Rate.

(d) **Obligations Absolute.** The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall

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be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement 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) any payment by the L/C Issuer 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 the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit plans, policies of creditors, liquidator, receiver or programs offered other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with (x) any proceeding under any Debtor Relief Law or (y) any Bail-In Action;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guarantee Agreement or any other guarantee, for all or any of the Loan Document Obligations of any Loan Party in respect of such Letter of Credit; or

(vi) 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 Loan Party;

provided that the foregoing shall not excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are waived by Company, unless otherwise the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the L/C Issuer's gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(e) **Role of L/C Issuer.** Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight 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 the L/C Issuer, any of its Related Parties nor any of the correspondents, participants or assignees of the L/C Issuer 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 Required Lenders or the Required Class Lenders in respect of the Revolving Facility, as applicable, (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness,

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validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The 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 that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, any of its Related Parties nor any of the correspondents, participants or assignees of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (iii) of this Section 2.4(e); provided that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of such employee benefit plans, policies or programs or by governing law. Nothing Letter of Credit. In furtherance and not in this Agreement shall constitute a waiver of any right that Employee may have to any vested benefit under such employee benefit programs or plans of Company pursuant to the terms of such employee benefit programs or plans and governing law.

## **1. Consideration.**

(a) **Separation Payment and COBRA Subsidy Payment.** In accordance with the Retention Agreement and in consideration for Employee's execution of this Agreement and the promises, covenants, agreements, and general release of all claims set forth herein, the Company agrees to pay to Employee or on his behalf, and the Employee agrees to accept the following:

(i) The gross total sum of one million forty seven thousand, seven hundred three dollars and twelve cents (\$1,047,703.12). ("Separation Payment"). Employee acknowledges that the Separation Payment is equal to 15 months of his current salary plus 125% percent of his current annual Targeted Bonus amount (or 15 months of target bonus) under the Company's current annual cash incentive in which Employee is eligible to participate. The Separation Payment, less applicable taxes and deductions, will be paid as a lump sum and deposited into Employee's bank account. This amount will be subject to tax withholdings and will be reported on an IRS Form W-2; and

(ii) If Employee provides Company with documentation showing to Company's satisfaction that he timely and properly enrolled for COBRA coverage for the medical plan, dental plan, and vision plan, at level consistent with those Employee was enrolled in as of the Separation Date, Employee will continue participation in these plans at the current "active" employee contribution rate for Employee and his eligible dependents (where applicable) and the Company will pay the "employer" share of the coverage payments, less applicable taxes and deductions for a maximum of 15 months (the "COBRA Subsidy Payment"). The COBRA Subsidy Payment will be tendered directly to Company's third-party provider of COBRA coverage on his behalf; provided, that if participation in such plans cannot be maintained beyond the period permitted for COBRA, the Company will pay the COBRA Subsidy Payment directly to Employee.

(b) **Timing and Conditions of Separation Payment and COBRA Subsidy Payment.** Assuming Employee returns to Company a copy of this Agreement, and does not revoke the Agreement pursuant to Section 20, Company will provide Employee with the consideration described in Section 2(a) on the sixty-fifth (65<sup>th</sup>) day following the Separation Date. Employee acknowledges and agrees that no payment or benefit provided under this Agreement, including the consideration described in Section 2(a), will be owed to Employee unless and until he returns the signed Agreement to the Company without revocation.

(c) **Tax Consequences.** Employee agrees and acknowledges that he shall be solely responsible for all taxes, assessments, interest, and penalties determined to be due by any federal, state or local government, agency or any other tax authority, court or tribunal, in connection with the aforementioned settlement payment including, without limitation any

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federal, state and local withholding taxes and Social Security taxes, except for Company's original contributions to FICA that would have been required at the time of payment. Employee covenants that he has not relied on Company for advice regarding any tax liabilities or consequences.

(d) **Adequate Consideration.** Employee understands, agrees and covenants that the consideration set forth in Section 2(a) exceeds what Employee is otherwise entitled to receive upon separation from his Company employment, and that Employee would not receive said consideration but for Employee's entering this Agreement. Employee accepts the consideration set forth in Section 2 as adequate and as the full, final, and complete settlement of all possible claims that Employee might have against Company as described in Section 4. Employee expressly understands, agrees and covenants that Company will not be required to make any payment, for any reason whatsoever, including, without limitation, any payment of attorneys' fees or costs and any payment to Employee or any person, heir, estate, attorney, representative, successor, assign, or agent acting on Employee's behalf in connection with any claim or right that might possibly be asserted by him or on his behalf.

(e) **Acknowledgment.** Employee acknowledges that the benefits provided under this Agreement are provided pursuant to Paragraph 3(a) of the Retention Agreement (Termination Prior to Change in Control). As set forth in the Retention Agreement, Employee will not be eligible to earn and will not receive any Separation Payment or COBRA Subsidy Benefit if the Company, in its sole discretion, concludes that facts and circumstances exist or existed that would have justified a termination for "Cause," as defined in Paragraph 3(d) of the Retention Agreement. Additionally, as set forth in the Retention Agreement, if the Company determines after any such severance benefits have commenced or otherwise been provided to Employee under this Agreement, that there are facts and circumstances that would have justified a termination of Employee's employment for "Cause," the Company may: (i) cease any future payment of the Separation Payment or

the COBRA Subsidy Benefit, as applicable, otherwise payable to the Executive under this Agreement, and the Executive shall have no right to receive such benefits; and/or (ii) require that Employee repay, within not less than thirty (30) days, any and all Separation Payment and COBRA Subsidy Payments, as applicable, previously paid to the Employee under the terms of this Agreement. In the event that the Company elects, within its sole discretion, to exercise its rights as provided in the Retention Agreement, it shall provide written notice to Employee of such determination and election, as well as the period of time within which Employee is required to repay amounts previously paid, if applicable.

**2. Released Parties.** As used in this Agreement, "Released Parties" means:

(a) MIMEDX Group, Inc., and any and all of its past, present and future predecessors, successors, affiliates, parents, subsidiaries, divisions, and related companies, including, without limitation MIMEDX Group, Inc. Severance Plan; and

(b) Any and all past or present predecessors, subsidiaries, affiliates and benefit plans, and each of their past, present and future officers, directors, trustees, members, administrators, agents, attorneys, employees and insurance carriers, as well as the heirs, successors and assigns of any of such persons or such entities related to MIMEDX Group, Inc. and MIMEDX Group, Inc. Severance Plan;

(c) Any and all past, present and future partners, shareholders, directors, officers, trustees, managers, employees, attorneys, agents, benefit plans (and their sponsors, fiduciaries and administrators), insurers, reinsurers, members and servants of any of the entities described in Section 3(a) or (b).

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**3. Mutual Release of All Claims.** In exchange for the consideration described in Section 2, Employee, for himself and on behalf of his heirs, estate, representatives, successors, assigns, and agents, hereby expressly and unconditionally releases and forever discharges Company and all other Released Parties from any and all claims arising at any time through the date of Employee's execution of this Agreement, including, without limitation, all possible claims arising out of or in any way relating to Employee's employment by Company, or the termination of that employment.

(a) This general release of claims covers, without limitation:

(i) any and all claims under any possible legal, equitable, contract, or tort theory including, without limitation, claims for wrongful discharge, employment termination in violation of public policy, negligent hiring, negligent supervision, infliction of emotional distress, fraud, promissory estoppel, breach of contract (except breach of this Agreement), breach of any other legal, equitable or fiduciary obligation, interference with contract or prospective economic advantage, false imprisonment, assault, battery, defamation, negligence, personal injury and invasion of privacy;

(ii) any and all claims under any possible statutory theory, including, without limitation, the following statutes, as amended: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, the Immigration Reform and Control Act, the Americans with Disabilities Act, the Rehabilitation Act, the Equal Pay Act, the Lilly Ledbetter Fair Pay Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act; the Pregnancy Discrimination Act, the Genetic Information Nondiscrimination Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, Employee Retirement Income Security Act, the Sarbanes Oxley Act, the Dodd-Frank Act, the National Labor Relations Act, the Workers Adjustment and Retraining Notification Act, the Uniformed Services Employment and Reemployment Rights Act, the Health Insurance and Portability Accountability Act, the Fair Credit Reporting Act, Employee Polygraph Protection Act, the Georgia Fair Employment Practices Act, the Georgia Equal Pay Act, the Georgia Equal Employment for People with Disabilities Code, Retaliatory Employment Discrimination Act ("REDA"),

(iii) and any state, or local law, statute, ordinance, regulation or executive order prohibiting employment discrimination based on any legally protected characteristic, prohibiting retaliation for "whistleblowing" or any other legally protected activity, relating to leaves of absence, or otherwise governing Employee's employment with, or separation of employment with, Company;

(iv) any and all claims of any kind or nature that Employee had, has, or may have, whether known or unknown, against Company or any of the Released Parties arising on or before the date of Employee's execution of this Agreement, including, without limitation, any continuing effects; and

(v) any and all claims for costs, expenses and fees of any and all attorneys who have at any time or are presently representing Employee in connection with this Agreement or any other claim or right released by him under this Agreement.

(b) This Agreement shall not waive, or be construed to waive: (i) any claim or right of Employee that cannot be waived under the law; (ii) any claim or right Employee might have to unemployment compensation benefits relating to Employee's separation from employment with Company; (iii) any claim or right Employee might have to any vested benefits for which Employee may be eligible under any employee benefit program or plan of Company; (iv) any claim or right that arises after the date of Employee's execution of this Agreement; (v)

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any claim related to the enforcement of this Agreement;; and (vi) any right or claim for indemnification of Employee for third party claims arising out of or related to Employee's service as an employee, officer and director of the Company and its subsidiaries under those entities' certificates of incorporation and bylaws, any indemnification agreement to which Employee is a party and any insurance policies held by the Company or subsidiaries providing indemnification coverage (subject to and accordance with the terms of such documents, agreements and policies).

(c) The Parties understand that nothing in this Agreement prohibits Employee from filing an administrative charge or complaint or otherwise reporting any possible violations of federal law or regulation or making other disclosures that are protected under the whistleblower provisions of federal law or regulation to any governmental agency or entity, including, without limitation, the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Justice, the Securities and Exchange Commission, Congress, or any agency Inspector General, or participating or cooperating in any investigation by any such federal, state or local administrative agency of such charge or reported violation of law. Employee, however, waives his right to monetary, injunctive, or other relief to which Employee might be entitled should any federal, state or local administrative agency or any other third party pursue any claims on Employee's behalf arising out of or relating to his employment by Company or the termination of that employment. This means that by executing this Agreement, Employee will have waived any right to obtain a recovery if an administrative agency or any other person or entity pursues a claim against Company or any of the other Released Parties based on any actions taken by them up to the date of Employee's execution of this Agreement, and that Employee will have released Company and the other Released Parties of any and all claims described under this Section 4 arising up to the date of his execution of this Agreement. Nothing in this Section 4 shall prohibit Employee from making any disclosure in accordance with Section 7 including any disclosure to the U.S. Securities and Exchange Commission ("SEC") pursuant to Section 21F-17(b) of the Securities and Exchange Act of 1934, as amended, or receiving an award from the SEC in connection therewith.

**4. Affirmations.** Employee affirms that: (a) Employee has neither filed or caused to be filed nor is presently a party to any claim, complaint, grievance, or action against Company or any of the other Released Parties in any form or forum; (b) other than the payments described under Section 2(a), Company owes Employee no leave (paid or unpaid), compensation, wages, bonuses, commissions, or other payment or benefit of any kind; (c) Company in no way has interfered with Employee's exercise of any rights or denied Employee any benefit or entitlement provided under the Employee Retirement Income Security Act, the Family and Medical Leave Act, the National Labor Relations Act, the Fair Labor Standards Act or the Uniformed Services Employment and Reemployment Rights Act; (d) Employee suffered no on-the-job injuries or illnesses for which Employee has not already filed a workers' compensation claim; and (e) prior to signing this Agreement, Employee engaged in no conduct that would violate Section 7, 8, 10 or 11 of this Agreement. Employee acknowledges and understands that

the truthfulness and accuracy of the foregoing, affirmations are a material term of this Agreement, the L/C Issuer may accept documents that appear on their face to be in order, without which Company would not have entered this Agreement.

**5. No Admission of Wrongdoing.** The Parties agree that neither this Agreement nor the furnishing of the consideration responsibility for this Agreement shall be deemed or construed at any time for any purpose as an admission by Company or by Employee of liability or unlawful conduct further investigation, regardless of any kind, notice or evidence of any liability or unlawful conduct of any kind. Nothing in the preceding sentence shall preclude introduction of this Agreement by Company to establish that Employee's claims have been resolved and/or released, or by either Party to establish a breach of this Agreement.

**6. Confidentiality Agreement.** Subject to Section 4(c) and except as otherwise required by law, Employee agrees that he will not disclose, disseminate, or publicize, or cause or permit to be disclosed, disseminated, or publicized, directly or indirectly, specifically or generally, to any person, corporation, association, governmental agency, or other entity, (i) the existence of this Agreement; (ii) the terms and conditions of this Agreement, including that any sums were paid to Employee; and (iii) the content of any and all settlement discussions related to this Agreement; (iii) any confidential information regarding Employee's employment with the Company; or (iv) any claims or allegations of wrongdoing, or the basis for any such claims or allegations, which were or could have been made or asserted against the Company or any of the Released Parties, except that such information may be disclosed: (a) to Employee's accountant, attorneys, domestic partner, and/or spouse, provided that, to the maximum extent permitted by applicable law, rule, code, or regulation, they agree to maintain contrary, and the confidentiality of the Agreement; (b) to the extent necessary to report income to appropriate taxing authorities; (c) in response to an order of a court of competent jurisdiction or a subpoena issued under authority thereof; (d) in response to any subpoena issued by a state or federal governmental agency; or (e) as otherwise required by law. Other than in the case of subpoenas, court orders, or other communications (including information requests) regarding an investigation or action by the SEC, to the extent that Employee is subpoenaed by any person or entity (including but not limited to any government agency) to give testimony or produce documents (in a deposition, court proceeding, or otherwise) which in any way relates to Employee's employment by the Company and/or any of the Released Parties and/or this Agreement, Employee will, except as provided for in and subject to Section 4(c) of this Agreement or as prohibited by the order of court or government agency, give prompt notice of such request to William F. Hulse, Esq., or his successor at the Company. Nothing in this provision shall restrict Employee's ability to communicate directly with any governmental or regulatory agency regarding any potential violation of law or regulation.

The parties acknowledge and agree that this Section 7 of the Agreement shall be in addition to, and L/C Issuer shall not be considered responsible for the validity or construed as superseding sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in conflict with, any other obligation, whether contractual or otherwise, that Employee owes or may owe to the Company

The Parties acknowledge and agree that this Section 7 is a material provision of this Agreement, and that any breach of this Section 7 shall be a material breach of this Agreement.

Nothing in this Agreement is intended to interfere with Employee's right to make truthful statements about the terms and conditions of his employment with the Company for the purpose of engaging in protected concerted activity, or to interfere with any other rights protected under Section 7 of the National Labor Relations Act, provided that such statements are entitled to protection under the law.

**7. Mutual Non-Disparagement Agreement.** Subject to Section 4(c) and except as otherwise required by law, Employee will refrain from directly or indirectly making any comment, engaging in publicity, or taking any other action that reflects adversely upon Company or any other of the Released Parties. The Parties acknowledge and agree that this Section 8 is a material provision of this Agreement, and that any breach of this Section 8 shall be a material breach of this Agreement.



The parties acknowledge and agree that this Section 8 of the Agreement shall be in addition to, and shall not be considered or construed as superseding or in conflict with, any other obligation, whether contractual or otherwise, that Employee owes or may owe to the Company.

The Company agrees to refrain from, directly or indirectly, making any comment, engaging in publicity that reflects adversely on Employee.

**8. Cooperation.** Except as provided in and subject to Section 4(c) of this Agreement, Employee agrees that he will reasonably cooperate with the Company regarding any investigation, or the defense or prosecution of any claims, proceedings, arbitrations, or actions now pending or in existence, or **part**, which may be brought in the future, against or on behalf of the Company, which relate to events or occurrences that transpired during his employment with the Company. Employee's cooperation shall include, but not necessarily be limited to: (i) attending meetings with and truthfully answering questions posed by representatives and/or attorneys of the Company; (ii) providing or producing documents relevant to such claim, proceeding, arbitration, or action, as applicable, to the extent that such documents are in Employee's possession, custody, or control and as may be requested, from time to time, by representatives and/or attorneys of the Company; (iii) executing truthful and complete declarations or affidavits; and (iv) appearing as a witness at depositions, trials, arbitration hearings, or other proceedings without the necessity of a subpoena and testifying truthfully and completely. The Company agrees to reimburse Employee for all of his reasonable, out-of-pocket expenses associated with such cooperation, including reasonable travel expenses, in accordance with any applicable Company policy as in effect from time to time, so long as Employee provides advance written notice of his request for reimbursement and provide satisfactory documentation of the expenses. Nothing in this provision shall be construed or applied so as to obligate Employee to violate any law or legal obligation. Nothing herein is intended to unduly interfere with Employee's other business or personal activities, and the Company shall use reasonable efforts to ensure any cooperation requested thereby does not unduly interfere with any subsequent employment and, to the extent that such cooperation does unreasonably interfere with Employee's subsequent employment, it will be requested only if, upon a good faith determination by the Company, it is reasonably necessary. If Employee is required to provide more than an aggregate of 50 hours of Employee's time pursuant to this Section 9, the Company will compensate Employee for any additional time over 50 hours at the rate of \$500.00 per hour; provided that Employee provides the Company with an estimate of the hours required for any such task beyond the 50 hours.

**9. Return of Company Property.** Employee represents and warrants that he has returned all Company-issued property, including, without limitation, credit cards, keys, laptops, mobile and other computing devices, including all related peripheral equipment such as batteries and power cords, computer software, files, manuals, letters, notes, records, drawings, notebooks, reports and any other documents and tangible items that Employee received, acquired, prepared, used or maintained in connection with conducting business for or on behalf of Company, whether maintained at Employee's office, home or any other location, and in all forms, including electronic form and expressly including documents and tangible items containing confidential information. Employee will not retain, disclose or make any further use, directly or indirectly, of any such Company property.

**10. Existing Post-Employment Obligations.** Employee acknowledges and agrees that nothing in this Agreement shall in any way limit, restrict, diminish, waive or otherwise reduce any post-employment obligation owed by Employee to Company under any agreement entered by Employee prior to this Agreement, any established policy of Company and/or governing law, including, without limitation, the Retention Agreement, MIMEDX Confidentiality and Non-Solicitation Agreement, MIMEDX Employee Inventions Assignment Agreement, and MIMEDX Non-Competition Agreement.

**11. No Right to Reemployment.** Employee acknowledges that neither Company nor any of the other Released Parties will ever be obligated to employ or reemploy Employee after he signs this Release.

**12. Amendment.** This Agreement may not be modified, altered or changed except in a writing executed by both Parties wherein specific reference is made to this Agreement and to which a copy of this Agreement is attached.

**13. Entire Agreement.** This Agreement represents and contain the entire understanding between the Parties in connection with the subject matter therein. The Parties expressly acknowledge and recognize that there are no oral agreements, understandings or representations between them other than those contained in this Agreement, and any such prior agreements or understandings are hereby specifically terminated. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, personal representatives, heirs, and/or successors and assigns of the Parties.

**14. Severability.** If any term, condition, clause, or provision of this Agreement is determined by a court of competent jurisdiction prove to be invalid or unenforceable under ineffective for any reason.

(f) **Conflict with Letter of Credit Application.** Notwithstanding anything else to the law, then only contrary in any Letter of Credit Document (including any Letter of Credit Application), in the event of any conflict between the terms hereof and the terms of any such Letter of Credit Document, the terms hereof shall control, provided that term, condition, clause, or provision shall be stricken from this Agreement, and this Agreement all non-conflicting terms of any such Letter of Credit Document shall remain in full force and effect effect.

(g) **Applicability of ISP; Limitation of Liability.** Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Loan Party for, and the L/C Issuer's rights and remedies against any such Loan Party shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Credit Agreement, including the law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in all other respects, the or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

#### Section 1.5 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Term Loan Commitments (other than any Incremental Term Loan Commitments) shall automatically terminate upon the making of the Term Loans on the Closing Date, and (ii) the Revolving Commitments shall terminate on the last day of the Availability Period. Any Incremental Term Loan Commitment shall terminate as provided in the applicable Incremental Assumption Agreement.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments, provided, however, that (i) the Borrower shall not terminate or reduce the Revolving Commitments if, the general release of all claims in Section 4 is deemed to be invalid or unenforceable, Employee agrees to enter into a valid general release of all claims against the Released Parties that is drafted by and satisfactory to Company. Further, if a court should determine that any portion of this Agreement is overbroad or unreasonable, such provision shall be given after giving effect to the maximum extent possible by narrowing any concurrent prepayment or enforcing in part that aspect repayment of the provision found to be overbroad or unreasonable.

**15. Construction.** This Agreement was negotiated between Revolving Loans and the Parties and shall not be construed against any Party.

**16. Governing Law.** This Agreement shall be governed and construed Swingline Loans in accordance with Section 2.7, the laws of Georgia, without reference to principles of conflicts of laws.

**17. Consultation with Attorney; Voluntary Release.** Employee acknowledges that he has been advised to consult with an attorney and provided a fair and reasonable opportunity to do so before executing this Agreement. Employee further acknowledges that he has carefully read and fully understands all sum of the provisions Revolving Exposures of this Agreement, and that he has executed it of his own free will, act and deed, without coercion, and with full knowledge of the nature and consequences thereof.



**18. Consideration Period.** Employee acknowledges that he has been given the opportunity to consider this Agreement for a period of sixty (60) days (the "Consideration Period") from the Separation Date, which is a reasonable period of time. If Employee executes this Agreement prior to the expiration of the Consideration Period, Employee will thereby waive the remainder of the Consideration Period.

**19. Revocation Period.** Employee has a period of seven (7) calendar days following Employee's execution of this Agreement in which to revoke this Agreement (the "Revocation Period"). For a revocation to be valid, Employee must deliver written notice that he has revoked this Agreement to MIMEDX Group, Inc., 1775 West Oak Commons Court, Marietta, GA 30062, Attention: Chief Human Resources Officer, by the expiration of the Revocation Period. If Employee revokes this Agreement as provided under this Section, Company shall have no obligations under this Agreement, including making any payments described under Section 2. If Employee does not revoke this Agreement as provided under this Section, then this Agreement shall take effect on the eighth (8th) day following Employee's execution of this Agreement (the "Effective Date").

**20. Knowing and Voluntary Waiver of Age Discrimination Claims.** Employee acknowledges that he enters this Agreement and waives any and all age discrimination claims under the Age Discrimination in Employment Act on a "knowing and voluntary" basis, as set forth in 29 U.S.C. § 626(f).

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**21.** Revolving Lenders would exceed the aggregate Revolving Commitments, (ii) each such reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000, and (iii) any reduction of the Revolving Commitments to an amount below the L/C Sublimit or the Swingline Sublimit shall automatically reduce the L/C Sublimit or the Swingline Sublimit, as applicable, on a Dollar for Dollar basis. If at any time, as a result of such a partial reduction or termination as provided in **Execution Section 2.5(a)**, the Revolving Exposure of all Lenders would exceed the aggregate Revolving Commitments, then the Borrower shall on the date of such reduction or termination of Revolving Commitments, repay or prepay Revolving Borrowings or Swingline Loans (or a combination thereof) and/or Cash Collateralize Letters of Credit in **Counterparts** an aggregate amount equal to such excess.

(c) [Reserved].

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Revolving Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable, provided that a notice of termination of the Revolving Commitments may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied subject to the Borrower's obligation to indemnify the Lenders pursuant to **Section 3.5**. **This Agreement may** Each reduction, and any termination, of the Revolving Commitments shall be **executed** permanent and each reduction of the Revolving Commitments shall be made ratably among the Revolving Lenders in **two or more counterparts**, which together shall constitute one and the same instrument, accordance with their respective Revolving Commitments.

**22. Section 1.6 Electronic Copies Repayment of Loans; Evidence of Debt.**

(a) **Payment at Maturity.** The **Parties acknowledge** Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of (A) each Revolving Lender the then unpaid principal amount of each Revolving Loan together with all accrued interest thereon on the earlier of the Revolving Maturity Date and, **agree that an electronic copy** if different, the date of the termination of the Revolving Commitments in accordance with the provisions of this Credit Agreement, **executed** (B) each Term Lender, the then unpaid principal amount of each Term Loan together with all accrued interest thereon on the earlier of the Maturity Date applicable to the Term Facility and, if different, the date of the acceleration of the Loans in accordance with **Section 8.2**, and (C) each Incremental Term Lender, the then unpaid principal amount of each Incremental Term Loan together with all accrued interest thereon on the earlier of the applicable Incremental Term Loan Maturity Date and, if different, the date of the acceleration of the Loans in accordance with **Section 8.2**, and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan together with all accrued interest thereon on the earliest of (A) the maturity date selected by **both Parties**, shall constitute an original the Borrower for such Swingline Loan, (B) the Revolving Maturity Date and (C) the date of **same**, the termination of the Revolving Commitments in accordance with the provisions of this Credit Agreement.

**SIGNATURES ON NEXT PAGE(b)**

**Amortization Payments for Term Loans (other than Other Term Loans).** On each date set forth below, the Borrower shall pay to the Administrative Agent, for the account of the Term Lenders (other than Incremental Term Lenders with respect to Other Term Loans), the aggregate unpaid principal balance of the Term Loans (other than Other Term Loans) in an amount equal to (i) the aggregate outstanding principal amount of the Term Loans on the Closing Date (as adjusted from time to time pursuant to Section 2.7(a), Section 2.7(b)(iii) and Section 2.11(f) multiplied by (ii) the percentage set forth below adjacent to such date under the heading "Percentage":

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**EMPLOYEE SWEARS THAT HE HAS CAREFULLY READ THE FOREGOING AGREEMENT, THAT EMPLOYEE UNDERSTANDS COMPLETELY ITS CONTENTS, THAT EMPLOYEE UNDERSTANDS THE SIGNIFICANCE AND CONSEQUENCES OF SIGNING IT, AND THAT EMPLOYEE HAS HAD A FULL AND FAIR OPPORTUNITY TO HAVE AN ATTORNEY EXPLAIN ALL OF ITS CONTENTS AND RAMIFICATIONS.**

**HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE PAYMENTS AND OTHER BENEFITS SET FORTH IN THIS AGREEMENT, EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS THAT EMPLOYEE HAS OR MIGHT HAVE AGAINST COMPANY.**

IN WITNESS WHEREOF, Employee and Company knowingly and voluntarily executed this Agreement as of the date(s) set forth below:

For Employee: Date	Percentage
March 31, 2024	1.25%
June 30, 2024	1.25%
September 30, 2024	1.25%
December 31, 2024	1.25%
March 31, 2025	1.25%
June 30, 2025	1.25%
September 30, 2025	1.25%
December 31, 2025	1.25%
March 31, 2026	1.875%
June 30, 2026	1.875%
September 30, 2026	1.875%
December 31, 2026	1.875%
March 31, 2027	1.875%
June 30, 2027	1.875%
September 30, 2027	1.875%
December 31, 2027	1.875%
March 31, 2028	2.5%
June 30, 2028	2.5%
September 30, 2028	2.5%
December 31, 2028	2.5%

(c) **Amortization Payments for Other Term Loans.** The Borrower shall pay to the Administrative Agent, for the account of the applicable Incremental Term Lenders with respect to Other Term Loans, on each Incremental Term Loan Repayment Date, a principal amount of the Other Term Loans (as adjusted from time to time pursuant to Section 2.7(a), Section 2.7(b)(iii) and Sections 2.11(d)) equal to the amount set forth in the applicable

Incremental Assumption Agreement, together in each case with accrued and unpaid interest on the principal amount to be paid to, but excluding, the date of such payment.

(d) Notes. Any Lender may request through the Administrative Agent that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to (i) in the case of a Revolving Lender, a Revolving Loan Note, (ii) in the case of a Term Lender, a Term Loan Note and (iii) in the case of the Swingline Lender, a Swingline Loan Note. In addition, if requested by a Lender, its Note may be made payable to such Lender and its registered assigns in which case all Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to [Section 10.4](#)) be represented by one or more Notes in like form payable to the order of the payee named therein and its registered assigns.

(e) Lender Records. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(f) Register. Entries made in good faith by the Administrative Agent in the Register pursuant to [Section 10.4\(c\)](#), and by each Lender in its account or accounts pursuant to [Section 2.6\(e\)](#), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such

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account or accounts, such Lender, under this Credit Agreement, absent manifest error; provided, however, that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Credit Agreement.

#### Section 1.7 Prepayments

(a) Optional Prepayments. (i) The Borrower may, upon written notice to the Administrative Agent, at any time and from time to time, voluntarily prepay any Borrowing of any Class (other than Swingline Loans) in whole or in part without premium or penalty (except as set forth in [Section 3.5](#)), provided that (A) such notice must be received by the Administrative Agent not later than 1:00 p.m. (1) three (3) Government Securities Business Days prior to any date of prepayment of a SOFR Borrowing and (2) on the date of prepayment of an ABR Borrowing and (B) each prepayment shall be in a principal amount of the Borrowing Minimum or a whole multiple of the Borrowing Multiple in excess thereof or, in each case, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, provided that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied subject to the Borrower's obligation to indemnify the Lenders pursuant to [Section 3.5](#). Each prepayment of Term Loans pursuant to this [Section 2.7\(a\)](#) shall be applied to the installments thereof as directed by the Borrower (it being understood and agreed that if the Borrower does not so direct at the time of such prepayment, such prepayment shall be applied against the scheduled repayments of the Term Loans under [Section 2.6](#) on a ratable basis and pro rata to the remaining installments and shall be paid to the Administrative Agent for the account of the Appropriate Lenders in accordance with their respective Applicable Percentages.

(i) The Borrower may, upon written notice to the Swingline Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment and (B) any such prepayment shall be in a principal amount of the Borrowing Minimum or a whole multiple of the Borrowing Multiple in excess thereof or the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

#### (b) Mandatory Prepayments

##### (i) Net Cash Proceeds

(A) Dispositions. In the event that any Loan Party or any of its Subsidiaries receives Net Cash Proceeds in respect of any Disposition, then, substantially simultaneously with (and in any event not later than the third Business Day next following) the receipt of such Net Cash Proceeds, the Borrower shall prepay the Term Loans in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

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(B) Reserved.

(C) Casualty Events. In the event that any Loan Party or any of its Subsidiaries receives Net Cash Proceeds in respect of any Casualty Event, then, substantially simultaneously with (and in any event not later than the third Business Day next following) the receipt of such Net Cash Proceeds, the Borrower shall prepay the Term Loans in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(ii) [Reserved].

(iii) Application of Mandatory Prepayments. Each prepayment of outstanding Term Loans required to be made pursuant to Section 2.7(b) shall be allocated pro rata among the Term Loans and applied against the remaining scheduled installments of principal due in respect of Term Loans under Section 2.6(b) and Section 2.6(c), respectively, pro rata against such remaining scheduled installments of principal; provided that if, after applying all or a portion of such prepayment to the Term Loans, the Term Loans have been paid in full, any unapplied portion thereof shall be applied to the prepayment of the Revolving Loans (without a corresponding reduction in Commitments).

(iv) Notice of Mandatory Prepayment. The Borrower shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.7(b), (i) a certificate signed by a Responsible Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) to the extent practicable, at least three (3) Business Days' prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid.

(c) Prepayments of Revolving Loans. If for any reason the Total Revolving Outstandings at any time exceed the aggregate Revolving Commitments then in effect, the Borrower shall immediately prepay, without premium or penalty, Revolving Loans and Swingline Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess.

(d) General Rules. All prepayments shall be subject to Section 3.5, but shall otherwise be without premium or penalty. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. All prepayments shall be accompanied by accrued interest thereon and any additional amounts required pursuant to Section 3.5.

#### Section 1.8 Payments Generally; Administrative Agent's Clawback.

(a) General. Each Loan Party shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal of Loans, L/C Borrowings, interest or fees, or of amounts payable under Sections 3.4, 3.5, 3.6 or 10.3, or otherwise) prior to 12:00 noon on the date when due, in immediately available funds. In furtherance of the foregoing, the Borrower hereby irrevocably authorizes the Administrative Agent, in the Administrative Agent's sole discretion, to request on behalf of the Borrower, Revolving Loans (which shall be ABR Loans) or Swingline Loans, in an amount sufficient to pay all principal, L/C Borrowings, interest, fees, or other amounts from time to time due and payable by any Loan Party to any Credit Party hereunder or under any other Loan Document. All payments to be made by a Loan Party hereunder shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest

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thereon. All such payments shall be made to the Administrative Agent's Payment Office, except payments to be made to the L/C Issuer or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 3.4, 3.5, 3.6 or 10.3, shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) Pro Rata Treatment. Except as otherwise provided in this Section 2.8 and as otherwise required under Section 3.4(e), each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of fees, each reduction of the Revolving Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Appropriate Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans of the applicable Class). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount.

(c) Administrative Agent's Clawback. (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.2 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the Appropriate Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, with

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interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(ii) Notice by Administrative Agent. A notice from the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this paragraph (c) shall be conclusive, absent manifest error.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and purchase participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 10.3(c) are several and not joint. The failure of any Lender to make any Loan or purchase participations in Letters of Credit and Swingline Loans or make any payment under Section 10.3(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, purchase its participation in Letters of Credit and Swingline Loans or to make its payment under Section 10.3(c).

(e) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the borrowing of Loans set forth in Article 5 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.

(f) 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.

(g) Insufficient Payment. Subject to the provisions of Article 8, whenever any payment received by the Administrative Agent under this Credit Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Credit Parties under or in respect of this Credit Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent (i) first, towards payment of all fees and expenses due to the Administrative Agent under the Loan Documents, (ii) second, towards payment of all expenses then due hereunder, ratably among the parties entitled thereto in accordance herewith, (iii) third, towards payment of interest, fees and commissions then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and commissions then due to such parties, and (iv) fourth, towards payment of principal of Loans and unreimbursed L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal of Loans and unreimbursed L/C Borrowings then due to such parties.

(h) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then such Lender shall (x) notify the Administrative Agent of such fact, and (y) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such

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payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Credit Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

#### Section 1.9 Defaulting Lenders

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Credit 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 Credit Agreement shall be restricted as set forth in the definition of Required Lenders.

(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 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.8 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swingline Lender hereunder; third, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.10; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Credit Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Credit Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Credit Agreement, in accordance with Section 2.10; sixth, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a

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result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings 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 Borrowings 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 Facility without giving effect to Section 2.9(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 2.9(a)(ii), shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive L/C Participation Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.10.

(C) With respect to any L/C Participation Fees not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower 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 or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's or Swingline 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. If any L/C Obligations or Swingline Loans are outstanding at the time such Lender becomes a Defaulting Lender, then all or any part of the Swingline Exposure and L/C Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.17, 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.

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(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and each Swingline Lender and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Facility (without giving effect to Section 2.9(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the L/C Issuer shall not be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

#### Section 1.10 Cash Collateral.

(a) Certain Credit Support Events. The Borrower shall provide Cash Collateral to the L/C Issuer:

(i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in a L/C Borrowing, within two (2) Business Days following any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Amount of such L/C Borrowing,

(ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, immediately (without the necessity of any request), in an amount not less than the Minimum Collateral Amount of such L/C Obligation,

(iii) if the Borrower shall be required to provide Cash Collateral pursuant to Section 8.2, immediately upon any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Amount of all L/C Obligations,

(iv) if there shall exist a Defaulting Lender, within two (2) Business Days following any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Amount of the Fronting Exposure of the L/C Issuer with respect to such Defaulting Lender, and

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(v) on any date, if the L/C Obligations exceed the L/C Sublimit, within two (2) Business Days following any request by the Administrative Agent or the L/C Issuer, in an amount not less than the Minimum Collateral Amount of such excess.

(b) **Grant of Security Interest.** As security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.10(c), (i) the Borrower (and to the extent provided by any Defaulting Lender, such Defaulting Lender) hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and in all proceeds of the foregoing, and (ii) to the extent provided by any Defaulting Lender, such Defaulting Lender hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and in all proceeds of the foregoing. Borrower shall enter into documentation reasonably satisfactory to the Administrative Agent as may be requested in connection with the above-described grant of security. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application.** Notwithstanding anything to the contrary contained in this Credit Agreement, Cash Collateral provided under any of this Section 2.10 or Sections 2.4, 2.7, 2.10 or 8.2 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Termination of Requirement.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.4(b)(vii))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided that, subject to this Section 2.10, the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

#### **Section 1.11 Incremental Commitments.**

(a) The Borrower may, from time to time, by written notice to the Administrative Agent, request Incremental Term Loan Commitments and/or additional Revolving Commitments, as applicable (collectively, "**Incremental Commitments**"), from one or more Lenders (in the sole discretion of such Lenders) or Eligible Assignees who will become Lenders, in an aggregate principal amount of up

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to an amount equal to the greater of \$50,000,000 and 1.00x Consolidated EBITDA; provided that at the time of the incurrence of such Incremental Commitments and immediately after giving effect thereto and to the use of the proceeds thereof (assuming the full utilization thereof), (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (B) the Borrower shall be in compliance, on a Pro Forma Basis, with each of the Financial Covenants set forth in Sections 7.12(a) and (b); provided, further, that each such person, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent and, in connection with any additional Revolving Commitment, the L/C Issuer and the Swingline Lender

(which approvals shall not be unreasonably withheld or delayed). Such notice shall set forth (i) the amount of the Incremental Term Loan Commitments or additional Revolving Commitments being requested (which shall be in minimum increments of \$5,000,000 and a minimum amount of \$20,000,000), (ii) the date on which such Incremental Term Loan Commitments and/or additional Revolving Commitments are requested to become effective (which shall not be less than 10 Business Days nor more than 60 calendar days after the date of such notice, unless otherwise agreed to by the Administrative Agent) and (iii) in the case of Incremental Term Loan Commitments, whether such Incremental Term Loan Commitments are to be Term Loan Commitments or commitments to make term loans with terms different from the Term Loans ("Other Term Loans"). All Incremental Term Loans shall be made in Dollars.

(b) The Borrower and each Incremental Term Lender and/or additional Revolving Lender shall execute and deliver to the Administrative Agent an Incremental Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Commitment of such Lender. Subject to clause (c) below, each Incremental Assumption Agreement in respect of Incremental Term Loan Commitments shall specify the terms of the Incremental Term Loans to be made thereunder. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Assumption Agreement, this Credit Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Commitments evidenced thereby and any increase to the Applicable Margins required by the foregoing provisions of this paragraph. Any such deemed amendment may be memorialized in writing by the Administrative Agent with the Borrower's consent (not to be unreasonably withheld or delayed) and furnished to the other parties hereto.

(c) The terms of each Incremental Term Loan and, as applicable, each additional Revolving Commitment shall be reasonably satisfactory to the Administrative Agent and in any event:

- (i) shall rank *pari passu* in right of payment and of security with the existing Revolving Loans and the existing Term Loans;
- (ii) in the case of Incremental Term Loans, shall not mature earlier than the Latest Maturity Date of the Term Loans outstanding at the time of incurrence of such Incremental Term Loans;
- (iii) in the case of Incremental Term Loans, shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of then existing Term Loans;
- (iv) in the case of Incremental Term Loans, subject to clauses (ii) and (iii) above, shall have amortization determined by the Borrower and the applicable Incremental Term Lenders;

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(v) in the case of Incremental Term Loans, subject to clause (x) below, shall have an Applicable Margin determined by the Borrower and the applicable Incremental Term Lenders;

(vi) in the case of Incremental Term Loans, may participate on a *pro rata* basis or less than *pro rata* basis (but not on a greater than *pro rata* basis) in any voluntary or mandatory prepayments of initial Term Loans hereunder, as specified in the applicable Incremental Assumption Agreement;

(vii) without the prior written consent of any Loan Party or Credit Party, if the Effective Yield on any secured Other Term Loans (as determined by the Administrative Agent) exceeds by more than 50 basis points (the amount of such excess above 50 basis points being referred to herein as the "Yield Differential") the Effective Yield (as determined by the Administrative Agent) on any then outstanding Class of Term Loans, then the Applicable Margin for each such Class of Term Loans shall automatically be increased by the Yield Differential, effective upon the making of such Other Term Loans; and

(viii) all material terms of any additional Revolving Commitments and Revolving Loans under such additional Revolving Commitments shall be identical to the existing Revolving Commitments and Revolving Loans.

(d) No Incremental Term Loan Commitments or additional Revolving Commitments shall become effective under this Section 2.11 unless, on the date of such effectiveness, (i) the conditions set forth in paragraphs (a) and (b) of Section 4.2 shall be satisfied as if it was a borrowing date and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer of the Borrower; and (ii)

the Administrative Agent shall have received (with sufficient copies for each of the Incremental Term Lenders and/or additional Revolving Lenders) closing certificates, opinions of counsel and other customary documentation requested by the Administrative Agent.

(e) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all action as may be reasonably necessary to ensure that all Incremental Term Loans (other than Other Term Loans), when originally made, are included in each Borrowing of outstanding Term Loans on a pro rata basis and that following the establishment of any additional Revolving Commitments, the outstanding Revolving Loans are held by the Revolving Lenders in accordance with their new Applicable Percentages. This may be accomplished at the discretion of the Administrative Agent by requiring each outstanding SOFR Borrowing of the relevant Class to be converted into an ABR Borrowing of such Class on the date of each Incremental Term Loan or additional Revolving Commitment, or by allocating a portion of each Incremental Term Loan to each outstanding SOFR Term Borrowing of the same Class on a pro rata basis, even though as a result thereof such Incremental Term Loan may effectively have a shorter Interest Period than the Term Loans included in the Borrowing of which they are a part (and notwithstanding any other provision of this Credit Agreement that would prohibit such an initial Interest Period), or requiring a prepayment and reborrowing of Revolving Loans. Any conversion or prepayment made pursuant to the preceding sentence shall be subject to Section 3.5 (it being understood that, the Administrative Agent shall consult with the Borrower regarding the foregoing and, to the extent practicable, will attempt to pursue options that minimize breakage costs). In addition, to the extent any Incremental Term Loans are not Other Term Loans, the scheduled amortization payments under Section 2.6(b) required to be made after the making of such Incremental Term Loans shall be ratably increased by the aggregate principal amount of such Incremental Term Loans.

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### Article 3

#### INTEREST, FEES, YIELD PROTECTION, ETC.

##### Section 1.1 Interest.

(a) Interest Rate Generally. All ABR Loans (other than Swingline Loans, which shall bear interest in accordance with the second following sentence) shall bear interest at a rate per annum equal to the Alternate Base Rate as in effect from time to time plus the Applicable Margin. All SOFR Loans shall bear interest at a rate per annum equal to Term SOFR for the Interest Period in effect for such Loans plus the Applicable Margin. Each Swingline Loan shall bear interest at a rate per annum equal to the Daily SOFR Rate as in effect from time to time plus the Applicable Margin.

(b) Default Rate.

(i) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing then, any principal of or interest on any Loan, any reimbursement obligation in respect of any L/C Disbursement or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate to the fullest extent permitted by Applicable Law.

(ii) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing then, so long as such Event of Default is continuing, all outstanding principal of each Loan and all Unreimbursed Amounts in respect of L/C Disbursements (including L/C Borrowings) shall, without duplication of amounts payable under the preceding sentence, bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate to the fullest extent permitted by Applicable Law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and at such other times as may be specified herein, provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(d) Computation of Interest. All interest hereunder shall be computed on the basis of a year of 360 days (or in the case of interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Alternate Base Rate, Daily SOFR Rate or Term SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent clearly manifest error.

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(e) Term SOFR Conforming Changes. In connection with the use or administration of Term 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 Credit Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

#### Section 1.2 Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender, a commitment fee (the "Commitment Fee"), which shall accrue at a rate per annum equal to the Applicable Margin on the average daily unused amount of the Revolving Commitment of such Revolving Lender during the period from and including the date on which this Credit Agreement becomes effective pursuant to Section 10.6(a) to but excluding the date on which such Revolving Commitment terminates. For purposes of computing Commitment Fees, the Revolving Commitment of any Revolving Lender shall be deemed to be used to the extent of the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's L/C Exposure. Accrued Commitment Fees shall be payable in arrears on the last day of March, June, September and December of each year, each date on which the Revolving Commitments are permanently reduced and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Closing Date. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) L/C Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of the Revolving Lenders a fee (the "L/C Participation Fee") in Dollars for each Letter of Credit, at a rate per annum equal to the Applicable Margin multiplied by the average daily amount available to be drawn under such Letter of Credit, and (ii) to the L/C Issuer for its own account a fee (the "L/C Fronting Fee"), which shall accrue at the rate or rates per annum separately agreed upon between the Borrower and the L/C Issuer on the average daily amount of the L/C Obligations (excluding any portion thereof attributable to unreimbursed L/C Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any L/C Obligations, as well as the L/C Issuer's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued L/C Participation Fees and L/C Fronting Fees shall be payable in arrears on the last day of March, June, September and December of each year, commencing on the first such date to occur after the Closing Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the L/C Issuer pursuant to this paragraph shall be payable within 10 days after demand. All L/C Participation Fees and L/C Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Notwithstanding the foregoing, if an Event of Default has occurred and is continuing then, so long as such Event of Default is continuing, L/C Participation Fees and L/C Fronting Fees, as applicable, shall be calculated at a rate per annum equal to the Default Rate.

(c) Other Fees. The Borrower agrees to pay to each Credit Party, for its own account, fees and other amounts payable in the amounts and at the times separately agreed upon between the Borrower and such Credit Party.

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(d) **Payment of Fees Generally.** All fees and other amounts payable hereunder shall be paid on the dates due, in immediately available funds. Fees and other amounts paid shall not be refundable under any circumstances.

**Section 1.3 Inability to Determine Rates.** Subject to **Section 3.8**, if, on or prior to the first day of any Interest Period for any SOFR Loan or prior to setting the daily interest rate for a Daily SOFR Loan:

(a) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof, or

(b) (i) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, or (ii) the Swingline Lender determines that the Daily SOFR Rate does not adequately and fairly reflect the cost of making or maintaining Swingline Loans, in each case,

the Administrative Agent will promptly so notify the Borrower and each Lender.

Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or maintain SOFR Loans or Daily SOFR Loans, and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans or Daily SOFR Loans shall be suspended (to the extent of the affected Interest Periods) until the Administrative Agent (with respect to clause (b) above, at the instruction of the Required Lenders) revokes such notice. Upon the Borrower's receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected Interest Periods) or Daily SOFR Loans or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans in the amount specified therein, (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period and (iii) in the case of clause (b)(ii) above, notwithstanding anything to the contrary in **Section 3.1(a)**, each Swingline Loan shall bear interest at the Alternate Base Rate plus the Applicable Margin. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to **Section 3.5**. Subject to **Section 3.8**, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of "Alternate Base Rate" until the Administrative Agent revokes such determination.

**Section 1.4 Increased Costs; Illegality.**

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining any maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement)), special deposit, liquidity, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or any L/C Issuer;

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(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer any other condition, cost or expense (other than Taxes) affecting this Credit Agreement or Loans made by such Lender or any Letter of Credit or participation in any such Loan or Letter of Credit;



and the result of any of the foregoing shall be to increase the cost to such Lender, such L/C Issuer 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, any L/C Issuer 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, L/C Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, L/C Issuer or other Recipient, the Borrower will pay to such Lender, L/C Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, L/C Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Applicable Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Credit Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

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(e) **Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of the Lenders to make or maintain SOFR Loans or Daily SOFR Loans, and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Alternate Base Rate", in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans and Daily SOFR Loans to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Alternate Base Rate"), on the last day of the Interest Period therefor, in the case of SOFR Loans, and immediately, in the case of Daily SOFR Loans, if all affected Lenders may lawfully continue to maintain such Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such Loans to such day, and (ii) if necessary to avoid such illegality, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate without reference to clause (c) of the definition of "Alternate Base Rate" in each case until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR or Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.5.



**Section 1.5 Compensation for Losses.** In the event of (a) the payment or prepayment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto whether voluntary, mandatory, automatic, by reason of acceleration (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under [Section 2.7\(a\)](#) and is revoked in accordance therewith), or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto or maturity date applicable thereto as a result of a request by the Borrower pursuant to [Section 3.7\(b\)](#), then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

**Section 1.6 Taxes.**

(a) **Defined Terms.** For purposes of this [Section 3.6](#), the term “**Lender**” includes the L/C Issuer and the term “**Applicable Law**” includes FATCA.

(b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax

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from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by the Loan Parties.** Each of the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) **Indemnification by the Loan Parties.** Each of the Loan Parties shall jointly and severally indemnify each Recipient, within 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) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of [Section 10.4\(d\)](#) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this [Section 3.6](#), such Loan Party 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 the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) **Status of Lenders.** (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or

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reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in [Section 3.6\(g\)\(ii\)\(A\)](#), [\(ii\)\(B\)](#) 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.

(i) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or about the date on which such Lender becomes a Lender under this Credit Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Credit Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (A) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (B) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of [Exhibit F-1](#) to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" related to any Loan Party described in Section 881(c)(3)(C) of the Code (a "[U.S. Tax Compliance Certificate](#)") and (B) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, 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 or IRS Form W-8BEN-E, as applicable, a U.S. Tax

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Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the 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 F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Credit Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, 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 Credit Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party 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 pursuant to this Section 3.6 (including by the payment of additional amounts pursuant to this Section 3.6), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph

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(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(i) Survival. Each party's obligations under this Section 3.6 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the expiration or cancellation of all Letters of Credit and the Termination Date.

(j) Confidentiality. Nothing contained in Section 3.6(h) shall require any Credit Party or any other indemnified party to make available any of its Tax returns (or any other information that it deems to be confidential or proprietary) to the indemnifying party or any other Person.

#### Section 1.7 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.4, or requires the 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 3.6, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different Applicable Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.4 or Section 3.6, 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 Borrower hereby agrees 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 3.4 or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.6 and, in each case, such Lender has declined or is unable to designate a different Applicable Lending Office in accordance with Section 3.7(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.4), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.4 or Section 3.6) and obligations under this Credit 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) unless waived by the Administrative Agent in its sole discretion, the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.4;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in L/C Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.5) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

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(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.4 or payments required to be made pursuant to Section 3.6, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented (or is willing to consent upon becoming a Lender) to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### Section 1.8 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and each Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 3.8), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent (subject to clause (y) below) of any other party to, this Credit Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is

provided to the Lenders without any amendment to, or further action or consent of any other party to, this Credit Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, 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 Credit Agreement or any other Loan Document.

(c) **Notices; Standards for Decisions and Determinations.** The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.8(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.8, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to

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take or refrain from taking any action or selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Credit Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.8.

(d) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) **Benchmark Unavailability Period.** Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, (i) the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

#### Article 4

#### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**Section 1.1 Conditions to Initial Credit Extensions.** The effectiveness of this Credit Agreement and the obligation of each Lender and the L/C Issuer to make its initial Credit Extension hereunder on the Closing Date is subject to satisfaction or waiver of the following conditions precedent:

(a) **Credit Agreement.** The Administrative Agent (or its counsel) shall have received a counterpart of this Credit Agreement (which may include facsimile transmission or electronic mail transmission of a signed signature page of this Credit Agreement) that, when taken together, bear the

signatures of the Borrower and each Lender.

(b) Notes. The Administrative Agent shall have received a Note for each Lender that shall have requested one, signed on behalf of the Borrower.

(c) Legal Opinion. The Administrative Agent shall have received a favorable written opinion (addressed to the Credit Parties and dated the Closing Date) from Greenberg Traurig,

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P.A., special counsel to the Loan Parties, in form, scope and substance reasonably satisfactory to the Administrative Agent. The Borrower hereby requests such counsel to deliver such opinions.

(d) Officers' Closing Certificate. The Administrative Agent shall have received a certificate of the President or a Vice President and the Secretary or Assistant Secretary of each Loan Party, executed by a Responsible Officer of such Loan Party and dated as of the Closing Date, which certificate shall (A) certify that attached thereto is a true and complete copy of the resolutions of written consents of its board of directors, members or other governing body, authorizing the execution, delivery and performance of the Loan Documents to which it is a party, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect, (B) identify by name and title and bear the signatures of the Responsible Officer or authorized signatory of such Loan Party authorized to sign the Loan Documents to which it is a party, (C) certify that attached thereto is a true and complete copy of the Organizational Documents of each Loan Party (which, with respect to such Loan Party's certificate or articles of incorporation or certificate or articles of formation, are certified by the relevant authority of the jurisdiction of organization of such Loan Party), including, without limitation, all amendments thereto through the date hereof and (D) certify that attached hereto is a true and complete copy of a certificate of good standing, existence or its equivalent with respect to each Loan Party (which are certified by the relevant authority of the jurisdiction of organization of such Loan Party).

(e) Fees and Expenses. Substantially contemporaneously with the making of the Loans to be made on the Closing Date, the Borrower shall have paid all fees and expenses that under the terms hereof or of the Engagement Letter are due and payable on or prior to the Closing Date, as well as the reasonable fees, disbursements and other charges of counsel to the Administrative Agent and the Lead Arranger in connection with the Transactions to the extent invoiced on or prior to the Closing Date.

(f) Collateral and Guarantee Requirement.

(i) The Collateral Documents set forth in Schedule 4.1(f) shall have been duly executed and/or delivered by each Loan Party that is to be a party thereto and shall be in full force and effect. The Administrative Agent on behalf of the Secured Parties shall have a security interest in the Collateral of the type and the priority described in each such Collateral Document; and

(ii) The Administrative Agent shall have received a Perfection Certificate with respect to each Loan Party dated the Closing Date and duly executed by a Responsible Officer of the Borrower and shall have received the results of a search of the Uniform Commercial Code filings (or equivalent filings) made with respect to the Loan Parties in the states (or other jurisdictions) of formation of such persons, in each case as indicated on such Perfection Certificate, together with copies of the financing statements (or similar documents) disclosed by such search, and accompanied by evidence reasonably satisfactory to the Administrative Agent that the Liens indicated in any such financing statement (or similar document) would be permitted under Section 7.2 or have been or will be contemporaneously released or terminated.

(g) Guarantee Agreement. The Guarantee Agreement shall have been duly executed and delivered by each Loan Party that is to be a party thereto and shall be in full force and effect.

(h) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate attesting to the Solvency of each Loan Party and its Subsidiaries (taken as a whole) on the Closing Date immediately before and after giving effect to the Transactions, from the Financial Officer of the Borrower.

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(i) Committed Loan Notice; Letter of Credit Application. The Administrative Agent shall have received a completed Committed Loan Notice and/or Letter of Credit Application, duly executed by a Responsible Officer of the Borrower with respect to any Credit Extensions to be made on the Closing Date.

(j) Insurance. The Administrative Agent shall have received evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect and that the Administrative Agent has been named as lender's loss payee and/or additional insured, as applicable, under each insurance policy with respect thereto and all endorsements thereto have been delivered, in each case, in accordance with the terms of the Loan Documents, and the Administrative Agent is otherwise satisfied with all of the insurance arrangements of the Loan Parties and their Subsidiaries.

(k) Pro-Forma Compliance Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of the Borrower, setting forth reasonably detailed calculations demonstrating compliance with each of the Financial Covenants set forth in Sections 7.12(a) and (b) on a Pro Forma Basis immediately after giving effect to the Transactions occurring on the Closing Date.

(l) USA PATRIOT Act; KYC. To the extent requested, at least five (5) days prior to the Closing Date, each Lender shall have received:

(i) any and all documentation and other information requested by such Lender in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the USA PATRIOT Act; and

(ii) to the extent the Borrower constitutes a "legal entity customer" under the Beneficial Ownership Regulation, a completed Beneficial Ownership Certification in relation to the Borrower.

(m) Financial Statements and Projections. The Administrative Agent shall have received (i) the Audited Financial Statements, (ii) the Unaudited Financial Statements and (iii) the financial projections for the Borrower and its Subsidiaries through the Fiscal Year ending December 31, 2028.

(n) Legal Impediments. No law or regulation shall be applicable that restrains, prevents or imposes materially adverse conditions upon the Credit Facilities.

(o) No Material Adverse Effect. There shall not have occurred a Material Adverse Effect or any event or circumstance that could reasonably be expected to result in a Material Adverse Effect and the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower to the foregoing effect.

(p) Responsible Officer Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower confirming that the conditions set forth in paragraph (o) of this Section 4.1 and clauses (a) and (b) of Section 4.2 shall be satisfied.

(q) Approvals. All Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Equity Interests issued by any Loan Party) required in connection with the execution, delivery and performance of the Loan Documents and the

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consummation of the transactions contemplated hereby shall have been obtained and be in full force and effect.

(r) Existing Credit Agreement Refinancing. The Existing Credit Agreement Refinancing shall have been consummated substantially contemporaneously with the funding of the Loans to be made on the Closing Date. The Existing Credit Agreement (and each related loan document) and



all commitments thereunder shall have been terminated, all obligations thereunder shall have been paid in full (other than obligations that are contingent in nature or unliquidated at such time, which under the terms of the Existing Credit Agreement or related loan documents expressly survive such payment and termination) and all documentation necessary to release or terminate, as applicable, security interests and guarantees in respect thereof shall have been delivered to the Administrative Agent or its counsel.

For purposes of determining whether the Closing Date has occurred, each Lender that has executed this Credit Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Lead Arranger, Administrative Agent or such Lender, as the case may be, unless such Lender has notified the Administrative Agent of any disagreement prior to the initial Credit Extensions hereunder.

**Section 1.2 Conditions to All Credit Extensions.** The obligation of each Lender or the L/C Issuer, as the case may be, to honor any Request for Credit Extension (other than (x) as may be limited in respect of certain conditions precedent as set forth in [Section 1.11](#) with respect to any extension of Credit in connection with a Limited Condition Acquisition and (y) a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of SOFR Loans) is subject to the satisfaction of the conditions in [Section 4.1](#) and the following additional conditions precedent:

(a) Each of the representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects, in each case on and as of such date as if made on and as of such date, provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all respects as of such earlier date; provided further that any representation and warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Borrowing under an Incremental Facility, each of the applicable requirements set forth in [Section 2.11](#) shall have been satisfied.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the applicable conditions specified in [Sections 4.2\(a\)](#) and, if applicable, (b) have been satisfied on and as of the date of the applicable Credit Extension.

## Article 5

### REPRESENTATIONS AND WARRANTIES

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The Borrower represent and warrant to the Administrative Agent and the Lenders that:

**Section 1.1 Existence, Qualification and Power; Compliance with Laws.** Each Loan Party and each of its Subsidiaries (a) is duly incorporated, organized or formed, and validly existing and, where applicable, in good standing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business as now conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and, where applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, and (d) has all requisite governmental licenses, authorizations, consents and approvals and is in compliance with all applicable statutes and regulations imposed by any Governmental Authority, to operate its business as currently conducted; except in each case referred to in clause (c) or (d), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Borrower and its Subsidiaries are in compliance with all laws, rules,

regulations and orders of any Governmental Authority applicable to it or its property and maintains all permits and licenses necessary to conduct its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Section 1.2 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party, and the consummation of the Transactions, are within such Loan Party's corporate, limited liability company or other analogous powers, have been duly authorized by all necessary corporate, limited liability company or other analogous action, and do not and will not (a) contravene the terms of any of such Person's Organizational Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than under the Loan Documents), or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any law; except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i), to the extent that such conflict, breach, contravention or payment could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 1.3 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of any Loan Document to which it is a party, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Loan Documents, except for (i) filings and recordings necessary to satisfy the Collateral and Guarantee Requirement, and (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect.

**Section 1.4 Binding Effect.** Each Loan Document has been duly executed and delivered by each Loan Party that is party thereto and constitutes a legal, valid and binding obligation of each such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

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**Section 1.5 Financial Statements; No Material Adverse Effect.**

**(a) The Audited Financial Statements and Unaudited Financial Statements:**

(i) fairly present the financial condition of the Borrower and its Subsidiaries, as applicable, as of the dates thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, subject, in the case of the Unaudited Financial Statements, to normal year-end audit adjustments and the absence of footnotes; and

(ii) show all material Indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries, as applicable, as of the date thereof, including liabilities for Taxes, material commitments and contingent obligations.

**(b)** Since December 31, 2022, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

**Section 1.6 Litigation.** There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against any Loan Party or, to the knowledge of the Borrower, threatened in writing against or affecting the Loan Parties or any of their Subsidiaries (a) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (b) that involve or affect, or that purport to or could reasonably be expected to involve or affect, any Loan Document or the Transactions.

**Section 1.7 Environmental Matters.**

(a) Except for the Disclosed Matters and except for Environmental Claims that have been fully resolved in compliance with Environmental Laws with no remaining obligations or conditions:

(i) except where any of the following would not reasonably be expected to result in a Material Adverse Effect, each Loan Party and its Subsidiaries possess all Environmental Permits required under applicable Environmental Law to conduct their respective businesses and are, and within applicable statutes of limitation, have been, in material compliance with the terms of such Environmental Permits. No Loan Party or any of its Subsidiaries has received written notice that any Environmental Permits possessed by any of them will be revoked, suspended or will not be renewed;

(ii) [reserved];

(iii) to each of the Loan Parties' and their Subsidiaries' knowledge, each of the Loan Parties and their Subsidiaries are currently, and within applicable statutes of limitation, have been, in material compliance with all applicable Environmental Law such that noncompliance would not be reasonably expected to result in a Material Adverse Effect;

(iv) no Loan Party nor any of its Subsidiaries has received (A) notice of any Environmental Claim, or (B) notice of actual or potential liability by a third-party under any Environmental Law including any Environmental Liability that such Loan Party or Subsidiary may have retained or assumed either contractually or by operation of law or of any Environmental Claim, in either case with respect to clauses (A) or (B) that reasonably could be

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expected to result in a Material Adverse Effect. No Loan Party or any of its Subsidiaries has knowledge of any circumstances that reasonably could be expected to result in an Environmental Liability that could be reasonably expected to result in a Material Adverse Effect;

(v) as of the Closing Date: (A) no property or facility currently, or to the knowledge of each Loan Party, formerly owned, operated or leased by any Loan Party or any of its current or former Subsidiaries, and (B) no property at which Hazardous Materials generated, owned or controlled by any Loan Party, any of its present or former Subsidiaries or any predecessor in interest have been stored, treated or disposed of, have been identified by a Governmental Authority as recommended for or requiring or potentially requiring any Loan Party or any of its current or former Subsidiaries to perform environmental assessment and/or response actions under Environmental Law that would reasonably be expected to result in a Material Adverse Effect;

(vi) to each Loan Party's and its Subsidiaries' knowledge, (A) there has been no disposal, spill, discharge or Release of any Hazardous Material generated, used, owned, stored or controlled by any Loan Party, any of its Subsidiaries, on, at or under any property currently or formerly owned, leased or operated by any Loan Party, any of its current or former Subsidiaries, (B) there are no Hazardous Materials located in, at, on or under such facility or property, or at any other location, in either case (A) or (B), that reasonably could be expected to require investigation, removal, remedial or corrective measures by any Loan Party or any of its Subsidiaries or that reasonably could result in a Material Adverse Effect, and (C) neither the Loan Parties nor any of their Subsidiaries has retained or assumed any liability contractually or by operation of law with regard to the generation, treatment, storage or disposal of Hazardous Materials or compliance with Environmental Law that could reasonably be expected to result in a Material Adverse Effect;

(vii) to each Loan Party's and its Subsidiaries' knowledge, (A) there are no underground or aboveground storage tank or other underground storage receptacle or related piping, or any impoundment or other disposal area in each case containing Hazardous Materials located on any facility or property currently, or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries, and (B) no asbestos or polychlorinated biphenyls have been used or disposed of by any Loan Party or their Subsidiaries at any such facility or property, in either case (A) or (B) except in material compliance with applicable Environmental Laws and as would not result in Environmental Liability that could reasonably be expected to result in a Material Adverse Effect.

(viii) no Lien has been recorded against any properties, assets or facilities currently owned, leased or operated by any Loan Party or any of its Subsidiaries under any Environmental Law.

(b) The Loan Parties and their Subsidiaries have provided to the Administrative Agent and its authorized representatives all material records and files, including all material assessments, reports, studies, analyses, audits, tests and data, in their possession or under their control concerning any Environmental Claim, the existence of Hazardous Materials or any other environmental concern at properties, assets or facilities currently or formerly owned, operated or leased by any Loan Party or any of their present or former Subsidiaries or predecessor in interest, or concerning compliance by any Loan Party or any such Subsidiary with, or liability under any Environmental Law.

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Section 1.8 Ownership of Properties; Liens; Intellectual Property. Each Loan Party and its Subsidiaries (a) has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes, (b) owns, or is entitled to use, all trademarks, service marks, trade names, domain names, copyrights, patents, patent rights, technology, software, know-how database rights, design rights and other intellectual property rights necessary to the conduct of its business, and the use thereof by the Loan Parties and their respective Subsidiaries does not infringe upon or otherwise violate the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (c) has complied in all material respects with all obligations under all material leases to which it is a party and all such leases are in full force and effect and (d) enjoys peaceful and undisturbed possession under all such material leases. No claim has been asserted and is pending by any Person challenging or questioning any Loan Party's use of any Intellectual Property or the validity or effectiveness of any Loan Party's Intellectual Property unless such claim would not reasonably be expected to have a Material Adverse Effect. No holding, decision or judgment has been rendered by any Governmental Authority and no action or proceeding is pending or threatened in writing, which would limit, cancel or question the validity of, or the rights of any Loan Party in, any Intellectual Property or Intellectual Property license that would reasonably be expected to have a Material Adverse Effect.

Section 1.9 Casualty, Etc. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 1.10 Investment Company Status, Etc. No Loan Party or any of its Subsidiaries is (a) an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) otherwise subject to any other regulatory scheme limiting its ability to incur debt.

Section 1.11 Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all federal, provincial, state, municipal, foreign and other Tax returns and reports required to be filed, and have timely paid all federal, provincial, state, municipal, foreign and Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which are being Contested in Good Faith and (b) failures to file or pay as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. There are no Tax audits, deficiencies, assessments or other claims with respect to any Loan Party or any of its Subsidiaries that could, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 1.12 ERISA.

(a) Each Benefit Plan sponsored by any Loan Party or any of their respective ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. No event described in Section 4062(e) of ERISA has occurred and is continuing with respect to any Pension Plan. The present value of all accumulated benefit obligations under each Pension Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Pension Plan.

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(b) Each Pension Plan that is intended to qualify under Section 401(a) of the Code is subject to a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of the Loan Parties, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Loan Party and ERISA Affiliate has made all required contributions to each Pension Plan subject to Section 412 of the Code, and no application for a funding waiver pursuant to Section 412 of the Code has been made with respect to any Pension Plan.

(c) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions, or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan that would reasonably be expected to have a Material Adverse Effect. There has been no violation of the fiduciary responsibility rules of ERISA with respect to any Pension Plan that has resulted in or would reasonably be expected to have a Material Adverse Effect.

(d) No Loan Party or ERISA Affiliate (i) has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (ii) has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA with respect to a Multiemployer Plan, and (iii) has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

(e) No such Pension Plan or trust created thereunder, or party in interest (as defined in Section 3(14) of ERISA), or any fiduciary (as defined in Section 3(21) of ERISA), has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) which would subject such Pension Plan or any other plan of any Loan Party or any of its ERISA Affiliates, any trust created thereunder, or any such party in interest or fiduciary, or any party dealing with any such Pension Plan or any such trust, to any material penalty or tax on "prohibited transactions" imposed by Section 502 of ERISA or Section 4975 of the Code.

(f) No Loan Party nor any ERISA Affiliate sponsors, maintains, or contributes to, or has any obligation under, any Foreign Plan.

**Section 1.13 Subsidiaries: Equity Interests.** As of the Closing Date, no Loan Party has any direct or indirect Subsidiaries or investments (other than Cash Equivalents) in, or joint ventures or partnerships with, any Person, except as disclosed in [Schedule 5.13](#). Such Schedule sets forth (a) the name and jurisdiction of organization or incorporation of each Subsidiary and identifies each Subsidiary that is an Excluded Subsidiary, Subsidiary Guarantor and/or a Material Foreign Subsidiary on the Closing Date, (b) the ownership interest of each Loan Party and tier respective Subsidiaries in each of their respective Subsidiaries, including the percentage of such ownership and (c) identifies each Person the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral and Guarantee Requirement. Except as set forth on [Schedule 5.13](#), neither any Loan Party nor any of its Subsidiaries has issued any Disqualified Equity Interests and there are no outstanding options or warrants to purchase Equity Interests of any Loan Party or any of its Subsidiaries of any class or kind, and there are no agreements, voting trusts or understandings with respect thereto or affecting in any manner the sale, pledge, assignment or other disposition thereof, including any right of first refusal, option, redemption, call or other rights with respect thereto, whether similar or dissimilar to any of the foregoing. All of the issued and outstanding Equity Interests owned by any Loan Party in its Subsidiaries have been duly authorized and issued and are fully paid and non-assessable and are free and clear of all Liens other than Liens in favor of the Administrative Agent under the Collateral Documents.

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**Section 1.14 Insurance.** [Schedule 5.14](#) sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries on the Closing Date (including names of carriers, policy number, expiration dates, insurance types and coverage amounts). As of the Closing Date, all premiums in respect of such insurance that are due and payable have been paid.

**Section 1.15 Federal Reserve Regulations, Etc.** Neither any Loan Party nor any of its Subsidiaries is engaged principally, or as one of their important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. Immediately before and after giving effect to the making of each Loan and the issuance of each Letter of Credit, Margin Stock will constitute less than 25% of each Loan Party's assets as determined in

accordance with Regulation U. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase, acquire or carry any Margin Stock or for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Federal Reserve Board, including Regulation T, U or X.

**Section 1.16 Collateral Documents.** The Security Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Security Agreement) and the proceeds thereof and (i) when the Pledged Equity Interests (other than uncertificated Equity Interests) and the Pledged Debt Securities (as each such term is defined in the Security Agreement) are delivered to the Administrative Agent together with the proper endorsements, the Lien created under Security Agreement shall constitute a fully perfected first priority Lien on, and security interest in, all right, title and interest of the Loan Parties in such Pledged Equity Interests and Pledged Debt Securities to the extent that the laws of the United States or any state, commonwealth or other political subdivision thereof govern the creation and perfection of any such security interest, in each case prior and superior in right to any other Lien or right of any other person and (ii) when financing statements in appropriate form are filed in the offices specified on Schedule 5.16(a) and, with respect to Collateral consisting of Intellectual Property registered or owned under the applicable copyright, trademark, and/or patent laws of the United States, when the Security Agreement (or Copyright Security Agreements, Patent Security Agreements and/or Trademark Security Agreements, as applicable) are filed with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and in each case, all applicable filing fees have been paid, the Lien created under the Security Agreement will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Collateral to the extent such security interest may be perfected by the filing of a UCC financing statement and, with respect to Intellectual Property, the filing of such Copyright Security Agreements, Patent Security Agreements and/or Trademark Security Agreements with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Lien or right of any other person, other than Liens expressly permitted by Section 7.2 which by operation of law or contract have priority over the Liens securing the Secured Obligations.

**Section 1.17 Solvency.** Immediately before and after giving effect to the consummation of each Transaction, each of the Loan Parties and its Subsidiaries are Solvent.

**Section 1.18 Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws.**

(a) No Loan Party, its Subsidiaries and, to the knowledge of such Loan Party or Subsidiary, their respective officers and employees and their directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions. Neither any Loan Party, any of its Subsidiaries or, to the knowledge of such Loan Party or Subsidiary, any of their respective directors, officers or employees is a

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Sanctioned Person. Each Loan Party and each of its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and all applicable Sanctions.

(b) No Loan or Letter of Credit, use of the proceeds of any Loan or Letter of Credit or other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions. No part of the proceeds of the Loans or the Letters of Credit will be used, directly or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.

(c) Neither the making of the Loans hereunder nor the use of the proceeds thereof will violate the any regulations passed under the USA PATRIOT Act or will violate the Trading with the Enemy Act, the International Emergency Economic Powers Act, or any regulations passed thereunder, including the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto or successor statute thereto (together with Sanctions, "Anti-Terrorism Laws"). Each Loan Party and each of its Subsidiaries are in compliance with applicable Anti-Terrorism Laws.

**Section 1.19 Regulatory Matters.**

(a) Except as set forth on Schedule 5.19, each Loan Party is, and for the last six (6) years, has been, conducting its business in compliance in all material respects with all Healthcare Laws applicable to the Loan Party, its property, any Product or other asset of such Loan Party.

(b) Each Loan Party and its Subsidiaries is in compliance in all material respects with Applicable Law governing the reporting and recordkeeping of Product modifications, adverse event reporting, recordkeeping for each Product, reporting of corrections and removals, and all other manufacturing and release documents and records are true in all material respects, and no Loan Party or any of its Subsidiaries has received or been subject to any written or oral communications from the FDA or any other Governmental Authority asserting that any Loan Party or any of its Subsidiaries was not in compliance with Applicable Law or any Permit which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) Each Loan Party and its Subsidiaries owns, free and clear of all Liens, except Liens permitted under this Credit Agreement, all Permits that are necessary (i) for the research, development and commercialization of the Products, including without limitation, all Permits necessary in connection with testing, manufacturing, marketing or selling any of the Products, and (ii) to carry on the business of the Loan Parties and their Subsidiaries. Each Permit is valid and in full force and effect and the Loan Parties and their Subsidiaries are in material compliance with all of the terms and conditions of such Permits and has made all declarations and filings with the applicable Governmental Authorities reasonably necessary to the conduct of the business of such Loan Party or Subsidiary. None of the Loan Parties or their Subsidiaries has received any notice from any Governmental Authority that any Permit has been or is being revoked, withdrawn, suspended or challenged or that such Governmental Authority is conducting an investigation or review thereof, has issued an order or recommendation stating that the development, testing and/or manufacturing of such Product should cease or that any Product should be withdrawn from the market which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

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(d) No Loan Party nor any of its Subsidiaries has made any material untrue statement of fact and no Loan Party or any of its Subsidiaries or any of their respective agents or representatives has made any fraudulent statement to the FDA or any other Governmental Authority, and no Loan Party nor any of its Subsidiaries has failed to disclose any material fact otherwise required to be disclosed to the FDA or any other Governmental Authority.

(e) Each Product (whether manufactured by the Borrower or any of its Subsidiaries, any of their respective Affiliates or a third party manufacturer under the direction of the Borrower or any of its Subsidiaries) has been, and currently is, being researched, developed, designed, investigated, manufactured, made, assembled, stored, packaged, labeled, marketed and distributed by the Borrower and its Subsidiaries or third parties on their behalf, in compliance with all Applicable Laws, including, without limitation, all Healthcare Laws and all required Permits.

(f) There have been no adverse clinical test results, clinical holds, serious adverse health events or injuries, or enforcement actions by any Governmental Authority with respect to any of the Products, and there have been no recalls or voluntary market withdrawal from any market, except as set forth on Schedule 5.19. No investigational Product or product candidate that has not yet received the requisite FDA marketing approval or clearance has been, or is being, marketed, sold, commercialized, or promoted in the United States.

(g) To the knowledge of the Loan Parties, none of the clinical investigators who is providing or has provided services in connection with any clinical trial sponsored by any Loan Party or any of their Subsidiaries has been or is disqualified, debarred, or otherwise sanctioned by the FDA, the Department of Health and Human Services, or any Governmental Authority and, to the knowledge of the Loan Parties, no such disqualification, or other sanction of any such clinical investigator is pending or threatened. None of the Loan Parties or any of their Subsidiaries has received from the FDA or other applicable Governmental Authority any notices or correspondence requiring or threatening the termination, suspension, material modification or clinical hold of any studies, tests or clinical trials with respect to or in connection with the Products.

(h) Except as set forth on Schedule 5.19 (other than routine surveillance audits and inspections), no investigation by any Governmental Authority with respect to the Borrower or any of its Subsidiaries is pending or, to the knowledge, threatened in writing. None of the Borrower or any of its Subsidiaries has received any written or oral communications from any Governmental Authority of any noncompliance with any Applicable Laws or any written or oral communication from any Governmental Authority of any material issues, problems, or concerns regarding the quality or performance of the Products which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. No Loan Party nor any of their



Subsidiaries has been served with or received any search warrant, subpoena, or civil investigative demand from any Governmental Authority regarding any actual or alleged violation of Healthcare Laws, except as set forth on Schedule 5.19.

(i) Except as set forth on Schedule 5.19, no Loan Party nor any of its Subsidiaries has been the subject of any “for cause” inspection, investigation or audit by any Governmental Authority in connection with any improper activity. No Loan Party, nor any of its Subsidiaries, nor any officer, director, employee, or any other personnel of any Loan Party or Subsidiary is a party to a corporate integrity agreement or has any reporting obligations pursuant to a settlement agreement, plan of correction, deferred prosecution agreement, consent decree or other remedial measure entered into with any Governmental Authority.

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(j) No Loan Party or any of its Subsidiaries, and to the knowledge of such Loan Party or Subsidiary, nor any officer, director, employee, or contractor of any Loan Party or Subsidiary (except with respect to the actions of former employees and officers of any Loan Party or Subsidiary which are public knowledge or have otherwise been disclosed in writing to the Administrative Agent and the Lenders), in such capacity on behalf of any such Person, directly or indirectly, has: (i) offered or paid or solicited or received any remuneration, in cash or in kind, or made any financial arrangements, in material violation of any applicable Healthcare Law; (ii) given any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) in material violation of any applicable Healthcare Law; (iii) established or maintained any unrecorded fund or asset for any purpose or made any misleading, false or artificial entries on any of its books or records in material violation of applicable Healthcare Laws; or (iv) knowingly or willfully offered, paid, solicited or received any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind (A) in return for referring an individual to a person for the furnishing or arranging of any item or service for which payment may be made in whole or in part by any “federal health care program” (as defined in 42 U.S.C. § 1320a-7b(f)), commercial health insurer, or self-pay patient, or (B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by any “federal health care program” (as defined in 42 U.S.C. § 1320a-7b(f)), commercial health insurer, or self-pay patient, or otherwise made any payment to any Person with the intention that any part of such payment would be in material violation of any applicable Healthcare Law. To the knowledge of any Loan Party, no Person has filed, or has threatened in writing to file, against any Loan Party or any Subsidiary, an action under any federal or state whistleblower statute related to alleged noncompliance with applicable Healthcare Laws, including under the False Claims Act of 1863 (31 U.S.C. § 3729 *et seq.*).

(k) Except where any of the following would not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, no Loan Party or any of its Subsidiaries, nor any officer, director, employee, contractor, or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. § 420.201) in any Loan Party or Subsidiary, is: (i) excluded, debarred, disqualified, or suspended from any “federal health care program” (as such term is defined in 42 U.S.C. § 1320a-7b(f)) or any other medical reimbursement program; (ii) “suspended” or “debarred” from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4); (iii) listed on the General Services Administration list of excluded parties; or (iv) made a party to any other action by any Governmental Authority that may prohibit it from selling products or providing services to any governmental or other purchaser pursuant to any Applicable Law. To the knowledge of any Loan Party, no such debarment, disqualification, suspension, exclusion, or prohibition is threatened or pending.

(l) Each of the Loan Parties and their Subsidiaries maintains and adheres to, in all material respects, compliance policies and procedures that are designed to promote compliance with and to detect, prevent, and address material violations of Laws, including all material Healthcare Laws, applicable to it and/or its assets, business or operations (collectively, “Health Care Compliance Program”). No Loan Party or any of its Subsidiaries is aware of any complaints from employees, independent contractors, vendors, physicians, customers, patients or other Persons that could reasonably be considered to indicate a violation of any Applicable Law, including any applicable Healthcare Law, which would be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

(m) The Loan Parties and their Subsidiaries are and have been for the last six (6) years, to the extent directly applicable, conducting their business in material compliance with all

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regulations promulgated under HIPAA. To the extent the Loan Parties or any of their Subsidiaries create any de-identified protected health information, the Loan Parties and their Subsidiaries do so in compliance with the HIPAA regulations. No Loan Party nor any of its Subsidiaries have (i) suffered any breach of unsecured health protected health information (except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect), or (ii) failed to notify any individual or required third party, including any appropriate Governmental Authority, of an event that triggered a notification or reporting requirement under any contract to which any Loan Party or any of its Subsidiaries is a party, or any applicable requirement related to the unauthorized access, use or disclosure of protected health information. The Loan Parties have no knowledge of any complaints to or investigations by any Governmental Authority with respect to HIPAA compliance by the Loan Parties or any of their Subsidiaries, have not received any notice or audit request from the United States Department of Health and Human Services Office for Civil Rights, is currently conducting their businesses in material compliance with all Applicable Laws governing the privacy, security or confidentiality of health information and/or other records generated in the course of providing or paying for health care services, including without limitation, all laws to the extent not preempted by HIPAA, and has conducted its businesses in material compliance with such laws since such laws first became applicable to it.

**Section 1.20** Accuracy of Information, Etc.

(a) Each Loan Party has disclosed to the Credit Parties all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to any Credit Party in connection with the transactions contemplated hereby and the negotiation of this Credit Agreement or delivered hereunder or under any other Loan Document (in each case 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 misleading, provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

**Section 1.21** Labor Matters. There are no strikes, lockouts or slowdowns against any Loan Party or any of its Subsidiaries pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties and their Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters. All material payments due from the Loan Parties or any of their Subsidiaries, or for which any claim may be made against any of the Loan Parties or any of their Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party or such Subsidiary. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any of the Loan Parties or any of their Subsidiaries is bound.

**Section 1.22** Absence of Certain Restrictions. No indenture, certificate of designation for preferred stock, agreement or instrument to which any Loan Party or any of its Subsidiaries is a party (other than this Credit Agreement), prohibits or limits in any way, directly or indirectly the ability of any

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Subsidiary to make Restricted Payments or loans to, to make any advance on behalf of, or to repay any Indebtedness to, any Loan Party or to another Subsidiary.

**Section 1.23** No Default. No Loan Party nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound in any respect that would reasonably be expected to have a Material Adverse Effect.

**Section 1.24 Common Enterprise.** The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Credit Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

**Section 1.25 Brokers' Fees.** None of the Loan Parties or their Subsidiaries has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Loan Documents other than the closing and other fees payable pursuant to this Credit Agreement and as set forth in the Fee Letter.

**Section 1.26 Affected Financial Institutions.** No Loan Party is an Affected Financial Institution.

## Article 6

### AFFIRMATIVE COVENANTS

Until the Termination Date, the Borrower covenants and agrees with the Credit Parties that:

**Section 1.1 Financial Statements and Other Information.** The Borrower will furnish or caused to be furnished to the Administrative Agent and each Lender either in hard copy or by electronic communication (including by email, internet and intranet websites) pursuant to procedures acceptable to the Administrative Agent:

(a) as soon as available, but in any event within ninety (90) days after the end of each Fiscal Year of the Borrower, beginning with the fiscal year ending on December 31, 2023, the Borrower's Form 10-K containing the audited consolidated balance sheet of the Borrower and its Subsidiaries together with the related statements of income, comprehensive income, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by Deloitte&Touche LLP or another registered independent public accounting firm of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

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(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each Fiscal Year, the Borrower's Form 10-Q containing the unaudited consolidated balance sheet of the Borrower and its Subsidiaries and the related unaudited statements of income, comprehensive income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate signed by a Financial Officer of the Borrower (i) stating whether any change in GAAP or in the application thereof has occurred since the Closing Date and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such Compliance Certificate, (ii) containing either a certification that no Default or Event of Default exists or, specifying the nature of each such Default, the nature and status thereof and any action taken or proposed to be taken with respect thereto, (iii) certifying that there have been no changes to the jurisdiction of organization or legal name of any Loan Party since the date of the last Compliance Certificate delivered pursuant to the Credit Agreement, (iv) attaching reasonably detailed calculations demonstrating compliance with Section 7.12, and (v) certifying that the Borrower has no Subsidiaries other than (A) those that existed on the Closing Date and were reflected in the Perfection Certificate on such date, (B) those formed or acquired after the Closing Date with respect to which the Administrative Agent was previously notified either pursuant to Section 6.12 of the Credit Agreement, in an additional Perfection Certificate or in a previous Compliance

Certificate, and (C) those other Subsidiaries set forth on the relevant Schedule to such Compliance Certificate, which Schedule sets forth for each such Subsidiary whether such Subsidiary is (w) a Domestic Subsidiary, (x) a Subsidiary Guarantor (including the basis for it not being a Subsidiary Guarantor, if applicable), (y) a Foreign Subsidiary and in such case, whether such Foreign Subsidiary is a Material Foreign Subsidiary or (z) an Excluded Subsidiary (including the basis for its constituting an Excluded Subsidiary).

(d) [reserved];

(e) (i) within forty-five (45) days after the beginning of each Fiscal Year, an annual consolidated forecast for the Borrower and its Subsidiaries for such Fiscal Year, including projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of each fiscal quarter for such Fiscal Year, the related consolidated statements of projected cash flow and projected income and a description of the underlying assumptions applicable thereto, all in reasonable detail acceptable to the Administrative Agent and (ii) promptly upon preparation thereof, such other forecasts that the Borrower or any Subsidiary may prepare and any revisions that may be made to any forecast previously delivered to the Administrative Agent and the Lenders

(f) concurrently with the delivery of any Compliance Certificate under clause (c) above, to the extent any of the Loan Parties have registered, applied for registration of, acquired, or otherwise obtained ownership of any new Intellectual Property since the Closing Date or since the last update pursuant to this clause (f), a description of such new Intellectual Property; and

(g) promptly following any request therefor, (i) such other information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the USA Patriot Act, the

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Beneficial Ownership Regulation or other applicable Anti-Corruption and Anti-Terrorism Laws (including those passed pursuant to the USA PATRIOT Act), and (ii) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as any Credit Party may reasonably request.

Additionally, documents required to be delivered pursuant to this Section 6.1 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so, shall be deemed to have been delivered on the date on which the Borrower posts such documents, or provides a link thereto, either: (i) on the Borrower's website on the Internet at the website address: <https://www.mimedx.com/>; or (ii) when such documents are posted electronically on the Borrower's behalf on an internet or intranet website to which each Credit Party and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) if any; provided that: (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Credit Party upon written request to the Borrower to deliver such paper copies until written request to cease delivering paper copies is given by the Administrative Agent or such Credit Party and (B) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents.

**Section 1.2 Notices of Material Events.** The Borrower will furnish or caused to be furnished to the Administrative Agent for distribution to each Lender prompt written notice of the following:

(a) the occurrence of any Default or Event of Default, specifying the nature and extent thereof;

(b) the filing or commencement of, or any threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against, or affecting, any Loan Party or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Effect;

(c) if requested by Administrative Agent from time to time, copies of any annual report required to be filed in connection with each Pension Plan or Foreign Plan, and as soon as possible after, and in any event within ten (10) Business Days after any Loan Party or any ERISA Affiliate knows or has reason to know that, any ERISA Event (or any similar event with respect to a Foreign Plan) has occurred that, alone or together with any other ERISA Event (or any similar event with respect to a Foreign Plan) would reasonably be expected to result in liability of any Loan Party or any ERISA Affiliate in an aggregate amount exceeding the Threshold Amount;

(d) as soon as reasonably possible and in no event later than five (5) Business Days after the receipt by any Loan Party or any of its Subsidiaries, of a copy of any notice, summons, citation or other written communication concerning any actual, alleged, suspected or threatened violation of any Environmental Law by, Environmental Claim against or Environmental Liability of, any Loan Party or any of its Subsidiaries, in each case, which would reasonably be expected to have a Material Adverse Effect;

(e) promptly upon receipt by the Borrower or any of its Subsidiaries obtaining knowledge that the Borrower or any of its Subsidiaries has become subject to any federal, state, or local government or civil or criminal investigations or audits involving or related to its compliance with Healthcare Laws (including, without limitation, an inquiry or investigation of any Person having "ownership, financial or control interest" (as that phrase is defined in 42 C.F.R. §420.201 et seq.) in the Borrower or any of its Subsidiaries (other than routine audits in the ordinary course of business that are not the result of any actual or alleged violations of Healthcare Laws) and any fines or penalties imposed

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by any Governmental Authority (including under any Healthcare Laws), that would reasonably be expected to have a Material Adverse Effect, written notice thereof prepared in reasonably detail;

(f) [reserved];

(g) [reserved];

(h) promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower or any of its Subsidiaries, copies of each notice or other correspondence received from the SEC (or comparable agency) concerning any investigation by such agency regarding financial or other operational results of the Borrower or any of its Subsidiaries (other than routine comment letters from the staff of the SEC relating to the Borrower's filings with the SEC);

(i) promptly upon written request by the Administrative Agent, copies of all reports, documents, filings or correspondence with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals, Permits or any Applicable Law;

(j) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to any other clause of this [Section 6.2](#);

(k) [reserved]; and

(l) promptly after any Person becomes, or ceases to be, a Subsidiary or a Guarantor, an updated list of Subsidiaries or Guarantors, as the case may be.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Borrower or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**Section 1.3 Existence; Conduct of Business.** The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect (a) its legal existence, (b) all Permits, and (iii) all Governmental Approvals (including the rights, licenses, permits, privileges and franchises material to the conduct of its business), provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under [Section 7.3](#) or any sale, lease, transfer or other disposition permitted by [Section 7.5](#).

**Section 1.4 Payment and Performance of Obligations.** The Borrower will, and will cause each of its Subsidiaries to, pay or perform its obligations, including Tax liabilities, that, if not paid or performed, could reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being Contested in Good Faith and (b) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect, provided that nothing in this Section shall be deemed to require any Loan Party to pay any Subordinated Debt in violation of the subordination provisions applicable thereto.

Section 1.5 Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

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Section 1.6 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by any Credit Party, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accounting firm, all at the expense of the Borrower and at such reasonable times and as often as reasonably requested; provided, however, during the existence of an Event of Default, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

Section 1.7 Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority (including all Healthcare Laws) applicable to it or its property and maintain all permits and licenses necessary to conduct its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. In addition, and without limiting the foregoing sentence, each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Environmental Laws in all material respects, and with applicable Anti-Corruption Laws, applicable Sanctions and the USA PATRIOT Act and the regulations promulgated thereunder in all respects. The Borrower will maintain a Health Care Compliance Program that includes: (a) regular compliance training for all directors, officers, employees, and contractors; (b) reasonable monitoring on a regular basis to ensure adherence to, and effectiveness of, the Health Care Compliance Program; and (c) modification of the compliance program from time to time as may be necessary to promote continuing material compliance with all Applicable Laws, including all applicable Healthcare Laws.

Section 1.8 Use of Proceeds.

(a) On the Closing Date, the proceeds of the Term Loans and Revolving Loans will be used to consummate the Existing Credit Agreement Refinancing and to pay Transaction Expenses, and thereafter, the proceeds of the Revolving Loans and Letters of Credit will be used only for general corporate and working capital purposes not inconsistent with the terms hereof or in contravention of any Law or any Loan Document, including Permitted Acquisitions.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase, acquire or carry any Margin Stock or (b) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. The Borrower will not request any Credit Extension, and the Borrower shall not use, and shall ensure that each Loan Party, their respective Subsidiaries and to the knowledge of any such Loan Party, respective directors, officers, employees and agents shall not use, the proceeds of any credit extension hereunder, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any anti-corruption laws or (ii) in any matter that would result in the violation of any applicable Sanctions or applicable Anti-Terrorism Laws by any Person, including any Credit Party.

Section 1.9 Information Concerning Collateral. The Borrower will furnish to the Administrative Agent at least 10 days prior written notice of any change in (a) the legal name or jurisdiction of incorporation or formation of any Loan Party, (b) the location of the chief executive office of any Loan Party, (c) the identity or organizational structure of any Loan Party such that a filed financing statement becomes misleading or (d) the Federal Taxpayer Identification Number or company

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organizational number of any Loan Party. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Borrower also agrees promptly to notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

**Section 1.10 Insurance.**

(a) The Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies, adequate insurance for its insurable properties, all to such extent and against such risks, including fire, casualty, business interruption and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations and of same or similar size, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it (including the insurance required pursuant to the Collateral Documents); and maintain such other insurance as may be required by law.

(b) [reserved].

(c) The Borrower will, and will cause each of its Subsidiaries to, (i) cause all such policies of such Loan Party and its Subsidiaries to be endorsed or otherwise amended to include an additional insured endorsement or a lender's loss payable endorsement, as appropriate, each in form and substance reasonably satisfactory to the Administrative Agent, (ii) cause all such policies to provide that neither such Loan Party, any Subsidiary or the Administrative Agent nor any other party shall be a co-insurer thereunder, and such other provisions as the Administrative Agent may reasonably require from time to time to protect its interests, (iii) deliver copies of all such policies to the Administrative Agent (which, except as set forth in clause (v) below or with respect to evidence of annual renewals, shall be not more than once per calendar year), (iv) cause each such policy to provide that it shall not be canceled, modified or not renewed for any other reason upon not less than thirty (30) days' (ten (10) days for non-payment of premium) prior written notice thereof by the insurer to the Administrative Agent, and (v) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent) together with evidence satisfactory to the Administrative Agent of payment of the premium therefor.

(d) [Reserved].

(e) The Borrower will, and will cause each of its Subsidiaries to, notify the Administrative Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 6.10 is taken out by any Loan Party; and promptly deliver to the Administrative Agent a copy of such policy or policies.

(f) In connection with the covenants set forth in this Section 6.10, it is understood and agreed that:

(i) no Credit Party or any of its Related Parties shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.10, it being understood that (A) each Loan Party shall look solely to its insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against any Credit Party or any of their Related Parties, provided, however, that if the insurance policies do not provide waiver of

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subrogation rights against such parties, as required above, then the Borrower (for itself and each of its Subsidiaries) hereby agrees, to the extent permitted by law, to waive its right of recovery, if any, against the Credit Parties and their Related Parties; and

(ii) the designation of any form, type or amount of insurance coverage by the Administrative Agent or the Required Lenders under this Section 6.10 shall in no event be deemed a representation, warranty or advice by any Credit Party that such insurance is adequate for the purposes of the business of any Loan Party or its Subsidiaries or the protection of their properties and the Administrative Agent and the Required Lenders shall have the right from time to time to require the Loan Parties and their respective Subsidiaries to keep other insurance in such form and amount as the Administrative Agent or the Required Lenders may reasonably request; provided that such insurance shall be obtainable on commercially reasonable terms.



#### Section 1.11 Casualty Events.

(a) The Borrower will, and will cause each of its Subsidiaries to, furnish to the Administrative Agent prompt written notice of each Casualty Event or the commencement of any action or proceeding for the condemnation or other taking of any such property or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding.

(a)

(b) If any Casualty Event results in Net Cash Proceeds (whether in the form of insurance proceeds, condemnation award or otherwise), the Administrative Agent is authorized to collect such Net Cash Proceeds and, if received by any Loan Party or any of its Subsidiaries, shall be held in trust for the benefit of the Administrative Agent hereunder and shall be forthwith paid over to the Administrative Agent, provided that (i) to the extent that any Loan Party or any of its Subsidiaries intends to use any such Net Cash Proceeds to repair, restore, reinvest or replace assets of the Borrower or any of its Subsidiaries as provided in the definition of Net Cash Proceeds, the Administrative Agent shall, subject to the terms and conditions of such proviso, deliver such Net Cash Proceeds to the Borrower on behalf of the applicable Loan Party, (ii) otherwise, the Administrative Agent shall, and each Loan Party hereby authorizes the Administrative Agent to, apply such Net Cash Proceeds to prepay the Loans in accordance with Section 2.7 and (iii) all proceeds of business interruption insurance shall be paid over to the Borrower unless a Default or an Event of Default has occurred and is continuing.

(c) All proceeds received by or paid to the Administrative Agent that do not constitute Net Cash Proceeds shall be paid over to the Borrower on behalf of the applicable Loan Party unless a Default or Event of Default has occurred and is continuing.

#### Section 1.12 Covenant to Guarantee and Provide Security.

(a) Subsidiary Guarantors. If any Subsidiary of a Loan Party (other than an Excluded Subsidiary or a Subsidiary that that is a party to this Credit Agreement and the Collateral Documents) is formed or acquired after the Closing Date or if an Excluded Subsidiary ceases to be an Excluded Subsidiary, the Borrower will notify the Credit Parties in writing thereof within thirty (30) days following the date on which such Subsidiary is formed or acquired or such Excluded Subsidiary ceases to be an Excluded Subsidiary (or such later date as may be acceptable to the Administrative Agent in its sole discretion) and, by such date:

(i) the Borrower will cause each such Subsidiary to (A) execute and deliver a Subsidiary Joinder Agreement and a Perfection Certificate and (B) promptly take such actions

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to create and perfect Liens on such Subsidiary's assets to secure the Secured Obligations as the Administrative Agent shall reasonably request, (including the execution and delivery of any collateral document necessary or appropriate to create and perfect Liens with respect to such Subsidiary's owned or leased real property in form and substance reasonably satisfactory to the Administrative Agent,

(ii) if any Equity Interests issued by any such Subsidiary are owned or held by or on behalf of any Loan Party, the Borrower will cause such Equity Interests to be pledged pursuant to the Collateral Documents not later than the 30<sup>th</sup> day after the date on which such Subsidiary is formed or acquired,

(iii) the Borrower will cause each such Subsidiary to become a party to any Master Intercompany Note not later than the 30<sup>th</sup> day after the date on which such Subsidiary is formed or acquired, and

(iv) the Borrower will deliver or cause to be delivered to the Administrative Agent such certificates and legal opinions as would have been required had such Subsidiary been a Subsidiary Guarantor on the Closing Date.

(b) [Reserved].

(c) Further Assurances.

(i) The Borrower will, and will cause each of the Loan Parties to, grant to the Administrative Agent, for the benefit of the Secured Parties, security interests in such of its assets and properties as are not covered by the Collateral Documents in order that the Borrower be in

compliance with the Collateral and Guarantee Requirement. Such security interests shall (i) be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (ii) constitute valid and enforceable perfected security interests superior to and prior to the rights of all third Persons, and subject to no other Liens, except Liens permitted by [Section 7.2](#). Such additional collateral documents and the other instruments related thereto shall have been duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Administrative Agent required to be granted pursuant to such additional collateral documents and all taxes, fees and other charges payable in connection therewith shall have been paid in full.

(ii) The Borrower will, and will cause each of the Loan Parties to, at its own expense, make, execute, endorse, acknowledge, file or deliver to the Administrative Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, surveys, reports and other assurances or instruments, and take such further steps relating to the Collateral covered by any of the Collateral Documents as the Administrative Agent may reasonably require. The Borrower shall cause to be delivered to the Administrative Agent such opinions of counsel and other related documents as may be reasonably requested by the Administrative Agent.

(iii) Each action required by this [Section 6.12\(c\)](#) shall be completed as soon as possible, but in no event later than thirty (30) days (or such longer period in the case of actions involving third parties as determined by the Administrative Agent in its reasonable discretion) after any such assets or properties are acquired or such action is requested to be taken by the Administrative Agent, as the case may be.

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**Section 1.13 Environmental Matters.** The Borrower will, and will cause each of its Subsidiaries to, (a) conduct its operations in material compliance with all applicable Environmental Laws, (b) implement any and all investigation, remediation, removal and response actions that either are necessary to materially comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or Release of any Hazardous Material by any Loan Party or any of its Subsidiaries on, at, under, or from any of their owned or leased property or are requested by Government Authorities pursuant to Environmental Law, (c) notify the Administrative Agent promptly upon becoming aware of any violation of Environmental Laws by any Loan Party or any of its Subsidiaries or any Release of Hazardous Materials on, at, under, or from, any property that is reasonably likely to result in an Environmental Claim against any Loan Party or any of its Subsidiaries or that would reasonably be expected to result in a Material Adverse Effect and promptly forward to the Administrative Agent a copy of any written communication received in connection therewith. If the Administrative Agent at any time has a reasonable basis to believe that there may be a violation of any Environmental Laws by any Loan Party or any of its Subsidiaries or a Release of Hazardous Materials on, at, under, or from any property owned or leased by any Loan Party or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect, then, subject to [Section 9.3\(d\)](#), upon written request by the Administrative Agent the Borrower shall cause such Loan Party to permit the Administrative Agent to appoint a nationally-recognized independent environmental testing firm or such other consultant as the Administrative Agent shall determine, at the Loan Parties' expense, to have access to the property owned or leased by each Loan Party and each of its Subsidiaries that is subject to the suspected violation or Release for the purpose of conducting an environmental investigation, which, at the environmental professionals' judgment, may include testing of environmental media, including soil and groundwater.

**Section 1.14 Post-Closing Obligations.**

(a) **Deposit Account Control Agreements.** The Loan Parties shall deliver, or cause to be delivered, to the Administrative Agent, within thirty (30) days after the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion), duly executed control agreements in favor of the Administrative Agent for the benefit of the Secured Parties for all Deposit Accounts, Securities Accounts and Commodity Accounts owned by the Loan Parties in the United States (other than to the extent constituting Excluded Accounts (as defined in the Security Agreement)).

(b) **Insurance Endorsements.** The Loan Parties shall deliver, or cause to be delivered, to the Administrative Agent, within thirty (30) days after the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion), insurance endorsements (a) naming the Administrative Agent as lender's loss payable on all property insurance policies of the Loan Parties as required under [Section 6.10](#), (b) naming the Administrative Agent as additional insured on all liability policies of the Loan Parties as required under [Section 6.10](#), and (c) providing the Administrative Agent with thirty (30) days (or ten (10) days' notice for non-payment of premium) prior written notice before any such policy or policies shall be altered or cancelled on all insurance policies of the Loan Parties.

(c) Patent Filings. The Loan Parties shall, within forty-five (45) days after the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion), ensure that all chain of title issues with respect to any Patent ownership have been corrected such that the Administrative Agent may properly record, and if necessary, perfect a security interest in all Patents subject to the patent law of the United States, in each case for the benefit of the Secured Parties.

(d) Patent Security Agreement and Perfection Certificate. The Loan Parties shall, within five (5) days after the Closing Date (or such later date as the Administrative Agent shall agree in its sole discretion) deliver to the Administrative Agent (i) a Patent Security Agreement covering any

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Patents owned by any Loan Party not otherwise included in the Patent Security Agreement delivered to the Administrative Agent on the Closing Date, and (ii) a Perfection Certificate with an updated Schedule 12(a) thereto reflecting any such additional Patents owned by any Loan Party not otherwise included on Schedule 12(a) of the Perfection Certificate delivered to the Administrative Agent on the Closing Date.

## Article 7

### NEGATIVE COVENANTS

Until the Termination Date, the Borrower covenants and agrees with the Credit Parties that:

#### Section 1.1 Indebtedness; Equity Interests.

(a) The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness created under the Loan Documents;

(ii) Indebtedness existing on the Closing Date and set forth in Schedule 7.1, and any and any Refinancing Indebtedness with respect thereto;

(iii) Indebtedness of the Borrower or any of its Subsidiaries incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Finance Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and any Refinancing Indebtedness with respect thereto, provided that (A) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (B) the aggregate outstanding principal amount of Indebtedness permitted by this clause (iii) shall not, without duplication, exceed \$5,000,000 at any time;

(iv) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the Closing Date, and any Refinancing Indebtedness with respect thereto, provided that (A) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (B) the aggregate outstanding principal amount of Indebtedness permitted by this clause (iv) shall not, without duplication, exceed \$10,000,000 at any time;

(v) intercompany Indebtedness of the Borrower or any Subsidiary owing to and held by the Borrower or any Subsidiary; provided, however, that (A) if the Borrower or any Subsidiary Guarantor is the obligor on such Indebtedness and any Subsidiary (other than a Subsidiary Guarantor) is the obligee thereof, such Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all Secured Obligations (including, with respect to any Subsidiary Guarantor, its obligations under the Security Agreement), (B) Indebtedness owed to the Borrower or any Subsidiary Guarantor must be evidenced by a Master Intercompany Note or an unsubordinated promissory note pledged to the Administrative Agent under the Security Agreement and (C) Indebtedness (excluding any ordinary course out-of-pocket expenses) of Subsidiaries (other than Subsidiary Guarantors) owed to the Borrower and/or a Subsidiary Guarantor may not exceed \$5,000,000 in the aggregate at any time outstanding;

(vi) Guarantees by (A) any Loan Party of Indebtedness of any other Loan Party, (B) any Non-Loan Party Subsidiary of Indebtedness of any other Non-Loan Party Subsidiary, and (C) any Non-Loan Party Subsidiary of any Indebtedness of any Loan Party, provided that, in each case, such Indebtedness is otherwise permitted by this Section 7.1(a);

(vii) obligations under any Swap Agreements permitted by Section 7.7;

(viii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(ix) unsecured guarantees arising as a result of customary indemnification obligations to purchasers that are not Affiliates of a Loan Party in connection with any Disposition permitted by Section 7.5;

(x) Indebtedness incurred in the ordinary course of business under (A) appeal bonds or similar instruments and (B) surety bonds, payment bonds, performance bonds, bid bonds, completion guarantees and similar obligations, workers' compensation claims, health, disability or other employee benefits, and bankers acceptances issued for the account of any Loan Party or its Subsidiaries and unsecured guarantees thereof;

(xi) Earn-Out Obligations owing to sellers incurred in connection with a Permitted Acquisition; provided that the amount of such Earn-Out Obligations shall be deemed to be part of the cost of such Investment (the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP or the amount actually paid);

(xii) contingent payment obligations and contingent liabilities in respect of any indemnification obligations and adjustments of purchase price, in each case in connection with a Permitted Acquisition;

(xiii) other Indebtedness not to exceed \$2,500,000 in the aggregate principal amount at any time outstanding; provided that any Liens securing such Indebtedness shall rank junior in priority to the liens securing the Indebtedness under the Loan Documents;

(xiv) other Indebtedness not to exceed \$2,500,000 in the aggregate at any time outstanding; provided that such Indebtedness (A) shall rank junior in priority to the Liens securing the Indebtedness under the Loan Documents pursuant to a subordination or intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent, (B) shall at the time such Indebtedness is incurred, have a scheduled maturity date that is at least ninety-one (91) days following the Latest Maturity Date and (C) shall not require payments of principal thereon prior to a date that is, at the time such Indebtedness is incurred, at least ninety-one (91) days following the Latest Maturity Date; and

(xv) deferred compensation or similar arrangement payable to future, present or former directors, officers, employees, members of management or consultants of any Loan Party and its Subsidiaries in an aggregate amount not to exceed \$3,000,000 outstanding at any one time.

(b) the Borrower will not, and will not permit any of its Subsidiaries to, (i) issue any Disqualified Equity Interests, or (ii) be or become liable in respect of any obligation (contingent or

otherwise) to purchase, redeem, retire, acquire or make any other payment in respect of any Equity Interests of any Loan Party or any of its Subsidiaries, except as permitted under Section 7.8.

**Section 1.2 Liens.** The Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

- (a) Liens created under the Loan Documents;
- (b) Permitted Encumbrances;
- (c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the Closing Date and set forth in Schedule 7.2, provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the Closing Date and any extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;
- (d) any Lien on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary, provided that (i) such Lien secures Indebtedness permitted by Section 7.1(a)(iii), (ii) such Lien and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary;
- (e) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Closing Date prior to the time such Person becomes a Subsidiary, provided that (i) such Lien secures Indebtedness permitted by Section 7.1(a)(iv), (ii) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as applicable, (iii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iv) such Lien shall secure only the Indebtedness and other obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as applicable, and any extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;
- (f) Liens of a depository bank or securities intermediary permitted by any Control Agreement;
- (g) Liens constituting deposits to secure real property lease obligations as lessee incurred by any Loan Party in the ordinary course of business;
- (h) Liens to secure Indebtedness permitted under Section 7.1(a)(xiv), provided that such Liens only secure Indebtedness incurred pursuant thereto; and
- (i) other Liens so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed \$10,000,000 at any one time.

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**Section 1.3 Fundamental Changes; Business; Fiscal Year.**

(a) The Borrower will not, and will not permit any of its Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise Dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the Equity Interests issued by any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve or consummate a Division, provided that, if at the time thereof and immediately after giving effect thereto, no Default or Event of Default shall or would have occurred and be continuing:

(i) any Wholly-Owned Subsidiary of the Borrower may merge into or consolidate with (A) the Borrower in a transaction in which the Borrower is the surviving entity, (B) any Subsidiary Guarantor in a transaction in which such Subsidiary Guarantor is the surviving entity, and (C) to the extent such Subsidiary is a Non-Loan Party Subsidiary, any other Non-Loan Party Subsidiary;

(ii) the Borrower or any Subsidiary may merge into or consolidate with any Person in a transaction that is not permitted by [Section 7.3\(a\)\(i\)](#), provided that (x) in the case of a merger involving the Borrower, the Borrower shall be the surviving entity of such merger, (y) such merger is permitted by [Section 7.4](#) and either (A) the Subsidiary Guarantor shall be the surviving entity or (B) such other Person shall become a Subsidiary Guarantor pursuant to [Section 6.12](#), and (z) such merger shall not be prohibited by [Section 7.5](#);

(iii) (A) any Subsidiary of a Loan Party may sell, transfer, lease or otherwise Dispose of all or substantially all of its assets to the Borrower or to any Subsidiary Guarantor and (B) any Non-Loan Party Subsidiary may sell, transfer, lease or otherwise Dispose of all or substantially all of its assets to the Borrower or any Subsidiary of the Borrower;

(iv) the Borrower or any of its Subsidiaries may sell, transfer, lease or otherwise Dispose of its assets in a transaction that is not permitted by [Section 7.3\(a\)\(iii\)](#), provided that such sale, transfer, lease or other Disposition is permitted by [Section 7.5](#); and

(v) (A) any Non-Loan Party Subsidiary may liquidate or dissolve so long as any remaining assets are transferred to another Non-Loan Party Subsidiary or a Loan Party and (B) any Subsidiary Guarantor may liquidate or dissolve so long as any remaining assets of such Subsidiary Guarantor are transferred to another Loan Party; provided that, in each case, the Borrower determines in good faith that such liquidation or dissolution is in the best interests of Borrower and its Subsidiaries and is not disadvantageous to the Administrative Agent or any Lender in any material respect;

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than an Approved Line of Business; and

(c) The Borrower will not, and will not permit any of its Subsidiaries to, change its Fiscal Year.

**Section 1.4 Investments, Loans, Advances, Guarantees and Acquisitions.** The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger or Division) any Investment, make or permit to exist any Guarantees of any obligations of, or make or permit to exist any investment or any other interest in, any other Person, make any Acquisition or purchase or otherwise enter into or become party to any derivative transaction, except:

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(a) Investments in cash and Cash Equivalents;

(b) investments existing on the Closing Date and set forth in [Schedule 5.13](#) and [Schedule 7.4](#);

(c) equity Investments made by the Borrower in the Equity Interests of any Subsidiary Guarantor or any Non-Loan Party Subsidiary and made by any Subsidiary Guarantor in the Equity Interests of any other Subsidiary Guarantor or any Non-Loan Party Subsidiary; provided that Investments pursuant to this [Section 7.4\(c\)](#) in any Non-Loan Party Subsidiary shall not exceed \$7,500,000 in the aggregate after the Closing Date less any amounts expended pursuant to subsection (e) below;

(d) Investments constituting Indebtedness made by (i) any Loan Party to any Subsidiary thereof or (ii) any Subsidiary to any Loan Party or another Subsidiary, in each case subject to the limitations set forth in [Section 7.1\(a\)\(v\)](#) and (vi);

(e) acquisitions made by (i) any Loan Party from any other Loan Party, (ii) any Non-Loan Party Subsidiary from any other Non-Loan Party Subsidiary and (iii) any Non-Loan Party Subsidiary from any Loan Party; provided that, with respect to this clause (iii), the amount of any such Investments shall not exceed \$7,500,000 in the aggregate after the Closing Date less any amounts expended pursuant to subsection (c) above;

(f) Guarantees permitted by [Section 7.1\(a\)](#);

(g) Swap Agreements permitted by [Section 7.7](#);

(h) Permitted Acquisitions;

(i) payroll, commission, travel and other similar cash advances made to directors (or comparable Persons), officers or employees in the ordinary course of business;

(j) (i) promissory notes and other non-cash consideration received in connection with Dispositions permitted by [Section 7.5](#) and (ii) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business as a result of insolvency, bankruptcy, reorganization, or other similar proceeding involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(k) Investments of any Person existing at the time such Person becomes a Subsidiary or consolidates or merges with Borrower or any Subsidiary thereof (including in connection with a Permitted Acquisition) so long as such Investments were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger;

(l) deposits of cash made in the ordinary course of business to secure performance of (i) operating leases and (ii) other contractual obligations that do not constitute Indebtedness, including earnest money deposits made in cash in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition;

(m) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

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(n) so long as no Default or Event of Default shall have occurred and be continuing or would immediately result therefrom, other Investments by the Borrower and its Subsidiaries after the Closing Date in an aggregate amount not to exceed \$20,000,000;

(o) Investments constituting (i) accounts arising, (ii) trade debt granted or (iii) deposits made, in connection with the purchase price of goods or services, in each case in the ordinary course of business; and

(p) Guarantees by any Loan Party of leases of its Subsidiaries, or by any Subsidiary of a Loan Party of leases of such Loan Party, in each case, solely to the extent not constituting Indebtedness.

In determining the amount of Investments, acquisitions, loans, and advances permitted under this [Section 7.4](#), Investments and acquisitions shall always be taken at the original cost thereof (regardless of any subsequent appreciation or depreciation therein) minus all returns of principal, capital, dividends, distributions and other cash returns thereof and minus all liabilities expressly assumed by another Person in connection with the sale or other Disposition of any Investment, and loans and advances shall be taken at the principal amount thereof then remaining unpaid.

**Section 1.5 Dispositions.** The Borrower will not, and will not permit any of its Subsidiaries to, Dispose of any of its assets except:

(a) issuances of Qualified Equity Interests by (i) any Wholly-Owned Subsidiary of a Loan Party to a Loan Party, in each case subject to the Collateral and Guarantee Requirement;

(b) the sale or lease of inventory in the ordinary course of business;

(c) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Credit Agreement or the other Loan Documents;

(d) the licensing and sublicensing on a non-exclusive basis of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business, and the leasing and subleasing of any other property;

(e) the granting of Liens permitted hereunder and the other transactions permitted by [Section 7.2](#);

(f) any Casualty Event and the Disposition of any property subject thereto;

(g) the abandonment, cancellation or lapse of issued patents, registered trademarks and other registered intellectual property of a Loan Party or Subsidiary thereof to the extent, in such Loan Party's reasonable business judgment, not economically desirable in the conduct of such Loan



Party's business or so long as such lapse is not materially adverse to the interests of the Lenders and (ii) the expiration of patents in accordance with their statutory terms;

(h) the sale of assets (other than Equity Interests of any Wholly-Owned Subsidiary, unless all of the Equity Interests of such Wholly-Owned Subsidiary (other than the Borrower) are sold in accordance with this clause (i)) for at least fair market value, so long as (A) no Default or Event of Default then exists or would immediately result therefrom, (B) at least 75% of the consideration received by the applicable Loan Party consists of cash or Cash Equivalents and is paid at the time of the closing of such sale, (C) the Net Cash Proceeds therefrom are applied and/or reinvested as (and to the extent)

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required by Section 2.7(b)(i)(A) and (D) the aggregate amount of the cash and non-cash proceeds received from all assets sold pursuant to this clause (i) shall not exceed \$10,000,000 in the aggregate in any Fiscal Year (for this purpose, using the fair market value of property other than cash and Cash Equivalents);

(i) any trade in of equipment in exchange for other equipment in the ordinary course of business;

(j) the unwinding or terminating of hedging arrangements or transactions contemplated by any Swap Agreement which are not prohibited hereunder;

(k) is by any Loan Party or Subsidiary thereof to any Loan Party;

(l) is by any Non-Loan Party Subsidiary to any Loan Party or any other Non-Loan Party Subsidiary; and

(m) any leases, subleases, licenses or sublicenses of property in the ordinary course of business.

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this Section 7.5 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 7.5, such Collateral (unless sold to a Loan Party) shall be sold automatically free and clear of the Liens created by the Collateral Documents and, at the expense of the Loan Parties, the Administrative Agent shall take all reasonable actions any Loan Party reasonably requests in writing in order to effect the foregoing.

**Section 1.6 Sale and Lease Back Transactions.** The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Sale and Leaseback arrangement, directly or indirectly, with any Person.

**Section 1.7 Swap Agreements.** The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any Subsidiary) and that are not for speculative purposes, and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Loan Party or Subsidiary.

**Section 1.8 Restricted Payments.** The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay for or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(a) subject to the Collateral and Guarantee Requirement, any Subsidiary of the Borrower may declare and pay, and agree to pay, dividends and other distributions with respect to its Equity Interests payable solely in perpetual common Equity Interests (other than Disqualified Equity Interests),

(b) any Subsidiary of the Borrower may declare and pay dividends or other distributions with respect to its Equity Interests to the Borrower or any Subsidiary Guarantor,

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(c) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may declare and pay Permitted Tax Distributions;

(d) the making of dividends or distributions by a Non-Loan Party Subsidiary to a Loan Party or another Non-Loan Party Subsidiary;

(e) the Borrower may make dividends payable solely in Equity Interests (other than Disqualified Equity Interests);

(f) so long as no Default or Event of Default shall have occurred and be continuing at the time of such purchase or would arise after giving effect thereto, the Borrower and its Subsidiaries may purchase common stock or common stock options from present or former officers, directors, employees or consultants of the Borrower and its Subsidiaries upon the death, disability or termination of employment of such person or otherwise in accordance with any stock option or stock appreciation rights plan or any stock ownership or subscription plan or equity incentive or other similar plan or termination agreement; provided that the aggregate amount of payments made under this clause shall not exceed \$2,500,000 during any Fiscal Year of the Borrower;

(g) (i) the Borrower may make cashless repurchase of Equity Interests deemed to occur upon the exercise of stock options or warrants if such repurchased Equity Interests represents a portion of the exercise price of such options or warrants, and (ii) the Borrower may make repurchase of Equity Interests deemed to occur upon the withholding of a portion of the Equity Interests granted or awarded to a current or former officer, director, employee or consultant to pay for the Taxes payable by such Person upon such grant or award (or vesting thereof);

(h) the Borrower or any of its Subsidiaries may purchase, redeem or otherwise acquired Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its Equity Interests (other than Disqualified Equity Interests); provided that any such issuance is otherwise permitted hereunder;

(i) payment of Earn-Out Obligations so long as (i) immediately before and immediately after giving effect to such payment, no Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such payment, the Borrower and its Subsidiaries shall be in pro forma compliance with the Financial Covenants set forth in Sections 7.12(a) and (b), in each case, as of the last day of the most recent fiscal quarter for which financial statements have been delivered under Section 6.1, and (iii) immediately after giving effect to such payment, Liquidity shall be at least \$20,000,000; and

(j) so long as (i) immediately before and immediately after giving effect to such payment, no Default or Event of Default shall have occurred and be continuing, the Borrower may make additional Restricted Payments in an aggregate amount not to exceed \$10,000,000 in any Fiscal Year.

**Section 1.9 Transactions with Affiliates.** The Borrower will not, and will not permit any of its Subsidiaries to, Dispose (including pursuant to a merger or Division) of any property or assets to, or purchase, lease or otherwise acquire (including pursuant to a merger or Division) any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates involving aggregate payments or consideration in excess of \$2,500,000, except (a) transactions in the ordinary course of business and at prices and on terms and conditions not less favorable to such Loan Party or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties (it being understood that this Section shall not apply to any transaction that is expressly permitted under Sections 7.1, 7.3, 7.4, 7.5 or 7.8 of this Credit Agreement between or among the Loan Parties and not

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involving any other Affiliate), (b) the Transactions, (c) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of any Loan Party and any of their respective Subsidiaries, (d) the payment of reasonable and customary compensation, severance and indemnification arrangements and benefit plans for officers and employees of any Loan Party and any of their respective

Subsidiaries in the ordinary course of business and (e) any arrangement, transaction and contract with or among any other Loan Party in the ordinary course of business.

**Section 1.10 Restrictive Agreements.** The Borrower will not, and will not permit any of its 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 any Loan Party or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its property or assets (unless such agreement or arrangement does not prohibit, restrict or impose any condition upon the ability of any Loan Party to create, incur or permit to exist, or the ability of the Administrative Agent to exercise any right or remedy with respect to, any Lien in favor of the Secured Parties created under the Loan Documents) or (b) the ability of any Subsidiary to pay dividends or make other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary, provided that (i) the foregoing shall not apply to (A) restrictions and conditions imposed by law or by the Loan Documents, (B) restrictions and conditions existing on the Closing Date identified on Schedule 7.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), and (C) customary restrictions and conditions contained in agreements relating to the sale of a subsidiary pending such sale provided that such restrictions and conditions apply only to its Subsidiary that is to be sold and such sale is permitted hereunder, (ii) clause (a) of this Section shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Credit Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (iii) clause (a) of this Section shall not apply to customary provisions in agreements restricting the assignment thereof.

**Section 1.11 Amendment of Material Documents.** The Borrower will not, and will not permit any of its Subsidiaries to, amend, supplement modify or waive any of its rights under any Subordinated Debt Document or any of its Organizational Documents, other than immaterial amendments, modifications or waivers that could not reasonably be expected to adversely affect the Credit Parties, provided that the Borrower shall deliver or cause to be delivered to the Administrative Agent and each Lender a copy of all amendments, modifications or waivers thereto (other than immaterial or ministerial amendments, modifications and waivers) together with the next Compliance Certificate required to be delivered pursuant to Section 6.1(c).

**Section 1.12 Financial Covenants.**

(a) **Maximum Consolidated Total Net Leverage Ratio.** The Borrower will not permit the Consolidated Total Net Leverage Ratio as of the end of any fiscal quarter to be greater than 3.50:1.00.

(b) **Minimum Consolidated Fixed Charge Coverage Ratio.** The Borrower will not permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter to be less than 1.25:1.00:

**Section 1.13 Payments on Subordinated Debt.** The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay for or make, directly or indirectly, any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any

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Indebtedness of such Person which is subordinated to the payment of the Loan Document Obligations except that so long as no Default or Event of Default shall have occurred and shall be continuing or would immediately result therefrom, the Borrower or any Subsidiary may make payments of Subordinated Debt to the extent permitted by the subordination provisions applicable thereto.

**Section 1.14 Government Regulation.** The Borrower will not, and will not permit any of its Subsidiaries to, (a) at any time be or become the subject of any law, regulation, or list of any government agency (including the United States Office of Foreign Asset Control list) that prohibits or limits any Lender from making any loans or extension of credit (including the Loans and the Letters of Credit) to any Loan Party or from otherwise conducting business with any Loan Party, or (b) fail to provide documentary and other evidence of any Loan Party's identity as may be requested by any Credit Party at any time to enable such Credit Party to verify any Loan Party's identity or to comply with any Applicable Law or regulation, including Section 326 of the USA PATRIOT Act.

**Section 1.15 Hazardous Materials.** The Borrower will not, and will not permit any of its Subsidiaries or agents to, cause or permit a Release or threat of Release of Hazardous Materials on, at, in, above, to, from or about any of the property where such Release or threat of Release would (a) violate, or form the basis for any Environmental Claims under, any Environmental Law or any Environmental Permit or (b) otherwise adversely impact the value or

marketability of any property of any Loan Party or any of its Subsidiaries or any of the Collateral, other than such Release, violation or Environmental Claim as could not reasonably be expected to result in an Environmental Liability having a Material Adverse Effect.

## Article 8

### EVENTS OF DEFAULT

#### Section 1.1 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment of Principal or L/C Disbursement. Any Loan Party shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise.

(b) Other Non-Payment. Any Loan Party shall fail to pay any interest on any Loan or on any reimbursement obligation in respect of any L/C Disbursement or any fee, commission or any other amount (other than an amount referred to in clause (a) of this Section) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) Representations and Warranties. Any representation or warranty made or deemed made by or on behalf of any Loan Party or any of its Subsidiaries in or in connection with any Loan Document or any amendment or modification hereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made.

(d) Specific Covenants. Any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Sections 6.1 (a)-(f), 6.2(a), 6.3(a) (solely with respect to the Borrower), 6.8, 6.12, or in Article 7.

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(e) Other Covenants. Any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document to which it is a party (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of thirty (30) days after the occurrence thereof.

(f) Cross Default - Payment Default on Material Indebtedness. Any Loan Party shall fail to make any payment (whether of principal, interest or otherwise and regardless of amount) in respect of any Material Indebtedness when and as the same shall become due and payable (after giving effect to any applicable grace period).

(g) Other Cross-Defaults. (i) Any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or payment date, or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due prior to their scheduled maturity or payment date or to require the prepayment, repurchase, redemption or defeasance thereof prior to their scheduled maturity or payment date (in each case after giving effect to any applicable notice and any applicable cure period), provided that this clause (g) shall not apply to secured Indebtedness that becomes due solely as a result of the voluntary sale, transfer or other disposition of the property or assets securing such Indebtedness; or (ii) any Loan Party or any of its Subsidiaries shall breach or default on any payment obligation constituting a Swap Agreement Obligation.

(h) Involuntary Proceedings. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Loan Party or any of its Subsidiaries or its debts, or of a substantial part of its assets, under any Debtor Relief Law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of its Subsidiaries or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) Voluntary Proceedings. Any Loan Party or any of its Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver,

trustee, custodian, sequestrator, conservator or similar official for any Loan Party or any of its Subsidiaries or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing.

(j) **Inability to Pay Debts.** Any Loan Party or any of its Subsidiaries shall become unable, admit in writing its inability or fail generally to pay its debts as they become due.

(k) **Judgments.** One or more (i) non-monetary judgments which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (ii) judgments for the payment of money in an aggregate amount in excess of the Threshold Amount shall be rendered against any Loan Party or any of its Subsidiaries or any combination thereof (which shall not be fully covered (without taking into account any applicable deductibles) by insurance from an unaffiliated insurance company with an A.M. Best financial strength rating of at least A-, it being understood that even if such amounts are covered by insurance from such an insurance company, such amounts shall count against

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such basket if responsibility for such amounts has been denied by such insurance company) and the same shall remain undischarged or unbonded for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any of its Subsidiaries to enforce any such judgment.

(l) **ERISA Events.** (i) An ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in liability of any Loan Party or any of its Subsidiaries in an aggregate amount exceeding the Threshold Amount, (ii) an ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (iii) a Loan Party or ERISA Affiliate shall fail to pay when due any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan; (iv) any event similar to (i), (ii), or (iii) above shall occur or exist with respect to a Foreign Plan; or (v) there shall be at any time a Lien imposed against the assets of any Loan Party or ERISA Affiliate under Section 412 or Section 430 of the Code or Sections 302, Section 303, or Section 4068 of ERISA.

(m) **Invalidity of Loan Documents.** Any Loan Document or any material provision thereof shall cease, for any reason, to be in full force and effect, or any Loan Party shall so assert in writing or shall disavow any of its obligations thereunder.

(n) **Liens.** Any Lien purported to be created under any Collateral Document (other than Collateral consisting of Intellectual Property that is registered or owned pursuant to the applicable copyright, trademark, or patent laws of any country other than the United States) shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Collateral Document, except (i) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (ii) as a result of the Administrative Agent's failure (x) to maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Security Agreement, (y) to renew or continue any UCC financing statement filed against any of the Loan Parties to perfect its security interest in the Collateral of such Loan Party and/or (z) to file any necessary amendments to any of the UCC financing statements filed by the Administrative Agent against any of the Loan Parties subsequent to the timely notification under Section 6.9 by any Loan Party of a legal change in name or jurisdiction of organization or formation, change in chief executive office address, or Federal Taxpayer Identification Number.

(o) **Licenses.** There shall occur the loss, suspension or revocation of, or failure to renew any license or permit now held or hereafter acquired if such loss, suspension, revocation or failure to renew would reasonably be expected to have a Material Adverse Effect.

(p) **Change of Control.** A Change of Control shall occur.

(q) **Cessation of Business.** There shall occur a cessation of a substantial part of the business of any Loan Party which would reasonably be expected to have a Material Adverse Effect.

(r) **Governmental Approvals.** Any material Governmental Approvals necessary for any Loan Party to operate in the ordinary course shall have been revoked, rescinded, suspended, modified in adverse manner or not renewed in the ordinary course for a full term, and such decision or revocation, rescission, suspension, modification or renewal has, or would reasonably be expected to have, a Material Adverse Effect.

**Section 1.2 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, then, and in every such event (other than an event described in [Section 8.1\(h\)](#) or [\(i\)](#)), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions (whether before or after the Closing Date), at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of each Loan Party accrued under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and (iii) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto) and thereupon such Cash Collateral shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and in case of any event described in [Section 8.1\(h\)](#) or [\(i\)](#), the Commitments shall automatically terminate (whether before or after the Closing Date) the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of each Loan Party accrued under the Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and Cash Collateral for the L/C Obligations as described above shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

**Section 1.3 Application of Funds.** After the exercise of remedies provided for in [Section 8.2](#) (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in [Section 2.10](#)), any amounts received on account of the Secured Obligations shall be applied by the Administrative Agent in the following order:

**First**, to the payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under [Article 3](#)), in each case payable to the Administrative Agent in its capacity as such;

**Second**, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the L/C Issuer and the L/C Fronting Fee), in each case payable to the L/C Issuer in its capacity as such;

**Third**, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts, payable to the Credit Parties (including fees, charges and disbursements of counsel to the respective Credit Parties and amounts payable under [Article 3](#)), ratably among them in proportion to the respective amounts described in this clause **Third** payable to them;

**Fourth**, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting accrued and unpaid interest on the Loans, L/C Obligations and other Secured Obligations, ratably among the Credit Parties in proportion to the respective amounts described in this clause **Fourth** payable to them;

**Fifth**, to the extent of any excess of such proceeds, to the payment of that portion of the Secured Obligations constituting unpaid principal of the Loans and L/C Obligations, the Cash Management Obligations and the Swap Agreement Obligations, ratably among the Secured Parties in proportion to the respective amounts described in this clause **Fifth** held by them;

Sixth, to the extent of any excess of such proceeds, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit;

Seventh, to the extent of any excess of such proceeds, to the payment of all other Secured Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Secured Obligations owing to the Secured Parties on such date; and

Last, to the extent of any excess of such proceeds, the balance, if any, after all of the Secured Obligations (other than unasserted contingent indemnification and unasserted expense reimbursement obligations in each case not yet due and payable) have been paid in full, to the Borrower or as otherwise required by law.

Subject to Section 2.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the Secured Obligations, if any, in the order set forth above. The Administrative Agent shall have no obligation to calculate the amount of any Swap Agreement Obligations or Cash Management Obligations and may request a reasonably detailed calculation thereof from the provider of such Secured Obligations. If the provider of any Swap Agreement Obligations or Cash Management Obligations fails to deliver the calculation of such Secured Obligations within five (5) days following request thereof by the Administrative Agent, then the Administrative Agent may assume the amount of such Secured Obligations are zero. Notwithstanding anything to the contrary set forth above, Excluded CEA Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

## Article 9

### THE ADMINISTRATIVE AGENT

**Section 1.1 Appointment and Authority.** Each of the Lenders and the L/C Issuer hereby irrevocably appoints Citizens Bank 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 L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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**Section 1.2 Rights as a Lender or L/C Issuer.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender or L/C Issuer as any other Lender or L/C Issuer 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 branches and 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 business with, the Borrower 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.

**Section 1.3 Exculpatory Provisions.**

(a) The Administrative Agent 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:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;



(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its branches or Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (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 Section 8.2 and Section 10.2), or (ii) in the absence of its own gross negligence, willful misconduct, or breach in bad faith 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 or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent in writing by the Borrower, a Lender or the L/C Issuer.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Credit 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

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Credit Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) The Administrative Agent shall not be responsible or have any liability for, or have any duty to investigate a violation or potential violation of an Environmental Law or a Release or threat of Release of a Hazardous Material pursuant to Section 6.13, nor shall it have any liability for any action it takes or does not take in connection with any such investigation.

**Section 1.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, 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 not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, amendment, increase, reinstatement or renewal of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), 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.

**Section 1.5 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 appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facilities as well as activities as Administrative Agent. The Administrative Agent

shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### Section 1.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting

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Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments 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 the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.3 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 while the retiring or removed Administrative Agent was acting as Administrative Agent. To the extent the retiring or removed Administrative Agent is holding cash, deposit account balances or other credit support as collateral for Cash Collateralized Letters of Credit, the retiring or removed Administrative Agent shall on or reasonably promptly following the Resignation Effective Date or the Removal Effective Date (as applicable) cause such collateral to be transferred to the successor Administrative Agent or, if no successor Administrative Agent has been appointed and accepted such appointment, to the respective L/C Issuers ratably according to the outstanding amount of Cash Collateralized Letters of Credit issued by them, in each case to be held as collateral for such Cash Collateralized Letters of Credit in accordance with this Credit Agreement.

Section 1.7 Non-Reliance on Administrative Agent, L/C Issuers and Other Lenders. Each Lender and L/C Issuer expressly acknowledges that that none of the Administrative Agent nor any arranger or bookrunner (collectively the "Arranger") has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or any of their Related Parties and based on such documents and information

as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other

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regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Credit Agreement and to extend credit to the Borrower hereunder. Each Lender and L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, or 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 analyses, appraisals and decisions in taking or not taking action under or based upon this Credit Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring and/or holding commercial loans in the ordinary course and is entering into this Credit Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring and/or holding such commercial loans or providing such other facilities.

**Section 1.8 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Lead Arranger or any agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Credit Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**Section 1.9 Administrative Agent May File Proofs of Claims; Credit Bidding.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or reimbursement for any L/C Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) 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 Loan Document Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Section 10.3) allowed in such judicial proceeding; and

(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 the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due

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for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under [Section 10.3](#).

(c) The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Secured Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or 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 [Section 10.02\(b\)](#)), and (C) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Lenders *pro rata* and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Secured Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

#### Section 1.10 Collateral and Guarantee Matters.

(a) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (A) at the Termination Date, (B) 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 under the Loan Documents to a Person that is not and is not required to become a Loan Party; *provided*, however, any sale or Disposition of all or substantially all of the Collateral or all or substantially all of the value of the Guarantees under the Guarantee Agreement shall be subject to [Section 10.2\(b\)](#), or (C) subject to [Section 10.2](#), if approved, authorized or ratified in writing by the Required Lenders;

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(ii) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by [Section 7.2\(d\)](#); and

(iii) to release any Guarantor from its obligations under the Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents, *provided, however*, that the release of all or substantially all of the Collateral or all or substantially all of the value of the Guarantees under the Guarantee Agreement shall be subject to [Section 10.2\(b\)](#).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Loan Documents pursuant to this [Section 9.10](#).

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 1.11 [Reserved].

Section 1.12 Cash Management Obligations and Swap Agreement Obligations. Except as otherwise expressly set forth herein or in the Security Agreement, any other Collateral Document or any other Loan Document, no Person holding Cash Management Obligations or Swap Agreement Obligations that obtains the benefits of any Guarantee under the Guarantee Agreement or any Collateral by virtue of the provisions hereof or of any Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral or amendment to any Loan Document (including any Collateral Document) other than in its capacity as a Lender or Administrative Agent and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 9 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, Cash Management Obligations or Swap Agreement Obligations except to the extent expressly required hereunder, provided that the Administrative Agent has received a Secured Obligation Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Person holding such Secured Obligations. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Cash Management Obligations and Swap Agreement Obligations.

Section 1.13 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, L/C Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party (any such Lender, L/C Issuer, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under Section 9.13(b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, L/C Issuer, Secured Party or other

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Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.13 and held in trust for the benefit of the Administrative Agent, and such Lender, L/C Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds 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 from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this Section 9.13(a) shall be conclusive, absent manifest error.

(b) Without limiting the provisions of Section 9.13(a), each Payment Recipient (and each of their respective successors and assigns) hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Credit Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) in the case of immediately preceding clause (z), an error and mistake has been made, in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, L/C Issuer or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.13(b). For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.13(b), shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.13(a), or on whether or not an Erroneous Payment has been made.

(c) Each Lender, L/C Issuer or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, L/C Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, L/C Issuer or Secured Party under any Loan Document with respect to any

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payment of principal, interest, fees, or other amounts, against any amount that the Administrative Agent has demanded to be returned under Section 9.13(a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with Section 9.13(a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Credit Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall be deemed to have waived any consents required under this Credit Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Credit Agreement.

(i) The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may in the sole discretion of the Administrative Agent be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any



reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, L/C Issuer or Secured Party, to the rights and interests of such Lender, L/C Issuer or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Secured Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Secured Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.13 shall not be interpreted to increase (or accelerate the due date for) the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.13 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or L/C Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof).

## Article 10

### MISCELLANEOUS

#### Section 1.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (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 facsimile as follows:

(i) if to any Loan Party, MiMedx Group, Inc., 1775 West Oak Commons, Ct., NE, Marietta, GA 30062, Attention: Legal Department, Email: [legaldept@mimedx.com](mailto:legaldept@mimedx.com), with a copy to (which shall not constitute notice), Greenberg Traurig, LLP, Terminus 200, 3333 Piedmont Road NE, Suite 2500, Atlanta, GA 30305, Attention: Bethani Oppenheimer, Email: [oppenheimerb@gtlaw.com](mailto:oppenheimerb@gtlaw.com);

(ii) if to the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.1 (Committed Loan Notices and Letter of Credit Applications shall additionally be delivered to the addressees set forth therein); and



(iii) if to any other Credit Party, the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile 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 delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures acceptable to the Administrative Agent, provided that the foregoing shall not apply to notices to any Credit Party pursuant to Article 2 if such Credit Party has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

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 acknowledgement of transmission to the intended recipient (such as by the "delivery receipt requested" function, return e-mail, confirmation of system-generated posting notices by a Platform or other written acknowledgement) and (ii) notices or communications posted to a Platform or an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient. Notwithstanding anything to the contrary herein, borrowing requests and other notices to Administrative Agent, a Swing Line Lender or an L/C Issuer sent by email or posted to a Platform or an Internet or intranet website shall only be effective against such party if receipt of such transmission is affirmatively acknowledged by such party.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications available to the L/C Issuer and the other Lenders by posting the Communications on the Platform and that certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities.

(ii) The Borrower hereby agrees that so long as any Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Communications that may be distributed to the Public Lenders and that: (A) all such (i) shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof; (B) by marking (ii) "PUBLIC," the Borrower shall be deemed to have authorized the

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Administrative Agent, Lead Arranger and the Lenders to treat such Communications as not containing any material non-public information (although it may be sensitive and proprietary) with respect to any Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Communications constitute Information, they shall be treated as set forth in Section 10.14); (C) all Communications marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (D) the Administrative Agent and the Lead Arrangers shall be entitled to treat any Communications that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". The Borrower acknowledges and agrees that the DQ List shall be deemed suitable for posting and may be posted by the Administrative Agent on the Platform, including the portion of the Platform designated for Public Lenders. The Borrower acknowledges and agrees that the DQ List shall be deemed suitable for posting and may be posted by the Administrative Agent on the Platform, including the portion of the Platform that is designated for Public Lenders.

(iii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of communications through the Platform.

## Section 1.2 Waivers; Amendments

(a) No failure or delay by any Credit Party in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Credit Parties under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan and/or the issuance, amendment, extension or renewal of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Credit Party may have had notice or knowledge of such Default at the time.

(b) Except as expressly provided by Section 2.11, Section 3.1(e), Section 3.8 or in the other paragraphs of this Section 10.2, neither this Credit Agreement, any other Loan Document (other than the Engagement Letter) nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Loan Parties and the Required Lenders (or, in the case of waivers of any condition precedent to any Revolving Borrowing set forth in Section 4.2, the Required Class Lenders in respect of the Revolving Facility), or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall:

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(i) extend or increase any Commitment of any Lender without the written consent of such Lender or increase the L/C Sublimit without the consent of the L/C Issuer (it being understood that a waiver of any condition precedent set forth in Article 4 or the waiver of any Default or Event of Default shall not constitute an extension or increase of any Commitment of any Lender or an increase of the L/C Sublimit);

(ii) reduce the principal amount of any Loan or any reimbursement obligation with respect to a L/C Disbursement, or reduce the rate of any interest, or reduce any fees or other amounts, payable under the Loan Documents, without the written consent of each Credit Party directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary to amend or modify any Financial Covenant, any defined terms used therein or the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate, in each case, notwithstanding the fact that any such amendment or modification actually results in reduction in the rate of interest or fees;

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Loan or reimbursement obligation with respect to any L/C Disbursement, or any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone the stated termination or expiration of the Revolving Commitments or reduce the amount of or postpone the date of any prepayment required by Section 2.7(b), without the written consent of each Credit Party directly and adversely affected thereby;

(iv) except as provided in Section 2.10 and subsection (c) below change any provision hereof in a manner that would alter the pro rata sharing of payments required by Section 2.8(b) or the pro rata reduction of Revolving Commitments required by Section 2.5(d), without the written consent of each Credit Party directly and adversely affected thereby;

(v) change any of the provisions of this Section or the definition of the terms “Required Lenders” or “Required Class Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder;

(vi) amend, modify or waive any provision of Section 2.10 without the written consent of the Administrative Agent, the Swingline Lender and the L/C Issuer;

(vii) change the currency in which any Commitment or Loan is, or is to be, denominated, Letters of Credit are to be issued or payment under the Loan Documents is to be made without the written consent of each Lender directly affected thereby;

(viii) release any Guarantor from its Guarantee under the Guarantee Agreement (except as expressly provided therein or in Section 9.10), or limit its liability in respect of such Guarantee, without the written consent of each Lender; or

(ix) release all or substantially all of the Collateral from the Liens of the Loan Documents (except as expressly provided in the applicable Collateral Document or in connection with a transaction permitted by Section 7.3), without the consent of each Lender; and

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Loan Document of (A) the Administrative Agent, unless in writing executed by the Administrative Agent, (B) any Issuing Bank, unless in writing executed by such

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Issuing Bank and (C) any Swingline Lender, unless in writing executed by such Swingline Lender, in each case in addition to the Borrower and the Lenders required above.

(c) Notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent that by its terms requires the consent of all the Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (x) the Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loan may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

(d) In addition, notwithstanding anything in this Section to the contrary, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Administrative Agent within 10 Business Days following receipt of notice thereof.

### Section 1.3 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties, jointly and severally, shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, Lead Arrangers and their respective Affiliates (including Attorney Costs which shall be limited to one primary counsel and one local or foreign counsel, if applicable, as reasonably necessary in each relevant jurisdiction material to the interests of the Lenders taken as a whole), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Credit Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, Lead Arrangers or any Credit Party (including Attorney Costs (but limited in the case of such legal fees and expenses to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Administrative Agent, Lead Arrangers and Credit Parties, taken as a whole and, if reasonably necessary, one local counsel or foreign counsel for the Administrative Agent, Lead Arrangers and Credit Parties taken as a whole in each relevant jurisdiction that is material to the interests of the Credit Parties, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction that is material to each group of similarly situated affected Persons) of the Administrative Agent or any Credit Party, in connection with the enforcement or protection of its rights (whether through negotiations, legal proceedings or otherwise) (A) in connection

with this Credit Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by Loan Parties. The Loan Parties, jointly and severally, shall indemnify the Administrative Agent (and any sub-agent thereof), each Credit Party, and each Related

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Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including Attorney Costs (but limited in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one additional counsel to all Indemnitees taken as a whole, and, if reasonably necessary, one local counsel for all Indemnitees taken as a whole in each relevant jurisdiction that is material to the interests of such Indemnitees, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction that is material to each group of similarly situated affected Indemnitees)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Credit Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Claim or Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (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 any Loan Party, and regardless of whether any Indemnitee is a party thereto or (v) any government investigation, audit, hearing or enforcement action resulting from any Loan Party's or any of its Affiliate's noncompliance (or purported noncompliance) with any applicable Sanctions, other Anti-Terrorism Laws or Anti-Corruption Laws (it being understood and agreed that the Indemnitees shall be entitled to indemnification pursuant to this clause (including indemnification for fines, penalties and other expenses) regardless of whether any adverse finding is made against any Loan Party or any of its Affiliates), provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction. To the extent that the indemnity set forth above in this paragraph shall be held to be unenforceable in whole or in part because it is violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under Applicable Law to the payment and satisfaction of all indemnified amounts incurred by Indemnitees or any of them. Notwithstanding anything contained in this Agreement to the contrary, the Loan Parties' liability and obligations with respect to any indemnified liability arising out of any Environmental Law, Environmental Claim or Environmental Liability shall be released on the date which is the earlier of (A) the one (1) year anniversary of the date on which the earliest of the following occurs: (i) the payment in full of the Loan Document Obligations, or (ii) the Administrative Agent or its nominee or assignee have exercised its foreclosure rights under this Agreement (any of (i) or (ii), the "Release Date") provided that the Administrative Agent has received an environmental investigation report, which includes an ASTM E1527-21 Phase I and a compliance audit, prepared on the Administrative Agent's behalf by environmental professionals selected by the Loan Parties and approved by the Administrative Agent in its reasonable discretion, at the cost of the Loan Parties, that indicates that the Real Property is free from any circumstance, condition, Hazardous Materials, Release or threat of Release of Hazardous Materials that constitutes a "recognized environmental condition" (as that term is defined in the ASTM standard practice for Phase I Environmental Site Assessments) and has no violations that would reasonably be expected to

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have a Material Adverse Effect and that were not disclosed to the Administrative Agent in connection with the closing of the Credit Facilities.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the L/C Issuer or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lender's Applicable 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), the L/C Issuer or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.8(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against the Administrative Agent (and any sub-agent thereof), any Lender and any L/C Issuer, and any Related Party of any of the foregoing Persons (each such Person being called a "Protected Person"), 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 Credit Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Protected Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Credit Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly and in no event later than 10 days after demand therefor.

#### Section 1.4 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent, each L/C Issuer and each Lender (and any other attempted assignment or transfer by any party hereto shall be null and void) 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 paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section. Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties

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hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each Credit Party) any legal or equitable right, remedy or claim under or by reason of this Credit 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 Credit Agreement (including all or a portion of its applicable Commitments and the applicable Loans at the time owing to it); provided that 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 applicable Commitment and/or the applicable Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to or by 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 paragraph (b)(i)(A) of this Section, the aggregate amount of the applicable Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the applicable Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of a Revolving Facility, or \$1,000,000, in the case of any assignment in respect of a Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the applicable Loan or the applicable Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Tranches on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default under Sections 8.1(a), (b), (h), or (i) has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender (other than a Defaulting Lender), an Affiliate of a Lender (other than a Defaulting Lender) or an Approved Fund, provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after written notice of such assignment shall have been delivered to the Borrower; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Credit Facilities;

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(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Facility or any unfunded Term Loan Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) a funded Term Facility to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuer and the Swingline Lender shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. In addition, each assignee shall, on or before the effective date of such assignment, deliver to the Borrower and the Administrative Agent certification as to exemption from deduction or withholding of any United States Taxes in accordance with Section 3.6(g).

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof or (C) a Person who, at the time of such assignment, is a Sanctioned Person if such assignment would violate Applicable Law.



(vi) No Assignment to Natural Persons. No such assignment shall be made 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).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the prior written consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans, as applicable, in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Credit Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (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 Credit Agreement and, to the extent of the interest assigned by such

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Assignment and Assumption, have the rights and obligations of a Lender under this Credit 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 Credit Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 3.5 and Section 10.3 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this paragraph shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain, at one of its offices in the United States, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the applicable Lenders, and the applicable Commitments of, and principal amounts of the applicable Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the L/C Issuers and the applicable Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Credit Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any L/C Issuer or Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, any L/C Issuer or the Administrative Agent, sell participations to any Person (other than (w) a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (x) the Borrower or any of the Borrower's Affiliates or Subsidiaries, (y) any Defaulting Lender or any of its subsidiaries or (z) a Person who, at the time of such participation, is a Sanctioned Person if the sale of such participation would violate Applicable Law) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its applicable Revolving Commitment and/or the applicable Loans owing to it); provided that (i) such Lender's obligations under this Credit Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and each Credit Party shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement.

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 Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or



instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 10.2(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.4, 3.5 and 3.6 (subject to the requirements and limitations therein, including the requirements under Section 3.6 (it being understood that the documentation required under Section 3.6(g) shall be delivered to the participating Lender)) 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 3.7 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 3.5 or 3.6, with respect to any participation, than its participating Lender 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

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participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.7(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.8 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.8(h) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and 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 Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Credit Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement and the Loan Documents 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) Disqualified Institutions.

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and/or assign all or a portion of its rights and obligations under this Credit Agreement (including through a participation) to such Person (unless the Borrower has consented to such assignment or participation in writing in its sole and absolute discretion, 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 Trade Date or any Person that the Borrower removes from the DQ List (including as a result of the delivery of a notice pursuant to the definition of "Disqualified Institution"), (x) any additional designation or removal permitted by the foregoing shall not apply retroactively to any prior or pending assignment or participation, as applicable, to any Lender or Participant and (y) any designation or removal after the Closing Date of a Person as a Disqualified Institution shall become effective three (3) Business Days after such designation or removal. Any assignment or participation in violation of this clause (h)(i) shall not be void, but the other provisions of this clause (h) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution or terminate any Revolving Commitment of a Lender which has sold a participation to a Participant which is a Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified

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Institution in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or 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 or such participation in such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this [Section 10.4](#), all of its interest, rights and obligations under this Credit Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Credit Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders or L/C Issuers by the Borrower, the Administrative Agent or any other Lender or L/C Issuer, (y) attend or participate in meetings attended by the Lenders, L/C Issuers and the Administrative Agent, or (z) access any electronic site established for the Lenders or L/C Issuers or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders or L/C Issuers 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 or any L/C Issuer to undertake any action (or refrain from taking any action) under this Credit Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders or L/C Issuers that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any Debtor Relief Plan, each Disqualified Institution party hereto hereby agrees (1) not to vote on such Debtor Relief Plan, (2) if such Disqualified Institution does vote on such Debtor Relief Plan 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 Debtor Relief Plan 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 Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “[DQ List](#)”) on the Platform, including that portion of the Platform that is designated for Public Lenders and/or (B) provide the DQ List to each Lender requesting the same.

(g) [Cashless Settlement](#). Notwithstanding anything to the contrary contained in this Credit Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Credit Agreement, pursuant to a cashless settlement mechanism acceptable to the Borrower, the Administrative Agent and such Lender.

**Section 1.5** [Survival](#). All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Credit Agreement or any other Loan Document shall be considered to have been relied

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upon by the other parties hereto and shall survive the execution and delivery of any Loan Document and the making of any Loans and the issuance of any Letter of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any L/C Obligation or any fee or any other amount payable under the Loan Documents is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or

terminated. The provisions of Sections 3.4, 3.5, 3.6, 10.3, 10.9, and 10.10 and Article 9 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby or the Termination Date.

**Section 1.6 Counterparts; Integration; Effectiveness; Electronic Execution.** This Credit Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Except as provided in Section 4.1, this Credit Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed signature page counterpart hereof by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Credit Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, any other similar state laws based on the Uniform Electronic Transactions Act or the Uniform Commercial Code, each as amended, and the parties hereto hereby waive any objection to the contrary, provided that (x) nothing herein shall require Administrative Agent to accept electronic signature counterparts in any form or format and (y) Administrative Agent reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to any Loan Document and the parties hereto agree to promptly deliver such manually executed counterpart signature pages. This Credit Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to Administrative Agent, Lead Arranger or any Lender, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 1.7 Severability.** In the event any one or more of the provisions contained in this Credit Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

**Section 1.8 Setoff.** If an Event of Default shall have occurred and be continuing, each Credit Party and each of their respective branches and Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits

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(general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Credit Party or any such branch or Affiliate to or for the credit or the account of any Loan Party or any of its Subsidiaries against any and all of the obligations of such Loan Party or such Subsidiary now or hereafter existing under this Credit Agreement or any other Loan Document to such Credit Party or such branch or Affiliate, irrespective of whether or not such Credit Party, branch or Affiliate shall have made any demand under this Credit Agreement or any other Loan Document and although such obligations of such Loan Party or Subsidiary may be contingent or unmatured or are owed to a branch, office or Affiliate of such Credit Party different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness, provided, that in the event that any Defaulting Lender shall exercise any right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.8 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 and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Credit Party and its branches and Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Credit Party and its branches and Affiliates may have. Each Credit Party agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 1.9 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) Governing Law. This Credit Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) Submission to Jurisdiction. Each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in New York County and of the United States District Court of the for the Southern District of New York and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Credit Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action 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 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 Credit Agreement or in any other Loan Document shall (i) affect any right that any Credit Party may otherwise have to bring any action or proceeding relating to this Credit Agreement or any other Loan Document against the Borrower or any other Loan Party or its properties in the courts of any jurisdiction, (ii) waive any statutory, regulatory, common law, or other rule, doctrine, legal restriction, provision or the like providing for the treatment of bank branches, bank agencies, or other bank offices as if they were separate juridical entities for certain purposes, including Uniform Commercial Code Sections 4-106, 4-A-105(1)(b), and 5-116(b), UCP 600 Article 3 and ISP98 Rule 2.02, and URDG 758 Article 3(a), or (iii) affect which courts have or do not have personal jurisdiction over the issuing bank or beneficiary of any Letter of Credit or any advising bank, nominated bank or assignee of proceeds thereunder or proper venue with respect to any litigation arising out of or relating to such Letter of Credit with, or affecting the rights of, any Person not a party to this Credit Agreement, whether or not such Letter of Credit contains its own jurisdiction submission clause.

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(c) Waiver of Objection to Venue. Each of the parties 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 Credit Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably 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 of the parties hereto irrevocably consents to service of process in the manner provided for notices in Section 10.1. Nothing in this Credit Agreement will affect the right of any party to this Credit Agreement to serve process in any other manner permitted by Applicable Law.

Section 1.10 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 CREDIT 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 HEREBY (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 CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 1.11 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or Fraudulent Transfer Law, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 1.12 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Credit Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Credit Agreement.

Section 1.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or L/C Obligation, together with all fees, charges and other amounts that are treated as interest thereon under Applicable Law (collectively the “charges”), shall exceed the maximum lawful rate (the “maximum rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding an interest in such Loan or L/C Obligation in accordance with

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Applicable Law, the rate of interest payable in respect of such Loan or L/C Obligation hereunder, together with all of the charges payable in respect thereof, shall be limited to the maximum rate and, to the extent lawful, the interest and the charges that would have been payable in respect of such Loan or L/C Obligation but were not payable as a result of the operation of this Section shall be cumulated, and the interest and the charges payable to such Lender in respect of other Loans or L/C Obligations or periods shall be increased (but not above the maximum rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

Section 1.14 Confidentiality; Treatment of Certain Information.

(a) Each Credit Party agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (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 requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by Applicable Law 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 Credit 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 or obligations under this Credit Agreement (other than Disqualified Institutions, except solely to the extent such disclosure was made to a Disqualified Institution who was not known by such Credit Party to be a Disqualified Institution at the time such disclosure was made) or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Credit Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower, its Subsidiaries or the Credit Facilities or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facilities, (viii) with the consent of the Borrower or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower or (z) is independently generated by the Administrative Agent, any Credit Party or any of their respective Affiliates. In addition, the Administrative Agent and the Lenders may disclose the existence of this Credit Agreement and information about this Credit Agreement and the Loan Documents to (i) market data collectors, league table providers and other similar service providers to the lending industry and (ii) service providers to the Administrative Agent or any Lender in connection with the administration of this Credit Agreement, the other Loan Documents, and the Commitments.

(b) For purposes of this Section, “Information” means all information received from any Loan Party or any of its Subsidiaries relating to any Loan Party or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any other Credit Party on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary or that is independently prepared by the Administrative Agent or any other Credit Party, provided that, in the case of information received from any Loan Party or any of its Subsidiaries after the Closing Date, 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

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maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding anything herein to the contrary, "Information" shall not include, and each Credit Party (and their Affiliates and respective partners, directors, officers, employees, agents, advisors and representatives) may disclose to any and all persons, without limitation of any kind, any information with respect to the U.S. federal income tax treatment and U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such Credit Party relating to such tax treatment and tax structure.

(c) The Loan Parties agree, on behalf of themselves and their Affiliates, that they will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Credit Agreement or any of the other Loan Documents without the prior written consent of such Person, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event, the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the Transactions (including, without limitation amount and type of facility) using the names, product photographs, logos or trademarks of the Loan Parties.

**Section 1.15 USA PATRIOT Act.** Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, and shall cause each Subsidiary to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with the USA PATRIOT Act.

**Section 1.16 No Fiduciary Duty.** Each Loan Party agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, such Loan Party and its Affiliates, on the one hand, and the Administrative Agent, the Lead Arrangers, the Documentation Agent, the Syndication Agent, the other Credit Parties and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Administrative Agent, the Lead Arrangers, the Documentation Agent, the Syndication Agent, the other Credit Parties or their respective Affiliates and no such duty will be deemed to have arisen in connection with any such transactions or communications.

**Section 1.17 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

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(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Credit Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.



## Section 1.18 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit 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 Credit Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit 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 sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant

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as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arrangers, their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent or the Lead Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Credit Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Loan Document Obligations),



(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Credit Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Credit Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent or the Lead Arrangers or any of their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Credit Agreement.

(c) The Administrative Agent and the Lead Arrangers hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Credit Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

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**Section 1.19 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.19, the following terms have the following meanings:

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

"Covered Entity" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

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Section 10.20 Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Guarantee or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any CEA Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such CEA Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such CEA Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 10.20 shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 10.20 to constitute, and this Section 10.20 shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

[Signature pages follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MIMEDX GROUP, INC., as the Borrower

By: /s/ Joseph H. Capper

Name: Joseph H. Capper

Title: Chief Executive Officer

MIMEDX TISSUE SERVICES, LLC., as a Guarantor

By: /s/ Joseph H. Capper  
Name: Joseph H. Capper  
Title: Chief Executive Officer

MIMEDX PROCESSING SERVICES, LLC, as a  
Guarantor

By: /s/ Joseph H. Capper  
Name:  
Title: Chief Executive Officer

MIMEDX SUPPLY LLC, as a Guarantor

By: /s/ Douglas Rice  
Name: Douglas Rice  
Title: Chief Financial Officer

/s/ Peter  
Carlson CITIZENS  
BANK, N.A. as the Administrative  
Agent, the L/C Issuer, the Swingline Lender  
**Peter Carlson**

Dated: July, 14,  
for himself and his heirs, estate, representatives, 2023 a  
successors, assigns, and agents Lender

By: /s/ Luis Gutierrez  
Name: Luis Gutierrez  
Title: Vice President

BANK OF AMERICA,  
NATIONAL

**Dated:**  
**ASSOCIATION** July 21,  
2023  
as a Lender

For MIMEDX Group, Inc.:

**By:**

/s/ Kate Surdez

(Signature)

H. Hope Walker

Kate Surdez

CHRO

H. Hope  
Walker

(Print Name)

(Title)

Name:

Title:

Senior  
Vice  
President

Exhibit 31.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULES 13a-14(A) AND 15d-14(A)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Joseph H. Capper, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, of MiMedx Group, Inc. (the "Report");
2. Based on my knowledge, this report 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; Report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, 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; 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 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 Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report 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: April 30, 2024

/s/ Joseph H. Capper

Joseph H. Capper

Chief Executive Officer

Exhibit 31.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO RULES 13a-14(A) AND 15d-14(A)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Doug Rice, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of MiMedx Group, Inc. (the "Report");
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: October April 30, 2023

/s/ Joseph H. Capper

Joseph H. Capper

Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO RULES 13a-14(A) AND 15d-14(A)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Doug Rice, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, of MiMedx Group, 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: October 30, 2023 2024

/s/ Doug Rice

Doug Rice

Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

The undersigned Joseph H. Capper, the Chief Executive Officer of MiMedx Group, Inc. (the "Company"), has executed this certification in connection with the filing with the Securities and Exchange Commission of the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 period ending March 31, 2024 (the "Report"). Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certifies, to his knowledge, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: ~~October~~ April 30, ~~2023~~ 2024

/s/ Joseph H. Capper

Joseph H. Capper

Chief Executive Officer

Exhibit 32.2

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

The undersigned, Doug Rice, the Chief Financial Officer of MiMedx Group, Inc. (the "Company"), has executed this certification in connection with the filing with the Securities and Exchange Commission of the Company's Quarterly Report on Form 10-Q for the ~~quarter ended September 30, 2023~~ period ending March 31, 2024 (the "Report"). Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certifies, to his knowledge, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: ~~October~~ April 30, ~~2023~~ 2024

/s/ Doug Rice

Doug Rice

Chief Financial Officer



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