

REFINITIV

DELTA REPORT

10-Q

TD SYNnex CORP

10-Q - AUGUST 31, 2023 COMPARED TO 10-Q - MAY 31, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	6496
CHANGES	293
DELETIONS	5994
ADDITIONS	209

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended May 31, 2023 August 31, 2023

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: 001-31892

TD SYNnex_Logo_Standard.jpg

TD SYNnex CORPORATION
(Exact name of registrant as specified in its charter)

Delaware

94-2703333

(State or other jurisdiction of incorporation or organization)

(IRS Employer Identification Number)

44201 Nobel Drive, Fremont, California

94538

(Address of principal executive offices)

(Zip Code)

(510) 656-3333

(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	SNX	The New York Stock Exchange

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 o

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 o

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

Large accelerated filer	x	Accelerated filer	o
Non-accelerated filer	o	Smaller reporting company	o
Emerging growth company	o		

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. o

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding as of June 28, 2023 September 26, 2023
Common Stock, \$0.001 par value	93,754,094 92,350,919

TD SYNnex CORPORATION

FORM 10-Q
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PART I - FINANCIAL INFORMATION

ITEM 1. Financial Statements

TD SYNnex CORPORATION
CONSOLIDATED BALANCE SHEETS
(currency and share amounts in thousands, except par value)
(unaudited)

		May 31, 2023	November 30, 2022		August 31, 2023	November 30, 2022
ASSETS	ASSETS			ASSETS		
Current assets:	Current assets:			Current assets:		
Cash and cash equivalents	Cash and cash equivalents	\$ 852,079	\$ 522,604	Cash and cash equivalents	\$ 1,250,872	\$ 522,604
Accounts receivable, net	Accounts receivable, net	8,376,421	9,420,999	Accounts receivable, net	8,892,130	9,420,999
Receivables from vendors, net	Receivables from vendors, net	983,633	819,135	Receivables from vendors, net	822,284	819,135
Inventories	Inventories	7,797,497	9,066,620	Inventories	7,462,162	9,066,620
Other current assets	Other current assets	711,563	671,507	Other current assets	741,052	671,507
Total current assets	Total current assets	18,721,193	20,500,865	Total current assets	19,168,500	20,500,865
Property and equipment, net	Property and equipment, net	427,615	421,064	Property and equipment, net	437,017	421,064
Goodwill	Goodwill	3,857,423	3,803,850	Goodwill	3,883,425	3,803,850
Intangible assets, net	Intangible assets, net	4,348,847	4,422,877	Intangible assets, net	4,313,828	4,422,877
Other assets, net	Other assets, net	623,870	585,342	Other assets, net	701,824	585,342
Total assets	Total assets	\$ 27,978,948	\$ 29,733,998	Total assets	\$ 28,504,594	\$ 29,733,998

(Amounts may not add or compute due to rounding)

The accompanying Notes are an integral part of these Consolidated Financial Statements (unaudited).

TD SYNnex CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(currency and share amounts in thousands, except per share amounts)
(unaudited)

		Three Months Ended		Six Months Ended			Three Months Ended		Nine Months Ended	
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022
Revenue	Revenue	\$ 14,062,124	\$ 15,269,791	\$ 29,187,495	\$ 30,739,768	Revenue	\$ 13,960,615	\$ 15,356,085	\$ 43,148,110	\$ 46,095,853
Cost of revenue	Cost of revenue	(13,098,714)	(14,314,002)	(27,220,518)	(28,815,318)	Cost of revenue	(12,989,342)	(14,440,055)	(40,209,860)	(43,255,373)
Gross profit	Gross profit	963,410	955,789	1,966,977	1,924,450	Gross profit	971,273	916,030	2,938,250	2,840,480
Selling, general and administrative expenses	Selling, general and administrative expenses	(673,698)	(670,574)	(1,327,921)	(1,323,425)	Selling, general and administrative expenses	(659,454)	(628,078)	(1,987,375)	(1,951,503)
Acquisition, integration and restructuring costs	Acquisition, integration and restructuring costs	(36,829)	(32,478)	(88,011)	(125,848)	Acquisition, integration and restructuring costs	(71,586)	(46,418)	(159,597)	(172,266)
Operating income	Operating income	252,883	252,737	551,045	475,177	Operating income	240,233	241,534	791,278	716,711
Interest expense and finance charges, net	Interest expense and finance charges, net	(74,285)	(47,968)	(154,485)	(90,311)	Interest expense and finance charges, net	(67,703)	(52,119)	(222,188)	(142,430)
Other expense, net	Other expense, net	(4,164)	(6,255)	(4,320)	(10,523)	Other expense, net	(2,371)	(1,852)	(6,691)	(12,375)
Income before income taxes	Income before income taxes	174,434	198,514	392,240	374,343	Income before income taxes	170,159	187,563	562,399	561,906
Provision for income taxes	Provision for income taxes	(41,347)	(49,597)	(92,133)	(93,102)	Provision for income taxes	(30,897)	(38,728)	(123,030)	(131,830)
Net income	Net income	\$ 133,087	\$ 148,917	\$ 300,107	\$ 281,241	Net income	\$ 139,262	\$ 148,835	\$ 439,369	\$ 430,076
Earnings per common share:	Earnings per common share:					Earnings per common share:				
Basic	Basic	\$ 1.41	\$ 1.55	\$ 3.18	\$ 2.93	Basic	\$ 1.49	\$ 1.55	\$ 4.67	\$ 4.48
Diluted	Diluted	\$ 1.41	\$ 1.55	\$ 3.17	\$ 2.92	Diluted	\$ 1.49	\$ 1.55	\$ 4.66	\$ 4.47
Weighted-average common shares outstanding:	Weighted-average common shares outstanding:					Weighted-average common shares outstanding:				
Basic	Basic	93,385	95,469	93,805	95,491	Basic	92,590	95,115	93,400	95,355
Diluted	Diluted	93,643	95,742	94,074	95,784	Diluted	92,881	95,407	93,676	95,648

(Amounts may not add or compute due to rounding)

The accompanying Notes are an integral part of these Consolidated Financial Statements (unaudited).

TD SYNnex CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(currency in thousands)
(unaudited)

Three Months Ended	Six Months Ended	Three Months Ended	Nine Months Ended
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		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022
Net income	Net income	\$ 133,087	\$ 148,917	\$ 300,107	\$ 281,241	Net income	\$ 139,262	\$ 148,835	\$ 439,369	\$ 430,076
Other comprehensive income (loss):	Other comprehensive income (loss):					Other comprehensive income (loss):				
Unrealized (losses) gains on cash flow hedges during the period, net of tax benefit (expense) of \$53 and (\$3,504) for the three months ended May 31, 2023 and 2022, respectively, and (\$235) and (\$6,422) for the six months ended May 31, 2023 and 2022, respectively										
		(164)	10,728	702	19,630					
Reclassification of net (gains) losses on cash flow hedges to net income, net of tax expense (benefit) of \$602 and (\$2,225) for the three months ended May 31, 2023 and 2022, respectively, and \$886 and (\$4,684) for the six months ended May 31, 2023 and 2022, respectively										
		(1,843)	6,813	(2,697)	14,314					
Unrealized gains on cash flow hedges during the period, net of tax expense of \$0 and (\$2,621) for the three months ended August 31, 2023 and 2022, respectively, and (\$235) and (\$9,043) for the nine months ended August 31, 2023 and 2022, respectively						Unrealized gains on cash flow hedges during the period, net of tax expense of \$0 and (\$2,621) for the three months ended August 31, 2023 and 2022, respectively	—	8,024	702	27,654
Reclassification of net (gains) losses on cash flow hedges to net income, net of tax expense (benefit) of \$880 and (\$1,367) for the three months ended August 31, 2023 and 2022, respectively, and \$1,766 and (\$6,051) for the nine months ended August 31, 2023 and 2022, respectively						Reclassification of net (gains) losses on cash flow hedges to net income, net of tax expense (benefit) of \$880 and (\$1,367) for the three months ended August 31, 2023 and 2022, respectively, and \$1,766 and (\$6,051) for the nine months ended August 31, 2023 and 2022, respectively	(2,756)	4,185	(5,453)	18,499

Total change in unrealized (losses) gains on cash flow hedges, net of taxes	Total change in unrealized (losses) gains on cash flow hedges, net of taxes	(2,007)	17,541	(1,995)	33,944	Total change in unrealized (losses) gains on cash flow hedges, net of taxes	(2,756)	12,209	(4,751)	46,153
Foreign currency translation adjustments and other, net of tax benefit (expense) of \$1,629 and (\$31) for the three months ended May 31, 2023 and 2022, respectively, and \$3,548 and (\$106) for the six months ended May 31, 2023 and 2022, respectively		62,610	(170,342)	146,699	(167,566)					
Foreign currency translation adjustments and other, net of tax benefit (expense) of \$2,807 and \$22 for the three months ended August 31, 2023 and 2022, respectively, and \$6,355 and (\$84) for the nine months ended August 31, 2023 and 2022, respectively						Foreign currency translation adjustments and other, net of tax benefit (expense) of \$2,807 and \$22 for the three months ended August 31, 2023 and 2022, respectively, and \$6,355 and (\$84) for the nine months ended August 31, 2023 and 2022, respectively	77,802	(336,271)	224,501	(503,837)
Reclassification of net foreign currency translation adjustment realized upon sale of foreign subsidiary, net of tax expense of \$0 for the three and nine months ended August 31, 2023						Reclassification of net foreign currency translation adjustment realized upon sale of foreign subsidiary, net of tax expense of \$0 for the three and nine months ended August 31, 2023	(578)	—	(578)	—
Other comprehensive income (loss)	Other comprehensive income (loss)	60,603	(152,801)	144,704	(133,622)	Other comprehensive income (loss)	74,468	(324,062)	219,172	(457,684)
Comprehensive income (loss)	Comprehensive income (loss)	\$ 193,690	\$ (3,884)	\$ 444,811	\$ 147,619	Comprehensive income (loss)	\$ 213,730	\$ (175,227)	\$ 658,541	\$ (27,608)

(Amounts may not add or compute due to rounding)

The accompanying Notes are an integral part of these Consolidated Financial Statements (unaudited).

TD SYNEX CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(currency in thousands, except per share amounts)
(unaudited)

Three Months Ended				Three Months Ended				Nine Months Ended			
May 31, 2023		May 31, 2022		May 31, 2023		May 31, 2022		August 31, 2023		August 31, 2022	
May 31, 2023		May 31, 2022		May 31, 2023		May 31, 2022		August 31, 2023		August 31, 2022	

Total Stockholders' equity, beginning balance	Total Stockholders' equity, beginning balance	\$ 8,148,586	\$ 8,021,857	\$ 8,025,506	\$ 7,905,975	Total Stockholders' equity, beginning balance	\$ 8,268,770	\$ 7,981,665	\$ 8,025,506	\$ 7,905,975
Common stock and additional paid-in capital:	Common stock and additional paid-in capital:					Common stock and additional paid-in capital:				
Beginning balance	Beginning balance	7,400,851	7,293,878	7,374,199	7,271,435	Beginning balance	7,422,815	7,315,762	7,374,199	7,271,435
Share-based compensation	Share-based compensation	18,687	19,928	43,282	40,255	Share-based compensation	20,442	19,554	63,724	59,809
Common stock issued for employee benefit plans		3,277	1,956	5,334	4,072					
Common stock issued and treasury stock reissued for employee benefit plans						Common stock issued and treasury stock reissued for employee benefit plans	(1,509)	1,944	3,825	6,016
Purchase of noncontrolling interest						Purchase of noncontrolling interest	—	2,640	—	2,640
Ending balance	Ending balance	7,422,815	7,315,762	7,422,815	7,315,762	Ending balance	7,441,748	7,339,900	7,441,748	7,339,900
Treasury stock:	Treasury stock:					Treasury stock:				
Beginning balance	Beginning balance	(458,698)	(230,374)	(337,217)	(201,139)	Beginning balance	(521,157)	(259,800)	(337,217)	(201,139)
Repurchases of common stock for tax withholdings on equity awards	Repurchases of common stock for tax withholdings on equity awards	(1,084)	(403)	(7,765)	(5,881)	Repurchases of common stock for tax withholdings on equity awards	(828)	(105)	(8,593)	(5,986)
Reissuance of treasury stock for employee benefit plans						Reissuance of treasury stock for employee benefit plans	3,803	—	3,803	—
Repurchases of common stock	Repurchases of common stock	(61,375)	(29,023)	(176,175)	(52,780)	Repurchases of common stock	(103,978)	(30,256)	(280,153)	(83,036)
Ending balance	Ending balance	(521,157)	(259,800)	(521,157)	(259,800)	Ending balance	(622,160)	(290,161)	(622,160)	(290,161)
Retained earnings:	Retained earnings:					Retained earnings:				
Beginning balance	Beginning balance	1,842,042	1,275,368	1,708,234	1,171,873	Beginning balance	1,942,118	1,395,519	1,708,234	1,171,873
Net income	Net income	133,087	148,917	300,107	281,241	Net income	139,262	148,835	439,369	430,076
Cash dividends declared	Cash dividends declared	(33,011)	(28,766)	(66,223)	(57,595)	Cash dividends declared	(32,682)	(28,561)	(98,905)	(86,156)
Ending balance	Ending balance	1,942,118	1,395,519	1,942,118	1,395,519	Ending balance	2,048,698	1,515,793	2,048,698	1,515,793
Accumulated other comprehensive loss:	Accumulated other comprehensive loss:					Accumulated other comprehensive loss:				
Beginning balance	Beginning balance	(635,609)	(317,015)	(719,710)	(336,194)	Beginning balance	(575,006)	(469,816)	(719,710)	(336,194)
Other comprehensive income (loss)	Other comprehensive income (loss)	60,603	(152,801)	144,704	(133,622)	Other comprehensive income (loss)	74,468	(324,062)	219,172	(457,684)
Ending balance	Ending balance	(575,006)	(469,816)	(575,006)	(469,816)	Ending balance	(500,538)	(793,878)	(500,538)	(793,878)
Total stockholders' equity, ending balance	Total stockholders' equity, ending balance	\$ 8,268,770	\$ 7,981,665	\$ 8,268,770	\$ 7,981,665	Total stockholders' equity, ending balance	\$ 8,367,748	\$ 7,771,654	\$ 8,367,748	\$ 7,771,654
Cash dividends declared per share	Cash dividends declared per share	\$ 0.35	\$ 0.30	\$ 0.70	\$ 0.60	Cash dividends declared per share	\$ 0.35	\$ 0.30	\$ 1.05	\$ 0.90

(Amounts may not add or compute due to rounding)

The accompanying Notes are an integral part of these Consolidated Financial Statements (unaudited).

TD SYNnex CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(currency in thousands)
(unaudited)

		Six Months Ended		Nine Months Ended	
		May 31, 2023	May 31, 2022	August 31, 2023	August 31, 2022
Cash flows from operating activities:	Cash flows from operating activities:			Cash flows from operating activities:	
Net income	Net income	\$ 300,107	\$ 281,241	Net income	\$ 439,369
Adjustments to reconcile net income to net cash provided by (used in) operating activities:	Adjustments to reconcile net income to net cash provided by (used in) operating activities:			Adjustments to reconcile net income to net cash provided by (used in) operating activities:	\$ 430,076
Depreciation and amortization	Depreciation and amortization	209,632	255,126	Depreciation and amortization	314,917
Share-based compensation	Share-based compensation	43,282	40,255	Share-based compensation	63,724
Provision for doubtful accounts	Provision for doubtful accounts	19,511	24,492	Provision for doubtful accounts	30,338
Other	Other	1,745	5,167	Other	(5,505)
Changes in operating assets and liabilities:	Changes in operating assets and liabilities:			Changes in operating assets and liabilities:	
Accounts receivable, net	Accounts receivable, net	1,204,467	301,882	Accounts receivable, net	724,701
Receivables from vendors, net	Receivables from vendors, net	(153,380)	65,864	Receivables from vendors, net	11,933
Inventories	Inventories	1,339,409	(1,863,551)	Inventories	1,704,394
Accounts payable	Accounts payable	(2,063,255)	661,189	Accounts payable	(1,777,131)
Other operating assets and liabilities	Other operating assets and liabilities	(296,768)	(56,147)	Other operating assets and liabilities	(310,035)
Net cash provided by (used in) operating activities	Net cash provided by (used in) operating activities	604,750	(284,482)	Net cash provided by (used in) operating activities	1,196,705
Cash flows from investing activities:	Cash flows from investing activities:			Cash flows from investing activities:	
Purchases of property and equipment	Purchases of property and equipment	(67,609)	(46,501)	Purchases of property and equipment	(107,417)
Other	Other	3,071	(150)	Other	(5,740)
Net cash used in investing activities	Net cash used in investing activities	(64,538)	(46,651)	Net cash used in investing activities	(113,157)
Cash flows from financing activities:	Cash flows from financing activities:			Cash flows from financing activities:	
Dividends paid	Dividends paid	(66,223)	(57,595)	Dividends paid	(98,905)
Repurchases of common stock	Repurchases of common stock	(174,791)	(52,780)	Repurchases of common stock	(277,760)
Net borrowings on revolving credit loans		29,424	34,312		(83,036)

Net (repayments) borrowings on revolving credit loans				Net (repayments) borrowings on revolving credit loans		
				(27,457)	81,992	
Principal payments on long term debt	Principal payments on long term debt	(33,441)	(52,078)	Principal payments on long term debt	(52,746)	(71,411)
Proceeds from issuance of common stock		5,334	4,072			
Proceeds from issuance of common stock and reissuances of treasury stock				Proceeds from issuance of common stock and reissuances of treasury stock		
				7,628	6,016	
Repurchases of common stock for tax withholdings on equity awards	Repurchases of common stock for tax withholdings on equity awards	(7,765)	(5,881)	Repurchases of common stock for tax withholdings on equity awards	(8,593)	(5,986)
Borrowings on long-term debt				Borrowings on long-term debt		
				51,837	—	
Other	Other	375	—	Other	375	(665)
Net cash used in financing activities	Net cash used in financing activities	(247,087)	(129,950)	Net cash used in financing activities	(405,621)	(159,246)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	Effect of exchange rate changes on cash, cash equivalents and restricted cash	36,098	(12,082)	Effect of exchange rate changes on cash, cash equivalents and restricted cash	50,089	(55,916)
Net increase (decrease) in cash, cash equivalents and restricted cash	Net increase (decrease) in cash, cash equivalents and restricted cash	329,223	(473,165)	Net increase (decrease) in cash, cash equivalents and restricted cash	728,016	(643,936)
Cash, cash equivalents and restricted cash at beginning of period	Cash, cash equivalents and restricted cash at beginning of period	522,856	994,913	Cash, cash equivalents and restricted cash at beginning of period	522,856	994,913
Cash, cash equivalents and restricted cash at end of period	Cash, cash equivalents and restricted cash at end of period	\$ 852,079	\$ 521,748	Cash, cash equivalents and restricted cash at end of period	\$ 1,250,872	\$ 350,977

(Amounts may not add or compute due to rounding)

The accompanying Notes are an integral part of these Consolidated Financial Statements (unaudited).

TD SYNnex CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
For the three and six nine months ended May 31, 2023 August 31, 2023 and 2022
(Except per share amounts or as otherwise indicated, currency and share amounts in thousands)
(unaudited)

NOTE 1—ORGANIZATION AND BASIS OF PRESENTATION:

TD SYNnex Corporation (together with its subsidiaries, herein referred to as “SYNNEX”, “TD SYNnex” or the “Company”) is a leading global distributor and solutions aggregator for the information technology (“IT”) ecosystem, headquartered in Fremont, California and Clearwater, Florida and has operations in North and South America, Europe and Asia-Pacific and Japan. The Company operates in three reportable segments based on its geographic regions: the Americas, Europe and Asia-Pacific and Japan (“APJ”).

On March 22, 2021, SYNnex entered into an agreement and plan of merger (the “Merger Agreement”) which provided that legacy SYNnex Corporation would acquire legacy Tech Data Corporation, a Florida corporation (“Tech Data”) through a series of mergers, which would result in Tech Data becoming an indirect subsidiary of TD SYNnex Corporation (collectively, the “Merger”). On September 1, 2021, pursuant to the terms of the Merger Agreement, the Company acquired all the outstanding shares of common stock of Tiger Parent (AP) Corporation, the parent corporation of Tech Data, for consideration of \$1.6 billion in cash (\$1.1 billion in cash after giving effect to a \$500.0 million equity contribution by Tiger Parent Holdings, L.P., Tiger Parent (AP) Corporation's sole stockholder and an affiliate of Apollo Global Management, Inc., to Tiger Parent (AP) Corporation

prior to the effective time of the Merger) and 44 million shares of common stock of SYNnex valued at approximately \$5.6 billion. The combined company is referred to as TD SYNnex.

The Consolidated Financial Statements include the accounts of the Company, its wholly-owned subsidiaries, majority-owned subsidiaries in which no substantive participating rights are held by minority stockholders and variable interest entities if the Company is the primary beneficiary. All intercompany accounts and transactions have been eliminated. The Company operates on a fiscal year that ends on November 30.

The accompanying interim unaudited Consolidated Financial Statements as of May 31, 2023 August 31, 2023 and for the three and six nine months ended May 31, 2023 August 31, 2023 and 2022 have been prepared by the Company, without audit, in accordance with the rules and regulations of the United States ("U.S.") Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles ("GAAP") in the United States have been condensed or omitted in accordance with such rules and regulations. In the opinion of management, the accompanying unaudited Consolidated Financial Statements reflect all adjustments, consisting only of normal recurring adjustments, necessary to state fairly the financial position of the Company and its results of operations and cash flows as of and for the periods presented. These financial statements should be read in conjunction with the annual audited financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended November 30, 2022.

Interim results of operations are not necessarily indicative of financial results for a full year, and the Company makes no representations related thereto. Certain columns and rows may not add or compute due to the use of rounded numbers.

NOTE 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

For a discussion of the Company's significant accounting policies, refer to the discussion in the Company's Annual Report on Form 10-K for the fiscal year ended November 30, 2022. No significant new accounting pronouncements were adopted during the six months ended May 31, 2023.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expense during the reporting period. The Company evaluates these estimates on a regular basis and bases them on historical experience and on various assumptions that the Company believes are reasonable. Actual results could differ from the estimates.

TD SYNnex CORPORATION NOTES TO CONSOLIDATED FINANCIAL STATEMENTS For the three and six nine months ended May 31, 2023 August 31, 2023 and 2022 (Except per share amounts or as otherwise indicated, currency and share amounts in thousands) (unaudited)

Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentration of credit risk consist principally of cash and cash equivalents, accounts receivable, receivables from vendors and derivative instruments.

The Company's cash and cash equivalents and derivative instruments are transacted and maintained with financial institutions with high credit standing, and their compositions and maturities are regularly monitored by management. Through May 31, 2023 August 31, 2023, the Company has not experienced any material credit losses on such deposits and derivative instruments.

Accounts receivable include amounts due from customers, including related party customers. Receivables from vendors, net, includes amounts due from original equipment manufacturer ("OEM") vendors primarily in the technology industry. The Company performs ongoing credit evaluations of its customers' financial condition and limits the amount of credit extended when deemed necessary, but generally requires no collateral. The Company also maintains allowances for expected credit losses. In estimating the required allowances, the Company takes into consideration the overall quality and aging of its receivable portfolio, the existence of credit insurance and specifically identified customer and vendor risks.

The following table provides revenue generated from products purchased from vendors that exceeded 10% of our consolidated revenue for the periods indicated (as a percent of consolidated revenue):

		Three Months Ended				Six Months Ended				Three Months Ended				Nine Months Ended			
		May 31, 2023		May 31, 2022		May 31, 2023		May 31, 2022		August 31, 2023		August 31, 2022		August 31, 2023		August 31, 2022	
Apple, Inc.	Apple, Inc.	N/A (1)		10	%	10	%	11	%	10	%	12	%	10	%	11	%
Cisco Systems, Inc.	Cisco Systems, Inc.	10	%	N/A (1)		N/A (1)		N/A (1)		10	%	N/A (1)		N/A (1)		N/A (1)	
HP Inc.	HP Inc.	10	%	11	%	N/A (1)		10	%	10	%	10	%	N/A (1)		10	%
Lenovo, Inc.	Lenovo, Inc.	N/A (1)		10	%	N/A (1)		N/A (1)									

(1) Revenue generated from products purchased from this vendor was less than 10% of consolidated revenue during the period presented.

One customer accounted for 12% 11% of the Company's total revenue during both the three and 11% nine months ended August 31, 2023. One customer accounted for 12% of the Company's total revenue during the three and six months ended May 31, 2023, respectively. August 31, 2022. No single customer accounted for more than 10% of the

Company's total revenue during the three and six nine months ended May 31, 2022 August 31, 2022. As of May 31, 2023 August 31, 2023 and November 30, 2022, no single customer comprised more than 10% of the consolidated accounts receivable balance.

Accounts Receivable

The Company maintains an allowance for doubtful accounts as an estimate to cover the future expected credit losses resulting from uncertainty regarding collections from customers or OEM vendors to make payments for outstanding balances. In estimating the required allowance, the Company takes into consideration historical credit losses, current conditions and reasonable and supportable forecasts. Adjustments to historical loss information are made for differences in current conditions as well as changes in forecasted macroeconomic conditions, such as changes in unemployment rates or gross domestic product growth. Expected credit losses are estimated on a pool basis when similar risk characteristics exist using an age-based reserve model. Receivables that do not share risk characteristics are evaluated on an individual basis.

The Company has uncommitted supply-chain financing programs with global financial institutions under which trade accounts receivable of certain customers and their affiliates may be acquired, without recourse, by the financial institutions. Available capacity under these programs is dependent on the level of the Company's trade accounts receivable with these customers and the financial institutions' willingness to purchase such receivables. In addition, certain of these programs also require that the Company continue to service, administer and collect the sold accounts receivable. As of May 31, 2023 August 31, 2023 and November 30, 2022, accounts receivable sold to and held by the financial institutions under these programs were \$1.1 billion \$834.5 million and \$1.4 billion, respectively. Discount fees related to the sale of trade accounts receivable under these facilities are included in "Interest expense and finance charges, net" in the Consolidated Statements of Operations. Discount fees for these programs totaled \$12.0 \$12.5 million and \$23.7 \$36.2 million in the three and six nine months ended May 31, 2023 August 31, 2023, respectively, and \$3.9 \$5.0 million and \$6.9 \$11.9 million in the three and six nine months ended May 31, 2022 August 31, 2022, respectively.

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Seasonality

The Company's operating results are affected by the seasonality of the IT products industry. The Company has historically experienced slightly higher sales in the first and fourth fiscal quarters due to patterns in capital budgeting, federal government spending and purchasing cycles of its customers and end-users. These historical patterns may not be repeated in subsequent periods.

Revenue Recognition

The Company generates revenue primarily from the sale of various IT products.

The Company recognizes revenues from the sale of IT hardware and software as control is transferred to customers, which is at the point in time when the product is shipped or delivered. The Company accounts for a contract with a customer when it has written approval, the contract is committed, the rights of the parties, including payment terms, are identified, the contract has commercial substance and consideration is probable of collection. Binding purchase orders from customers together with agreement to the Company's terms and conditions of sale by way of an executed agreement or other signed documents are considered to be the contract with a customer. Products sold by the Company are delivered via shipment from the Company's facilities, drop-shipment directly from the vendor, or by electronic delivery of software products. In situations where arrangements include customer acceptance provisions, revenue is recognized when the Company can objectively verify the products comply with specifications underlying acceptance and the customer has control of the products. Revenue is presented net of taxes collected from customers and remitted to government authorities. The Company generally invoices a customer upon shipment, or in accordance with specific contractual provisions. Payments are due as per contract terms and do not contain a significant financing component. Service revenues represents less than 10% of the total revenue for the periods presented.

Provisions for sales returns and allowances are estimated based on historical data and are recorded concurrently with the recognition of revenue. A liability is recorded at the time of sale for estimated product returns based upon historical experience and an asset is recognized for the amount expected to be recorded in inventory upon product return. These provisions are reviewed and adjusted periodically by the Company. Revenue is reduced for early payment discounts and volume incentive rebates offered to customers, which are considered variable consideration, at the time of sale based on an evaluation of the contract terms and historical experience.

The Company recognizes revenue on a net basis on certain contracts, where the Company's performance obligation is to arrange for the products or services to be provided by another party or the rendering of logistics services for the delivery of inventory for which the Company does not assume the risks and rewards of ownership, by recognizing the margins earned in revenue with no associated cost of revenue. Such arrangements include supplier service contracts, post-contract software support services, cloud computing and software as a service arrangements, certain fulfillment contracts and extended warranty contracts.

The Company considers shipping and handling activities as costs to fulfill the sale of products. Shipping revenue is included in revenue when control of the product is transferred to the customer, and the related shipping and handling costs are included in cost of revenue.

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Reclassifications

Certain reclassifications have been made to prior period amounts in the Consolidated Financial Statements to conform to the current period presentation. These reclassifications did not have a material impact on previously reported amounts.

Recently Issued Accounting Pronouncements

In September 2022, the FASB issued an accounting standards update which will require new enhanced disclosures by the buyer in supplier finance programs. Disclosures will include key terms of the program, including payment terms, along with the amount of related obligations, the financial statement caption that includes such obligations, and a rollforward of activity related to the obligations during the period. The new accounting standard must be adopted retrospectively to the earliest comparative period presented, except for the rollforward requirement, which should be adopted prospectively. The accounting standard is effective for the Company beginning with the quarter ending February 29, 2024, except for the rollforward requirement which is effective for the quarter ending February 28, 2025. Early adoption is permitted. While the new accounting standard is not expected to have an impact on the Company's financial condition, results of operations or cash flows, the Company is currently evaluating the impact the new accounting standard will have on its disclosures in the notes to the consolidated financial statements. The Company is evaluating the terms of its arrangements with certain of its suppliers and currently estimates that approximately \$2 \$2.0 billion to \$3 \$2.5 billion of balances included in "Accounts payable" on the Consolidated Balance Sheet as of August 31, 2023 may be within the scope of the standard.

In March 2020, the FASB issued optional guidance for a limited time to ease the potential burden in accounting for or recognizing the effects of reference rate reform, particularly, the risk of cessation of the London Interbank Offered Rate ("LIBOR") on financial reporting. The guidance provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The amendments are elective and are effective upon issuance for all entities through December 31, 2022, which was extended through December 31, 2024 per an update the FASB issued in December 2022. On May 22, 2023, the TD SYNEX Credit Agreement (as defined below) was amended to replace LIBOR with the Secured Overnight Financing Rate ("SOFR") as its benchmark rate (see Note 8 - Borrowings for further discussion of the TD SYNEX Credit Agreement). The Company does not currently expect any material impacts from the adoption of this new guidance. guidance did not have any material impacts for the Company.

NOTE 3—ACQUISITION, INTEGRATION AND RESTRUCTURING COSTS:

Acquisition, integration and restructuring costs are primarily comprised of costs related to the Merger and costs related to the Global Business Optimization 2 Program initiated by Tech Data prior to the Merger (the "GBO 2 Program").

The Merger

The Company incurred acquisition, integration and restructuring costs related to the completion of the Merger, including professional services costs, personnel and other costs, long-lived assets charges and termination fees, and stock-based compensation expense. Professional services costs are primarily comprised of IT and other consulting services, as well as legal expenses. Personnel and other costs are primarily comprised of costs related to retention and other bonuses, severance and duplicative labor costs. Long-lived assets charges and termination fees are comprised of include accelerated depreciation and amortization expense of \$5.3 million \$4.7 million and \$11.5 million \$16.2 million recorded during the three and six nine months ended May 31, 2023 August 31, 2023, respectively and \$52.9 million \$4.4 million and \$57.3 million recorded during the six three and nine months ended May 31, 2022 August 31, 2022, respectively due to changes in asset useful lives in conjunction with the consolidation of certain IT systems, as well as \$2.3 million systems. Long-lived asset charges and \$12.5 million termination fees also include \$0.4 million and \$12.9 million recorded during the three and six nine months ended May 31, 2023 August 31, 2023, respectively for termination fees related to certain IT systems. There were no long-lived assets charges and termination fees systems, along with \$4.3 million recorded during the three and nine months ended May 31, 2022 August 31, 2022 for impairment charges. Stock-based compensation expense primarily relates to costs associated with the conversion of certain Tech Data performance-based equity awards issued prior to the Merger into restricted shares of TD SYNEX (refer to Note 4 - Share-Based Compensation for further information) and expenses for certain restricted stock awards issued in conjunction with the Merger.

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In July 2023, the Company offered a voluntary severance program ("VSP") to certain co-workers in the United States as part of the Company's cost optimization efforts related to the Merger. The Company incurred \$37.2 million of costs in connection with the VSP during the three and nine months ended August 31, 2023, including \$30.0 million of severance costs and \$7.2 million of duplicative labor costs.

During the three and six nine months ended May 31, 2023 August 31, 2023 and 2022, acquisition and integration expenses related to the Merger were composed of the following:

		Three Months Ended		Six Months Ended				Three Months Ended		Nine Months Ended	
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022			August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022
Professional services costs	Professional services costs	\$ 4,311	\$ 5,793	\$ 11,121	\$ 13,941	Professional services costs	\$ 5,036	\$ 6,514	\$ 16,157	\$ 20,455	
Personnel and other costs	Personnel and other costs	11,275	4,404	24,282	15,348	Personnel and other costs	9,430	11,699	33,712	27,047	

Long-lived assets charges and termination fees	Long-lived assets charges and termination fees	7,613	—	23,989	52,871	Long-lived assets charges and termination fees	5,078	8,693	29,067	61,564
Stock-based compensation	Stock-based compensation	11,039	12,889	22,560	26,465	Stock-based compensation	11,912	12,911	34,472	39,376
Voluntary severance program costs						Voluntary severance program costs	37,178	—	37,178	—
Total	Total	\$ 34,238	\$ 23,086	\$ 81,952	\$ 108,625	Total	\$ 68,634	\$ 39,817	\$ 150,586	\$ 148,442

GB0 2 Program

Prior to the Merger, Tech Data implemented its GBO 2 Program that includes investments to optimize and standardize processes and apply data and analytics to be more agile in a rapidly evolving environment, increasing productivity, profitability and optimizing net-working capital. TD SYNEX continued this program in conjunction with the Company's integration activities. Acquisition, integration and restructuring expenses related to the GBO 2 Program are primarily comprised of restructuring costs and other costs. Restructuring costs are comprised of severance costs and other associated exit costs, including certain consulting costs. Other costs are primarily comprised of personnel costs, facilities costs and certain professional services fees not related to restructuring activities.

The Company incurred acquisition, integration and restructuring costs under the GBO 2 Program of \$2.6 million \$3.0 million and \$6.1 million \$9.0 million during the three and six nine months ended May 31, 2023 August 31, 2023, respectively, and \$9.4 million \$6.6 million and \$17.2 million \$23.8 million during the three and six nine months ended May 31, 2022 August 31, 2022, respectively. The Company does not expect to incur material costs under the GBO 2 Program in future periods. Cash payments related to restructuring costs and accrued restructuring balances related to the GBO 2 Program are not material as of May 31, 2023 August 31, 2023.

NOTE 4—SHARE-BASED COMPENSATION:

Overview of TD SYNEX Stock Incentive Plans

The Company recognizes share-based compensation expense for all share-based awards made to employees and directors, including employee stock options, restricted stock awards ("RSAs"), restricted stock units ("RSUs"), performance-based RSUs and employee stock purchase rights, based on estimated fair values.

The following tables summarize the Company's share-based awards activity for TD SYNEX stock incentive plans during the six nine months ended May 31, 2023 August 31, 2023.

A summary of the changes in the Company's stock options is set forth below:

	Stock options
Balances as of November 30, 2022	677
Exercised	(62) (82)
Balances May 31, 2023 as of August 31, 2023	615 595

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A summary of the changes in the Company's non-vested RSAs and RSUs is presented below:

	RSAs and RSUs
Nonvested at as of November 30, 2022	1,307
Granted	84 86
Vested	(206) (238)
Canceled	(62) (67)
Nonvested at May 31, 2023 as of August 31, 2023	1,123 1,088

A summary of share-based compensation expense in the Consolidated Statements of Operations for TD SYNEX stock incentive plans is presented below:

Three Months Ended		Six Months Ended		Three Months Ended		Nine Months Ended	
May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022	August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022

Selling, general and administrative expenses	Selling, general and administrative expenses	\$ 7,648	\$ 7,038	\$ 20,722	\$ 13,788	Selling, general and administrative expenses	\$ 8,530	\$ 6,643	\$ 29,252	\$ 20,431
Acquisition, integration and restructuring costs (on awards issued in connection with the Merger)		1,486	1,596	2,978	3,399					
Acquisition, integration and restructuring costs						Acquisition, integration and restructuring costs	2,312	1,511	5,290	4,910
Total share-based compensation expense	Total share-based compensation expense	\$ 9,134	\$ 8,634	\$ 23,700	\$ 17,187	Total share-based compensation expense	\$ 10,842	\$ 8,154	\$ 34,542	\$ 25,341

Tech Data Equity Awards

Prior to the Merger, certain of Tech Data's employees were granted performance-based equity awards in Tiger Parent Holdings L.P., a partnership entity that was the parent company of Tiger Parent (AP) Corporation and Tech Data, that were unvested at the time of the closing of the Merger. Upon closing of the Merger, the unvested performance-based equity awards were converted into restricted shares of TD SYNnex that vest over two years.

The following table summarizes the activity related to these restricted shares during the **six nine** months ended **May 31, 2023** **August 31, 2023**:

	Restricted shares
Nonvested at as of November 30, 2022	350
Vested	(15)
Canceled	(34)
Nonvested at May 31, 2023 as of August 31, 2023	301

The restricted shares had a fair value of \$127.60 per share upon closing of the Merger which is being recorded as share-based compensation expense on a straight-line basis over the vesting period in "Acquisition, integration, and restructuring costs" in the Consolidated Statement of Operations. The Company recorded **\$9.5 million** **\$9.6 million** and **\$19.6 million** **\$29.2 million** of share-based compensation expense related to these restricted shares in "Acquisition, integration, and restructuring costs" during the three and **six nine** months ended **May 31, 2023** **August 31, 2023**, respectively, and **\$11.3 million** **\$11.4 million** and **\$23.0 million** **\$34.5 million** during the three and **six nine** months ended **May 31, 2022** **August 31, 2022**, respectively. As **All of** May 31, 2023, there was \$9.6 million of total unamortized share-based compensation expense related to these **the remaining unvested** restricted shares **to be recognized over a weighted-average amortization period as of** 0.25 years. **August 31, 2023 vested on** September 1, 2023.

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NOTE 5—BALANCE SHEET COMPONENTS:

Cash, cash equivalents and restricted cash:

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the Consolidated Balance Sheets that sum to the total of the same amounts shown in the Consolidated Statements of Cash Flows:

		As of				As of	
		May 31, 2023	November 30, 2022			August 31, 2023	November 30, 2022
Cash and cash equivalents	Cash and cash equivalents	\$ 852,079	\$ 522,604	Cash and cash equivalents	\$ 1,250,872	\$ 522,604	
Restricted cash included in other current assets	Restricted cash included in other current assets	—	252	Restricted cash included in other current assets	—	252	
Cash, cash equivalents and restricted cash	Cash, cash equivalents and restricted cash	\$ 852,079	\$ 522,856	Cash, cash equivalents and restricted cash	\$ 1,250,872	\$ 522,856	

Accounts receivable, net:

		As of		As of	
		May 31, 2023	November 30, 2022	August 31, 2023	November 30, 2022
Accounts receivable	Accounts receivable	\$ 8,511,937	\$ 9,550,741	\$ 9,038,528	\$ 9,550,741
Less: Allowance for doubtful accounts	Less: Allowance for doubtful accounts	(135,516)	(129,742)	(146,398)	(129,742)
Accounts receivable, net	Accounts receivable, net	\$ 8,376,421	\$ 9,420,999	\$ 8,892,130	\$ 9,420,999

Receivables from vendors, net:

		As of		As of	
		May 31, 2023	November 30, 2022	August 31, 2023	November 30, 2022
Receivables from vendors	Receivables from vendors	\$ 1,001,608	\$ 831,539	\$ 838,486	\$ 831,539
Less: Allowance for doubtful accounts	Less: Allowance for doubtful accounts	(17,975)	(12,404)	(16,202)	(12,404)
Receivables from vendors, net	Receivables from vendors, net	\$ 983,633	\$ 819,135	\$ 822,284	\$ 819,135

Allowance for doubtful trade receivables:

Balance at as of November 30, 2022	\$ 129,742
Additions	19,511 30,338
Write-offs, recoveries, reclassifications and foreign exchange translation	(13,737) (13,682)
Balance at May 31, 2023 as of August 31, 2023	\$ 135,516 146,398

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Allowance for doubtful receivables from vendors:

Balance at as of November 30, 2022	\$ 12,404
Additions	5,897 4,026
Write-offs, recoveries, reclassifications and foreign exchange translation	(326) (228)
Balance at May 31, 2023 as of August 31, 2023	\$ 17,975 16,202

Accumulated other comprehensive loss:

The components of accumulated other comprehensive loss ("AOCI"), net of taxes, were as follows:

		Unrealized gains on cash flow hedges, net of taxes	Foreign currency translation adjustment and other, net of taxes	Total		Unrealized gains on cash flow hedges, net of taxes	Foreign currency translation adjustment and other, net of taxes	Total
Balance as of November 30, 2022	Balance as of November 30, 2022	\$ 6,169	\$ (725,879)	\$ (719,710)	Balance as of November 30, 2022	\$ 6,169	\$ (725,879)	\$ (719,710)

Other comprehensive income before reclassification	Other comprehensive income before reclassification	702	146,699	147,401	Other comprehensive income before reclassification	702	224,501	225,203
Reclassification of gains from accumulated other comprehensive loss								
		(2,697)	—	(2,697)				
Balance as of May 31, 2023		\$ 4,174	\$ (579,180)	\$ (575,006)				
Reclassifications from accumulated other comprehensive loss								
						(5,453)	(578)	(6,031)
Balance as of August 31, 2023					Balance as of August 31, 2023	\$ 1,418	\$ (501,956)	\$ (500,538)

Refer to [Note 6](#) - Derivative Instruments for the location of gains and losses reclassified from AOCI to the Consolidated Statements of Operations on derivative instruments. The reclassification of the net foreign currency translation adjustment realized upon sale of a foreign subsidiary was recorded within selling, general and administrative expenses in the Consolidated Statements of Operations.

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NOTE 6—DERIVATIVE INSTRUMENTS:

In the ordinary course of business, the Company is exposed to foreign currency risk, interest rate risk, equity risk, commodity price changes and credit risk. The Company enters into transactions, and owns monetary assets and liabilities, that are denominated in currencies other than the legal entity's functional currency. The Company may enter into forward contracts, option contracts, swaps, or other derivative instruments to offset a portion of the risk on expected future cash flows, earnings, net investments in certain international subsidiaries and certain existing assets and liabilities. However, the Company may choose not to hedge certain exposures for a variety of reasons including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset more than a portion of the financial impact resulting from movements in foreign currency exchange or interest rates. The Company does not use derivative instruments to cover equity risk and credit risk. The Company's hedging program is not used for trading or speculative purposes.

All derivatives are recognized on the balance sheet at their fair value. Changes in the fair value of derivatives are recorded in the Consolidated Statements of Operations, or as a component of AOCI in the Consolidated Balance Sheets, as discussed below.

Cash Flow Hedges

The Company uses interest rate swap derivative contracts to economically convert a portion of its variable-rate debt to fixed-rate debt. Gains and losses on cash flow hedges are recorded in AOCI until the hedged item is recognized in earnings. Deferred gains and losses associated with cash flow hedges of interest payments are recognized in "Interest expense and finance charges, net" in the same period as the related expense is recognized. Derivative instruments designated as cash flow hedges must be de-designated as hedges when it is probable the forecasted hedged transaction will not occur in the initially identified time period or within a subsequent two-month time period. Deferred gains and losses in AOCI associated with such derivative instruments are reclassified into earnings in the period of de-designation. Any subsequent changes in fair value of such derivative instruments are recorded in earnings unless they are re-designated as hedges of other transactions. The Company classifies cash flows related to the settlement of its cash flow hedges as operating activities in the Consolidated Statements of Cash Flows. The Company terminated its remaining interest rate swaps in May 2023 and had no interest rate swaps designated as cash flow hedges outstanding as of [May 31, 2023](#) [August 31, 2023](#).

Net Investment Hedges

The Company has entered into foreign currency forward contracts to hedge a portion of its net investment in euro denominated foreign operations which are designated as net investment hedges. The Company entered into the net investment hedges to offset the risk of change in the U.S. dollar value of the Company's investment in a euro functional subsidiary due to fluctuating foreign exchange rates. Gains and losses on the net investment hedges have been recorded in AOCI and will remain in AOCI until the sale or substantial liquidation of the underlying assets of the Company's investment. The initial fair value of hedge components excluded from the assessment of effectiveness is being recognized in the Consolidated Statements of Operations under a systematic and rational method over the life of the hedging instrument. The Company classifies cash flows related to the settlement of its net investment hedges as investing activities in the Consolidated Statements of Cash Flows.

Non-Designated Derivatives

The Company uses short-term forward contracts to offset the foreign exchange risk of assets and liabilities denominated in currencies other than the functional currency of the respective entities. These contracts, which are not designated as hedging instruments, mature or settle within twelve months. Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item to which the derivative relates.

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Fair Values of Derivative Instruments in the Consolidated Balance Sheets

The fair values of the Company's derivative instruments are disclosed in [Note 7](#) - Fair Value Measurements and summarized in the table below:

Balance Sheet Line Item	Balance Sheet Line Item	Value as of		Balance Sheet Line Item	Value as of	
		May 31, 2023	November 30, 2022		August 31, 2023	November 30, 2022
Derivative instruments not designated as hedging instruments:	Derivative instruments not designated as hedging instruments:			Derivative instruments not designated as hedging instruments:		
Foreign exchange forward contracts (notional value)	Foreign exchange forward contracts (notional value)	\$ 1,649,587	\$ 1,853,188	Foreign exchange forward contracts (notional value)	\$ 1,553,882	\$ 1,853,188
Other current assets	Other current assets	14,548	9,597	Other current assets	6,047	9,597
Other accrued liabilities	Other accrued liabilities	6,123	16,085	Other accrued liabilities	8,612	16,085
Derivative instruments designated as cash flow hedges:	Derivative instruments designated as cash flow hedges:			Derivative instruments designated as cash flow hedges:		
Interest rate swaps (notional value)	Interest rate swaps (notional value)	\$ —	\$ 1,000,000	Interest rate swaps (notional value)	\$ —	\$ 1,000,000
Other current assets	Other current assets	—	17,222	Other current assets	—	17,222
Derivative instruments designated as net investment hedges:	Derivative instruments designated as net investment hedges:			Derivative instruments designated as net investment hedges:		
Foreign currency forward contracts (notional value)	Foreign currency forward contracts (notional value)	\$ 520,000	\$ 523,750	Foreign currency forward contracts (notional value)	\$ 516,250	\$ 523,750
Other accrued liabilities	Other accrued liabilities	451	255	Other accrued liabilities	18,469	255
Other long-term liabilities	Other long-term liabilities	26,038	16,420	Other long-term liabilities	16,991	16,420

The Company terminated interest rate swaps with a notional value of \$400.0 million in December 2021 ("the December 2021 Terminations"). Cumulative losses from the December 2021 Terminations totaled \$16.0 million and are being reclassified from AOCI to "Interest expense and finance charges, net" over the period through September 2023. The Company additionally terminated the remaining interest rate swaps with a notional value of \$1.0 billion in May 2023 (the "May 2023 Terminations"). Cumulative gains from the May 2023 Terminations totaled \$10.0 million and are being reclassified from AOCI to "Interest expense and finance charges, net" over the period through October 2023.

Volume of Activity

The notional amounts of foreign exchange forward contracts represent the gross amounts of foreign currency, including, principally, the Australian dollar, Brazilian real, British pound, Canadian dollar, Chinese yuan, Czech koruna, Danish krone, Euro, Indian rupee, Indonesian rupiah, Japanese yen, Mexican peso, Norwegian krone, Philippine peso, Polish zloty, Singapore dollar, Swedish krona, Swiss franc and Turkish lira that will be bought or sold at maturity. The notional amounts for outstanding derivative instruments

provide one measure of the transaction volume outstanding and do not represent the amount of the Company's exposure to credit or market loss. The Company's exposure to credit loss and market risk will vary over time as currency and interest rates change.

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The Effect of Derivative Instruments on AOCI and the Consolidated Statements of Operations

The following table shows the gains and losses, before taxes, of the Company's derivative instruments designated as cash flow hedges and net investment hedges in Other Comprehensive Income ("OCI") and not designated as hedging instruments in the Consolidated Statements of Operations for the periods presented:

				Three Months Ended		Six Months Ended				Three Months Ended		Nine Months Ended	
		Location of Gains (Losses) in Income		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022			Location of Gains (Losses) in Income		August 31, 2023	August 31, 2022
Derivative instruments not designated as hedging instruments:	Derivative instruments not designated as hedging instruments:							Derivative instruments not designated as hedging instruments:					
(Losses) gains recognized from foreign exchange contracts, net ¹	(Losses) gains recognized from foreign exchange contracts, net ¹	Cost of revenue		\$ (7,611)	\$ 14,013	\$ (24,512)	\$ 4,118	(Losses) gains recognized from foreign exchange contracts, net ¹	Cost of revenue			\$ (18,603)	\$ 36,804
		Other											
Losses recognized from foreign exchange contracts, net ¹	Losses recognized from foreign exchange contracts, net ¹	expense, net		(2,662)	(949)	(5,225)	(1,159)						
Gains (losses) recognized from foreign exchange contracts, net ¹	Gains (losses) recognized from foreign exchange contracts, net ¹							Gains (losses) recognized from foreign exchange contracts, net ¹	Other expense, net			2,044	(3,285)
												(3,181)	(4,444)
Total	Total			\$ (10,273)	\$ 13,064	\$ (29,737)	\$ 2,959	Total				\$ (16,559)	\$ 33,519
Derivative instruments designated as cash flow hedges:	Derivative instruments designated as cash flow hedges:							Derivative instruments designated as cash flow hedges:					
(Losses) gains recognized in OCI on interest rate swaps	(Losses) gains recognized in OCI on interest rate swaps			\$ (217)	\$ 14,232	\$ 937	\$ 26,051						
Gains recognized in OCI on interest rate swaps	Gains recognized in OCI on interest rate swaps							Gains recognized in OCI on interest rate swaps				\$ —	\$ 10,645
Gains (losses) on interest rate swaps reclassified from AOCI into income	Gains (losses) on interest rate swaps reclassified from AOCI into income	Interest expense and finance charges, net		\$ 2,445	\$ (9,038)	\$ 3,583	\$ (18,998)	Gains (losses) on interest rate swaps reclassified from AOCI into income	Interest expense and finance charges, net			\$ 3,636	\$ (5,552)
												\$ 7,219	\$ (24,550)

Derivative instruments designated as net investment hedges:	Derivative instruments designated as net investment hedges:				Derivative instruments designated as net investment hedges:							
(Losses) recognized in OCI on foreign exchange forward contracts ⁽¹⁾	(Losses) recognized in OCI on foreign exchange forward contracts ⁽¹⁾		\$ (6,632)	\$ —	\$ (14,657)	\$ —	(Losses) recognized in OCI on foreign exchange forward contracts ⁽¹⁾		\$ (12,580)	\$ —	\$ (27,237)	\$ —
Gains recognized in income (amount excluded from effectiveness testing) ⁽²⁾	Gains recognized in income (amount excluded from effectiveness testing) ⁽²⁾	Interest expense and finance charges, net	\$ 2,308	\$ —	\$ 4,586	\$ —	Gains recognized in income (amount excluded from effectiveness testing) ⁽²⁾	Interest expense and finance charges, net	\$ 2,303	\$ —	\$ 6,889	\$ —

(1) The gains and losses largely offset the currency gains and losses that resulted from changes in the assets and liabilities denominated in nonfunctional currencies.

(2) The Company had no net investment hedges outstanding during the three and six nine months ended May 31, 2022 August 31, 2022.

Except for the net investment hedge amount for fiscal 2023 shown above, there were no material gain or loss amounts excluded from the assessment of effectiveness. Existing net gains in AOCI that are expected to be reclassified into earnings in the normal course of business within the next twelve months are \$7.1 million \$3.6 million.

Credit exposure for derivative financial instruments is limited to the amounts, if any, by which the counterparties' obligations under the contracts exceed the Company's obligations to the counterparties. The Company manages the potential risk of credit losses through careful evaluation of counterparty credit standing and selection of counterparties from a limited group of financial institutions.

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NOTE 7—FAIR VALUE MEASUREMENTS:

The Company's fair value measurements are classified and disclosed in one of the following three categories:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The following table summarizes the valuation of the Company's investments and financial instruments that are measured at fair value on a recurring basis:

	As of May 31, 2023				As of November 30, 2022			
	Fair value measurement category				Fair value measurement category			
	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
Assets:								
Forward foreign currency exchange contracts not designated as hedges	\$ 14,548	\$ —	\$ 14,548	\$ —	\$ 9,597	\$ —	\$ 9,597	\$ —
Interest rate swaps	—	—	—	—	17,222	—	17,222	—
Liabilities:								
Forward foreign currency exchange contracts not designated as hedges	\$ 6,123	\$ —	\$ 6,123	\$ —	\$ 16,085	\$ —	\$ 16,085	\$ —
Forward foreign currency exchange contracts designated as net investment hedges	26,489	—	26,489	—	16,675	—	16,675	—
	As of August 31, 2023				As of November 30, 2022			

	Fair value measurement category				Fair value measurement category			
	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
Assets:								
Forward foreign currency exchange contracts not designated as hedges	\$ 6,047	\$ —	\$ 6,047	\$ —	\$ 9,597	\$ —	\$ 9,597	\$ —
Interest rate swaps	—	—	—	—	17,222	—	17,222	—
Liabilities:								
Forward foreign currency exchange contracts not designated as hedges	\$ 8,612	\$ —	\$ 8,612	\$ —	\$ 16,085	\$ —	\$ 16,085	\$ —
Forward foreign currency exchange contracts designated as net investment hedges	35,460	—	35,460	—	16,675	—	16,675	—

The fair values of forward exchange contracts are measured based on the foreign currency spot and forward rates quoted by the banks or foreign currency dealers. Fair values of interest rate swaps are measured using standard valuation models using inputs that are readily available in public markets, or can be derived from observable market transactions, including spot and forward rates. There were no interest rate swaps outstanding as of May 31, 2023 August 31, 2023. The effect of nonperformance risk on the fair value of derivative instruments was not material as of May 31, 2023 August 31, 2023 and November 30, 2022.

The carrying values of accounts receivable, accounts payable and short-term debt approximate fair value due to their short maturities and interest rates which are variable in nature. The carrying value of the Company's term loans approximate their fair value since they bear interest rates that are similar to existing market rates. The estimated fair value of the Senior Notes was approximately \$2.2 billion and \$2.1 billion as of both May 31, 2023 August 31, 2023 and November 30, 2022, respectively.

During the six nine months ended May 31, 2023 August 31, 2023, there were no transfers between the fair value measurement category levels.

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NOTE 8—BORROWINGS:

Borrowings consist of the following:

		As of			As of	
		May 31, 2023	November 30, 2022		August 31, 2023	November 30, 2022
Committed and uncommitted revolving credit facilities and borrowings	Committed and uncommitted revolving credit facilities and borrowings	\$ 224,738	\$ 193,128	Committed and uncommitted revolving credit facilities and borrowings	\$ 164,863	\$ 193,128
Current portion of TD SYNnex Senior Notes				Current portion of TD SYNnex Senior Notes	700,000	—
Current portion of TD SYNnex term loan	Current portion of TD SYNnex term loan	75,000	75,000	Current portion of TD SYNnex term loan	75,000	75,000
Short-term borrowings before debt discount and issuance costs				Short-term borrowings before debt discount and issuance costs	\$ 939,863	\$ 268,128
Less: current portion of unamortized debt discount and issuance costs				Less: current portion of unamortized debt discount and issuance costs	(150)	—
Borrowings, current	Borrowings, current	\$ 299,738	\$ 268,128	Borrowings, current	\$ 939,713	\$ 268,128
TD SYNnex term loan	TD SYNnex term loan	\$ 1,312,500	\$ 1,350,000	TD SYNnex term loan	\$ 1,293,750	\$ 1,350,000

TD SYNEX Senior Notes	TD SYNEX Senior Notes	2,500,000	2,500,000	TD SYNEX Senior Notes	1,800,000	2,500,000
Other credit agreements and long-term debt	Other credit agreements and long-term debt	13,616	9,690	Other credit agreements and long-term debt	64,891	9,690
Long-term borrowings, before unamortized debt discount and issuance costs	Long-term borrowings, before unamortized debt discount and issuance costs	\$ 3,826,116	\$ 3,859,690	Long-term borrowings, before unamortized debt discount and issuance costs	\$ 3,158,641	\$ 3,859,690
Less: unamortized debt discount and issuance costs	Less: unamortized debt discount and issuance costs	(20,742)	(24,025)	Less: unamortized debt discount and issuance costs	(19,172)	(24,025)
Long-term borrowings	Long-term borrowings	\$ 3,805,374	\$ 3,835,665	Long-term borrowings	\$ 3,139,469	\$ 3,835,665

TD SYNEX United States Accounts Receivable Securitization Arrangement

In the United States, the Company has an accounts receivable securitization program to provide additional capital for its operations (the "U.S. AR Arrangement"). Under the terms of the U.S. AR Arrangement, the Company and its subsidiaries that are party to the U.S. AR Arrangement can borrow up to a maximum of \$1.5 billion based upon eligible trade accounts receivable. The U.S. AR Arrangement has a maturity date of December 2024. The effective borrowing cost under the U.S. AR Arrangement is a blended rate based upon the composition of the lenders, that includes prevailing dealer commercial paper rates and a rate based upon SOFR. In addition, a program fee payable on the used portion of the lenders' commitment accrues at 0.75% per annum. A facility fee is payable on the adjusted commitment of the lenders, to accrue at different tiers ranging between 0.30% per annum and 0.40% per annum depending on the amount of outstanding advances from time to time.

Under the terms of the U.S. AR Arrangement, the Company and certain of its U.S. subsidiaries sell, on a revolving basis, their receivables to a wholly-owned, bankruptcy-remote subsidiary. Such receivables, which are recorded in the Consolidated Balance Sheet, totaled approximately \$2.4 billion \$3.3 billion and \$2.9 billion as of May 31, 2023 August 31, 2023 and November 30, 2022, respectively. The borrowings are funded by pledging all of the rights, title and interest in the receivables acquired by the Company's bankruptcy-remote subsidiary as security. Any amounts received under the U.S. AR Arrangement are recorded as debt on the Company's Consolidated Balance Sheets. There were no amounts outstanding under the U.S. AR Arrangement at May 31, 2023 August 31, 2023 or November 30, 2022.

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TD SYNEX Credit Agreement

The Company is party to a credit agreement, dated as of April 16, 2021 and amended May 22, 2023 (as amended, the "TD SYNEX Credit Agreement") with the lenders party thereto and Citibank, N.A., as agent, pursuant to which the Company received commitments for the extension of a senior unsecured revolving credit facility not to exceed an aggregate principal amount of \$3.5 billion, which revolving credit facility (the "TD SYNEX revolving credit facility") may, at the request of the Company but subject to the lenders' discretion, potentially be increased by up to an aggregate amount of \$500.0 million. There were no amounts outstanding under the TD SYNEX revolving credit facility at May 31, 2023 August 31, 2023 or November 30, 2022. The TD SYNEX Credit Agreement also includes a senior unsecured term loan (the "TD SYNEX term loan" and, together with the TD SYNEX revolving credit facility, the "TD SYNEX credit facilities") in an original aggregate principal amount of \$1.5 billion, that was fully funded in connection with the closing of the Merger. The borrower under the TD SYNEX Credit Agreement is the Company. There are no guarantors of the TD SYNEX Credit Agreement. The maturity of the TD SYNEX Credit Agreement is on the fifth anniversary of the September 2021 closing date, to occur in September 2026, subject in the case of the revolving credit facility, to two one-year extensions upon the Company's prior notice to the lenders and the agreement of the lenders to extend such maturity date.

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The outstanding principal amount of the TD SYNEX term loan is payable in quarterly installments in an amount equal to 1.25% of the original \$1.5 billion principal balance, with the outstanding principal amount of the term loans due in full on the maturity date. Loans borrowed under the TD SYNEX Credit Agreement bear interest, in the case of SOFR rate loans, at a per annum rate equal to the applicable SOFR rate, plus the applicable margin, which may range from 1.125% to 1.750%, based on the Company's public debt rating (as defined in the TD SYNEX Credit Agreement). The applicable margin on base rate loans is 1.00% less than the corresponding margin on SOFR rate based loans. In addition to these borrowing rates, there is a commitment fee which ranges from 0.125% to 0.300% on any unused commitment under the TD SYNEX revolving credit facility based on the

Company's public debt rating. The effective interest rate for the TD SYNEX term loan was 6.63%, 6.81% and 5.46% as of May 31, 2023, August 31, 2023 and November 30, 2022, respectively. The Company used interest rate swap derivative contracts to economically convert a portion of the TD SYNEX term loan to fixed-rate debt. The interest rate swaps were terminated in May 2023 (see Note 6 - Derivative Instruments for further discussion).

The TD SYNEX Credit Agreement contains various loan covenants that are customary for similar facilities for similarly rated borrowers that restricts the ability of the Company and its subsidiaries to take certain actions. The TD SYNEX Credit Agreement also contains financial covenants which require compliance with a maximum debt to EBITDA ratio and a minimum interest coverage ratio, in each case tested on the last day of each fiscal quarter. The TD SYNEX Credit Agreement also contains various customary events of default, including with respect to a change of control of the Company.

TD SYNEX Senior Notes

On August 9, 2021, the Company completed its offering of \$2.5 billion aggregate principal amount of senior unsecured notes, consisting of \$700.0 million of 1.25% senior notes due August 9, 2024, \$700.0 million of 1.75% senior notes due August 9, 2026, \$600.0 million of 2.375% senior notes due August 9, 2028, and \$500.0 million of 2.65% senior notes due August 9, 2031 (collectively, the "Senior Notes," and such offering, the "Senior Notes Offering"). The Company incurred \$19.6 million towards issuance costs on the Senior Notes. The Company pays interest semi-annually on the notes on each of February 9 and August 9. The net proceeds from this offering were used to fund a portion of the aggregate cash consideration payable in connection with the Merger, refinance certain of the Company's existing indebtedness and pay related fees and expenses and for general corporate purposes.

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The interest rate payable on each series of the Senior Notes will be subject to adjustment from time to time if the credit rating assigned to such series of Senior Notes is downgraded (or downgraded and subsequently upgraded). The Company may redeem the Senior Notes, at any time in whole or from time to time in part, prior to (i) August 9, 2022 (the "2024 Par Call Date") in the case of the 2024 Senior Notes, (ii) July 9, 2026 (the "2026 Par Call Date") in the case of the 2026 Senior Notes, (iii) June 9, 2028 (the "2028 Par Call Date") in the case of the 2028 Senior Notes, and (iv) May 9, 2031 in the case of the 2031 Senior Notes (the "2031 Par Call Date" and, together with the 2024 Par Call Date, the 2026 Par Call Date and the 2028 Par Call Date, each, a "Par Call Date" and together, the "Par Call Dates"), at a redemption price equal to the greater of (x) 100% of the aggregate principal amount of the applicable Senior Notes to be redeemed and (y) the sum of the present values of the remaining scheduled payments of the principal and interest on the Senior Notes, discounted to the date of redemption on a semi-annual basis at a rate equal to the sum of the applicable treasury rate plus 15 basis points for the 2024 Senior Notes, 20 basis points for the 2026 Senior Notes and 25 basis points for the 2028 Senior Notes and 2031 Senior Notes, plus in each case, accrued and unpaid interest thereon to, but excluding, the redemption date. The Company may also redeem the Senior Notes of any series at its option, at any time in whole or from time to time in part, on or after the applicable Par Call Date, at a redemption price equal to 100% of the principal amount of the Senior Notes to be redeemed.

On June 14, 2022, the Company commenced an offer to exchange (the "Exchange Offer") its outstanding unregistered Senior Notes for new registered notes (the "Exchange Notes"). The purpose of the Exchange Offer was to fulfill the Company's obligations under the applicable registration rights agreement entered into in connection with the issuance of the Senior Notes. The Company did not receive any proceeds from the Exchange Offer, and the aggregate principal amount of Exchange Notes that were issued was equal to the aggregate principal amount of Senior Notes that were surrendered pursuant to the Exchange Offer. The terms of the Exchange Notes are substantially identical to the terms of the respective series of the Senior Notes, except that the Exchange Notes are registered under the Securities Act, and certain transfer restrictions, registration rights, and additional interest provisions relating to the Senior Notes do not apply to the Exchange Notes. The Exchange Offer expired on July 14, 2022 and settlement occurred on July 15, 2022.

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Other Short-Term Borrowings

The Company has various other committed and uncommitted lines of credit with financial institutions, finance leases, short-term loans, term loans, credit facilities and bank overdraft facilities, totaling approximately \$588.5 million \$589.1 million in borrowing capacity as of May 31, 2023 August 31, 2023. Most of these facilities are provided on an unsecured, short-term basis and are reviewed periodically for renewal. Interest rates and other terms of borrowing under these lines of credit vary by country, depending on local market conditions. There was \$224.7 million \$164.9 million outstanding on these facilities at May 31, 2023 August 31, 2023, at a weighted average interest rate of 6.54% 5.78%, and there was \$193.1 million outstanding at November 30, 2022, at a weighted average interest rate of 4.69%. Borrowings under certain of these lines of credit facilities are guaranteed by the Company.

At May 31, 2023 August 31, 2023, the Company was also contingently liable for reimbursement obligations with respect to issued standby letters of credit in the aggregate outstanding amount of \$30.6 million \$57.4 million. These letters of credit typically act as a guarantee of payment to certain third parties in accordance with specified terms and conditions.

The maximum commitment amounts for local currency credit facilities have been translated into U.S. dollars at May 31, 2023 August 31, 2023 exchange rates.

Covenant Compliance

The Company's credit facilities have a number of covenants and restrictions that require the Company to maintain specified financial ratios. The covenants also limit the Company's ability to incur additional debt, create liens, enter into agreements with affiliates, modify the nature of the Company's business, and merge or consolidate. As of **May 31, 2023** **August 31, 2023**, the Company was in compliance with the financial covenant requirements for the above arrangements.

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NOTE 9—EARNINGS PER COMMON SHARE:

The following table sets forth the computation of basic and diluted earnings per common share for the periods indicated:

		Three Months Ended		Six Months Ended			Three Months Ended		Nine Months Ended	
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022
Basic earnings per common share:	Basic earnings per common share:					Basic earnings per common share:				
Net income attributable to common stockholders ⁽¹⁾	Net income attributable to common stockholders ⁽¹⁾	\$ 132,087	\$ 147,944	\$ 297,854	\$ 279,533	Net income attributable to common stockholders ⁽¹⁾	\$ 138,260	\$ 147,885	\$ 436,069	\$ 427,418
Weighted-average number of common shares - basic	Weighted-average number of common shares - basic	93,385	95,469	93,805	95,491	Weighted-average number of common shares - basic	92,590	95,115	93,400	95,355
Basic earnings per common share	Basic earnings per common share	\$ 1.41	\$ 1.55	\$ 3.18	\$ 2.93	Basic earnings per common share	\$ 1.49	\$ 1.55	\$ 4.67	\$ 4.48
Diluted earnings per common share:	Diluted earnings per common share:					Diluted earnings per common share:				
Net income attributable to common stockholders ⁽¹⁾	Net income attributable to common stockholders ⁽¹⁾	\$ 132,089	\$ 147,947	\$ 297,859	\$ 279,538	Net income attributable to common stockholders ⁽¹⁾	\$ 138,263	\$ 147,887	\$ 436,076	\$ 427,425
Weighted-average number of common shares - basic	Weighted-average number of common shares - basic	93,385	95,469	93,805	95,491	Weighted-average number of common shares - basic	92,590	95,115	93,400	95,355
Effect of dilutive securities:	Effect of dilutive securities:					Effect of dilutive securities:				
Stock options and RSUs	Stock options and RSUs	258	273	269	293	Stock options and RSUs	291	292	276	293
Weighted-average number of common shares - diluted	Weighted-average number of common shares - diluted	93,643	95,742	94,074	95,784	Weighted-average number of common shares - diluted	92,881	95,407	93,676	95,648
Diluted earnings per common share	Diluted earnings per common share	\$ 1.41	\$ 1.55	\$ 3.17	\$ 2.92	Diluted earnings per common share	\$ 1.49	\$ 1.55	\$ 4.66	\$ 4.47

Anti-dilutive shares excluded from diluted earnings per share calculation	Anti-dilutive shares excluded from diluted earnings per share calculation	304	244	271	244	Anti-dilutive shares excluded from diluted earnings per share calculation	303	235	282	241
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(1) RSAs granted by the Company are considered participating securities. Income available to participating securities was immaterial in all periods presented.

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NOTE 10—SEGMENT INFORMATION:

Summarized financial information related to the Company's reportable business segments for the periods presented is shown below:

		Americas	Europe	APJ	Consolidated	Americas	Europe	APJ	Consolidated	
Three Months Ended May 31, 2023										
Three Months Ended August 31, 2023						Three Months Ended August 31, 2023				
Revenue	Revenue	\$ 8,699,342	\$ 4,461,461	\$ 901,321	\$ 14,062,124	Revenue	\$ 8,879,585	\$ 4,227,590	\$ 853,440	\$ 13,960,615
Operating income	Operating income	187,259	40,057	25,567	252,883	Operating income	192,606	29,531	18,096	240,233
Three Months Ended May 31, 2022										
Three Months Ended August 31, 2022						Three Months Ended August 31, 2022				
Revenue	Revenue	\$ 9,776,933	\$ 4,652,611	\$ 840,247	\$ 15,269,791	Revenue	\$ 9,900,779	\$ 4,681,797	\$ 773,509	\$ 15,356,085
Operating income	Operating income	192,823	40,525	19,389	252,737	Operating income	180,471	44,260	16,803	241,534
Six Months Ended May 31, 2023										
Nine Months Ended August 31, 2023						Nine Months Ended August 31, 2023				
Revenue	Revenue	\$ 17,338,046	\$ 9,981,898	\$ 1,867,551	\$ 29,187,495	Revenue	\$ 26,217,631	\$ 14,209,488	\$ 2,720,991	\$ 43,148,110
Operating income	Operating income	366,764	128,262	56,019	551,045	Operating income	559,370	157,793	74,115	791,278
Six Months Ended May 31, 2022										

Nine Months Ended August 31, 2022						Nine Months Ended August 31, 2022												
Revenue	Revenue	\$	18,851,206	\$	10,232,399	\$	1,656,163	\$	30,739,768	Revenue	\$	28,751,985	\$	14,914,196	\$	2,429,672	\$	46,095,853
Operating income	Operating income		331,342		105,857		37,978		475,177	Operating income		511,813		150,117		54,781		716,711

NOTE 11—RELATED PARTY TRANSACTIONS:

The Company has a business relationship with MiTAC Holdings Corporation ("MiTAC Holdings"), a publicly-traded company in Taiwan, which began in 1992 when MiTAC Holdings became one of the Company's primary investors through its affiliates. As of May 31, 2023, August 31, 2023 and November 30, 2022, MiTAC Holdings and its affiliates beneficially owned approximately 9.9% and 9.7% of the Company's outstanding common stock, respectively. Mr. Matthew Miao, Chairman Emeritus of the Company's Board of Directors and a director, is the Chairman of MiTAC Holdings and a director or officer of MiTAC Holdings' affiliates.

Beneficial Ownership of the Company's Common Stock by MiTAC Holdings

As noted above, MiTAC Holdings and its affiliates in the aggregate beneficially owned approximately 9.9% of the Company's outstanding common stock as of May 31, 2023, August 31, 2023. These shares are owned by the following entities:

	As of May 31, 2023	August 31, 2023
MiTAC Holdings ⁽¹⁾		5,300
Synnex Technology International Corp. ⁽²⁾		3,860
Total		9,160

⁽¹⁾ Shares are held as follows: 302 shares by Silver Star Developments Ltd. and 2,595 shares by MiTAC International Corp., both of which are wholly-owned subsidiaries of MiTAC Holdings, along with 2,403 shares held directly by MiTAC Holdings. Excludes 196 shares held directly by Mr. Miao, 217 shares indirectly held by Mr. Miao through a charitable remainder trust, and 190 shares held by his spouse.

⁽²⁾ Synnex Technology International Corp. ("Synnex Technology International") is a separate entity from the Company and is a publicly-traded corporation in Taiwan. Shares are held via Peer Development Ltd., a wholly-owned subsidiary of Synnex Technology International. MiTAC Holdings owns a noncontrolling interest of 14.1% in MiTAC Incorporated, a privately-held Taiwanese company, which in turn holds a noncontrolling interest of 15.7% 15.6% in Synnex Technology International. Neither MiTAC Holdings nor Mr. Miao is affiliated with any person(s), entity, or entities that hold a majority interest in MiTAC Incorporated.

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The following table presents the Company's transactions with MiTAC Holdings and its affiliates for the periods indicated:

		Three Months Ended		Six Months Ended			Three Months Ended		Nine Months Ended									
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022								
Purchases of inventories and services	Purchases of inventories and services	\$	41,193	\$	54,474	\$	81,636	\$	101,050	Purchases of inventories and services	\$	47,385	\$	85,113	\$	129,021	\$	186,163
Sale of products to MiTAC Holdings and affiliates	Sale of products to MiTAC Holdings and affiliates		1,527		1,076		5,275		1,136	Sale of products to MiTAC Holdings and affiliates		2,736		115		8,011		1,251

Payments made for rent and overhead costs for use of facilities of MITAC Holdings and affiliates, net	Payments made for rent and overhead costs for use of facilities of MITAC Holdings and affiliates, net	250	45	557	81	Payments made for rent and overhead costs for use of facilities of MITAC Holdings and affiliates, net	293	20	850	101
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The following table presents the Company's receivable from and payable to MITAC Holdings and its affiliates for the periods presented:

		As of				As of	
		May 31, 2023	November 30, 2022			August 31, 2023	November 30, 2022
Receivable from related parties (included in Accounts receivable, net)	Receivable from related parties (included in Accounts receivable, net)	\$ 4,423	\$ 1,222	Receivable from related parties (included in Accounts receivable, net)		\$ 4,075	\$ 1,222
Payable to related parties (included in Accounts payable)	Payable to related parties (included in Accounts payable)	10,204	30,317	Payable to related parties (included in Accounts payable)		10,051	30,317

NOTE 12—EQUITY:

Share Repurchase Program

In June 2020, the Board of Directors authorized a three-year \$400.0 million share repurchase program, effective July 1, 2020. In January 2023, the Board of Directors authorized a new three-year \$1.0 billion share repurchase program, replacing the existing \$400.0 million share repurchase program, pursuant to which the Company may repurchase its outstanding common stock from time to time in the open market or through privately negotiated transactions.

On January 30, 2023, the Company announced the closing of a secondary public offering (the "Offering") of an aggregate of 5.2 million shares of its common stock that were sold by certain entities managed by affiliates of Apollo Global Management, Inc (the "Selling Stockholders"). All the shares in the Offering were sold by the Selling Stockholders. The Company did not receive any of the proceeds from the sale of shares by the Selling Stockholders in the Offering. Also pursuant to the related underwriting agreement, the Company repurchased 0.9 million shares of its common stock from the underwriters as part of the Offering, at the public offering price of \$97.00 per share, resulting in a purchase price of \$87.3 million (the "Concurrent Share Repurchase"). The Concurrent Share Repurchase was made under the Company's existing \$1.0 billion share repurchase program, and is included within the caption "Shares of treasury stock purchased under share repurchase program" in the table below.

As of **May 31, 2023** **August 31, 2023**, the Company had **\$841.7 million** **\$738.8 million** available for future repurchases of its common stock under the authorized share repurchase program.

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The Company's common share repurchase activity for the **six** **nine** months ended **May 31, 2023** **August 31, 2023** is summarized as follows:

	Shares	Weighted-average price per share
Treasury stock balance at November 30, 2022	4,049	\$ 83.29
Shares of treasury stock repurchased under share repurchase program ⁽¹⁾	1,840	95.00
Shares of treasury stock repurchased for tax withholdings on equity awards	74	104.99
Treasury stock balance at May 31, 2023	5,963	\$ 87.40
	Shares	Weighted-average price per share
Treasury stock balance as of November 30, 2022	4,049	\$ 83.29
Shares of treasury stock repurchased under share repurchase program ⁽¹⁾	2,890	96.11
Shares of treasury stock repurchased for tax withholdings on equity awards	83	103.74
Shares of treasury stock reissued for employee benefit plans	(44)	87.93

Treasury stock balance as of August 31, 2023	6,978	\$	89.17
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(1) Weighted-average price per share excludes broker's commissions and excise taxes. "Repurchases of common stock" in the Consolidated Statements of Cash Flows for the six nine months ended May 31, 2023 August 31, 2023 excludes \$1.4 million \$2.4 million of accrued excise tax that is included in "Other current liabilities" and "Treasury stock" on the Consolidated Balance Sheets at May 31, 2023 August 31, 2023. Excise taxes when paid are classified as operating activities in the Consolidated Statements of Cash Flows.

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Dividends

On June 27, 2023 September 27, 2023, the Company announced that its Board of Directors declared a quarterly cash dividend of \$0.35 per common share payable on July 28, 2023 October 27, 2023 to stockholders of record as of the close of business on July 14, 2023 October 13, 2023. Dividends are subject to continued capital availability and declaration by the Board of Directors that the dividend is in the best interest of the Company's stockholders.

NOTE 13—COMMITMENTS AND CONTINGENCIES:

As is customary in the technology industry, to encourage certain customers to purchase products from us, the Company also has other financing agreements with financial institutions to provide inventory financing facilities to the Company's customers and allow certain customers of the Company to finance their purchases directly with the financial institutions. The Company is contingently liable to repurchase inventory sold under these agreements in the event of any default by its customers under the agreement and such inventory being repossessed by the financial institutions. As the Company does not have access to information regarding the amount of inventory purchased from the Company still on hand with the customer at any point in time, the Company's repurchase obligations relating to inventory cannot be reasonably estimated. Losses, if any, would be the difference between the repossession cost and the resale value of the inventory. Repurchases under these arrangements have been insignificant to date and the Company is not aware of any pending customer defaults or repossession obligations. The Company believes that, based on historical experience, the likelihood of a material loss pursuant to these inventory repurchase obligations is remote.

The French Autorité de la Concurrence ("Competition Authority") began in 2013 an investigation into the French market for certain products of Apple, Inc. ("Apple") for which the Company is a distributor. In March 2020, the Competition Authority imposed fines on Tech Data, on another distributor, and on Apple, finding that Tech Data entered into an anticompetitive agreement with Apple regarding volume allocations of Apple products. The initial fine imposed on Tech Data was €76.1 million. The Company appealed its determination to the French courts, seeking to set aside or reduce the fine. On October 6, 2022, the appeals court issued a ruling that reduced the fine imposed on the Company from €76.1 million to €24.9 million. As a result of the appeals court ruling, the Company determined that the best estimate of probable loss related to this matter is €24.9 million (approximately \$26.7 million \$27.2 million as of May 31, 2023 August 31, 2023), which has been paid in full. The Company continues to contest the arguments of the Competition Authority and has further appealed this matter. A civil lawsuit related to this matter, alleging anticompetitive actions in association with the established distribution networks for Apple, Tech Data and another distributor was filed by eBizcuss. The Company is currently evaluating this matter and cannot currently estimate the probability or amount of any potential loss.

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From time to time, the Company receives notices from third parties, including customers and suppliers, seeking indemnification, payment of money or other actions in connection with claims made against them. Also, from time to time, the Company has been involved in various bankruptcy preference actions where the Company was a supplier to the companies now in bankruptcy. In addition, the Company is subject to various other claims, both asserted and unasserted, that arise in the ordinary course of business. The Company evaluates these claims and records the related liabilities. It is possible that the ultimate liabilities could differ from the amounts recorded.

On December 1, 2020, the Company completed the previously announced separation of its customer experience services business (the "Separation"), in a tax-free transaction for federal income tax purposes, which was accomplished by the distribution of one hundred percent of the outstanding common stock of Concentrix Corporation ("Concentrix"). In connection with the Separation, the Company and Concentrix entered into a separation and distribution agreement as well as various other agreements that provide a framework for the relationships between the parties going forward, including among others an employee matters agreement, a tax matters agreement, and a commercial agreement, pursuant to which Concentrix will continue to provide certain limited services to the Company following the Separation.

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Under the Separation and Distribution agreement with Concentrix that was entered into in connection with the Separation, SYNnex agreed to indemnify Concentrix, each of its subsidiaries and each of their respective directors, officers and employees from and against all liabilities relating to, arising out of or resulting from, among other matters, the liabilities allocated to SYNnex as part of the Separation. Similarly, Concentrix agreed to indemnify SYNnex, each of its subsidiaries and each of their respective directors, officers and employees from and against all liabilities relating to, arising out of or resulting from, among other matters, the liabilities allocated to Concentrix as part of the Separation. The Company expects Concentrix to fully perform under the terms of the Separation and Distribution agreement.

Under the Separation and Distribution agreement, SYNnex and Concentrix agreed to cooperate with each other in managing litigation related to both companies' businesses. The Separation and Distribution agreement also included provisions that assign to each company responsibility for managing pending and future litigation related to the general corporate matters of SYNnex arising prior to the Separation.

The Company does not believe that the above commitments and contingencies will have a material adverse effect on the Company's results of operations, financial position or cash flows.

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the Consolidated Financial Statements and related Notes included elsewhere in this Report. Amounts in certain tables may not add or compute due to rounding.

When used in this Quarterly Report on Form 10-Q, or this "Report", the words "anticipates," "believes," "estimates," "expects," "intends," "allows," "can," "may," "could," "designed," "will," and similar expressions are intended to identify forward-looking statements. These are statements that relate to future periods and include statements about our business model and our services, our business and market strategy, future growth, demand, our infrastructure, our investment in our information technology, or IT, systems, our employee hiring and retention, the ownership interest of MITAC Holdings Corporation or MITAC Holdings, in us and its impact, the ownership interest of Apollo Global Management, Inc., or Apollo, in us and its impact, the impact of the Merger, our Merger-related integration plans, our plans, including with respect to the GBO 2 Program, our revenue, sources of revenue, our gross margins, our operating costs and results, timing of payment, the value of our inventory, our competition, including with Synnex Technology International Corp., our future needs and sources for additional financing, contract terms, relationships with our suppliers, adequacy of our facilities, ability to meet demand, managing inventory and our shipping costs, our legal proceedings, our operations, foreign currency exchange rates and hedging activities, our strategic acquisitions including anticipated cost savings and other benefits, our goodwill, seasonality of sales, adequacy of our cash resources, our debt and financing arrangements, including the impact of any change to our credit rating, interest rate risk and impact thereof, cash held by our international subsidiaries and repatriation, changes in fair value of derivative instruments, our tax liabilities, adequacy of our disclosure controls and procedures, cybersecurity, the replacement of LIBOR, impact of our pricing policies, impact of economic and industry trends, changes to the markets in which we compete, impact of new reporting rules and accounting policies, our estimates and assumptions, impact of inventory repurchase obligations and commitments and contingencies, our effective tax rates, impact of any impairment of our goodwill and intangible assets, our share repurchase and dividend program, and our purchase accounting adjustments, program. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, those risks discussed herein and others, including risks related to the risk that the legacy SYNnex and legacy Tech Data businesses will not be integrated successfully or realize the anticipated benefits of the combined company, the buying patterns of our customers, concentration of sales to large customers, the loss or consolidation of one or more of our significant original equipment manufacturer ("OEM") suppliers or customers, market acceptance of the products we assemble and distribute, competitive conditions in our industry and their impact on our margins, pricing and other terms with our OEM suppliers, our ability to gain market share, variations in supplier-sponsored programs, changes in our costs and operating expenses, increased inflation, dependence upon and trends in capital spending budgets in the IT industry, fluctuations in general economic conditions, changes in tax laws, risks associated with our international operations, uncertainties and variability in demand by our reseller and integration customers, supply shortages or delays, any termination or reduction in our floor plan financing arrangements, changes in value of foreign currencies and interest rates and other risk factors contained in Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the year ended November 30, 2022 and below under Part II, Item 1A, "Risk Factors." These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based, unless otherwise required by law.

In the Management's Discussion and Analysis of Financial Condition and Results of Operations, all references to "TD SYNnex," "SYNnex," "we," "us," "our" or the "Company" mean TD SYNnex Corporation and its subsidiaries, except where it is made clear that the term means only the parent company or one of its segments.

TD SYNnex, the TD SYNnex Logo and all other TD SYNnex company, product and services names and slogans are trademarks or registered trademarks of TD SYNnex Corporation. Other names and marks are the property of their respective owners.

Overview

We are a Fortune 100 corporation and a leading global distributor and solutions aggregator for the information technology ("IT") ecosystem. We serve a critical role, bringing products from the world's leading and emerging technology vendors to market, and helping our customers create solutions best suited to maximize business outcomes for their end-user customers.

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On March 22, 2021, SYNnex the Company entered into an agreement and plan of merger (the "Merger Agreement") which provided that legacy SYNnex Corporation would acquire legacy Tech Data Corporation, a Florida corporation ("Tech Data") through a series of mergers, which would result in Tech Data becoming an indirect subsidiary of TD

SYNNEX Corporation (collectively, the "Merger"). On September 1, 2021, pursuant to the terms of the Merger Agreement, **SYNNEX the Company** acquired all the outstanding shares of common stock of Tiger Parent (AP) Corporation, the parent corporation of Tech Data, for consideration of \$1.6 billion in cash (\$1.1 billion in cash after giving effect to a \$500.0 million equity contribution by Tiger Parent Holdings, L.P., Tiger Parent (AP) Corporation's sole stockholder and an affiliate of Apollo Global Management, Inc., to Tiger Parent (AP) Corporation prior to the effective time of the Merger) and 44 million shares of common stock of SYNNEX, valued at approximately \$5.6 billion.

Digital transformation and the migration to cloud computing is reshaping our industry, enabling businesses and consumers to evaluate, procure, acquire, and consume technology products and services in a variety of ways. Hybrid models of IT consumption, supporting both physical and virtual delivery methods are emerging, as hardware and software-based solutions become increasingly combined. As a result, customers are seeking greater integration of products, services and solutions that tie technologies together. Therefore, we believe it is important to provide a broad, end-to-end portfolio, with deep capabilities across the computing continuum to help customers manage the increasingly complex IT ecosystem and deliver the solutions and business outcomes the market desires. Our vision for the future is to be the vital solutions aggregator and orchestrator that connects the IT ecosystem.

Our global strategy is to deliver higher value by focusing on the following strategic priorities:

- **Invest** in high-growth technologies such as hybrid cloud, security, analytics/Internet of Things ("IoT"), artificial intelligence ("AI"), hyperscale infrastructure, and services.
- **Strengthen** our end-to-end portfolio of products, services and solutions, including technology-as-a-service and recurring revenue models.
- **Transform** our company digitally through greater automation and advanced analytics, which we believe will enhance the customer experience, broaden our customer base, increase sales and augment our presence in high growth technologies.
- **Expand** our global footprint and enhance the operational excellence of our businesses around the world.

We offer a comprehensive catalog of technology products from original equipment manufacturers ("OEM"), suppliers of high-growth technologies such as converged and hyper-converged infrastructure, cloud, security, data/analytics/IoT and services. We purchase IT hardware, software, and systems including personal computing devices and peripherals, mobile phones and accessories, printers, server and datacenter infrastructure, networking, communications and storage solutions, and systems components from our suppliers and sell them to our reseller and retail customers. Our reseller customers include value-added resellers, corporate resellers, government resellers, system integrators, direct marketers, retailers and managed service providers. We combine our core strengths in distribution with demand generation, supply chain management and design and integration solutions to help our customers achieve greater efficiencies in time to market, cost minimization, real-time linkages in the supply chain and aftermarket product support. We also provide comprehensive IT solutions in key vertical markets such as government and healthcare and we provide specialized service offerings that increase efficiencies in the areas of global computing components, logistics services and supply chain management. Additionally, we provide systems design and integration solutions for data center servers and networking solutions built specific to our customers' workloads and data center environments.

Our business is characterized by low gross profit as a percentage of revenue, or gross margin, and low operating income as a percentage of revenue, or operating margin. The market for IT products has generally been characterized by declining unit prices and short product life cycles, although unit prices for certain products have increased during certain periods due to factors such as supply chain constraints and inflation. We set our sales price based on the market supply and demand characteristics for each particular product or bundle of products we distribute and services we provide.

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We are highly dependent on the end-market demand for IT products, and on our partners' strategic initiatives and business models. This end-market demand is influenced by many factors including the introduction of new IT products and software by OEM suppliers, replacement cycles for existing IT products, trends toward cloud computing, overall economic growth and general business activity. A difficult and challenging economic environment, including due to the continued impacts of increased inflation, rising interest rates, increased risk in banking and financial institutions and Russia's invasion of Ukraine, may also lead to consolidation or decline in the IT industries and increased price-based competition. Our systems design and integration solutions business is highly dependent on the demand for cloud infrastructure, and the number of key customers and suppliers in the market. Our business includes operations in the Americas, Europe and Asia-Pacific and Japan ("APJ") so we are affected by demand for our products in those regions, and as well as the weakening impact of local currencies relative fluctuations in foreign currency exchange rates compared to the U.S. dollar which occurred during fiscal year 2022 may continue to adversely affect the operating results of our Europe and APJ segments, dollar.

Acquisitions

We continually seek to augment organic growth in our business with strategic acquisitions of businesses and assets that complement and expand our existing capabilities. We also divest businesses that we deem no longer strategic to our ongoing operations. We seek to acquire new OEM relationships, enhance our supply chain and integration capabilities, the services we provide to our customers and OEM suppliers, and expand our geographic footprint.

Results of Operations

The following table sets forth, for the indicated periods, data as percentages of total revenue:

Statements of Operations Data:	Statements of Operations Data:	Three Months Ended		Six Months Ended		Statements of Operations Data:	Three Months Ended		Nine Months Ended	
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022
Revenue	Revenue	100.00 %	100.00 %	100.00 %	100.00 %	Revenue	100.00 %	100.00 %	100.00 %	100.00 %
Cost of revenue	Cost of revenue	(93.15) %	(93.74) %	(93.26) %	(93.74) %	Cost of revenue	(93.04) %	(94.03) %	(93.19) %	(93.84) %
Gross profit	Gross profit	6.85 %	6.26 %	6.74 %	6.26 %	Gross profit	6.96 %	5.97 %	6.81 %	6.16 %

Selling, general and administrative expenses	Selling, general and administrative expenses	(4.79) %	(4.39) %	(4.55) %	(4.31) %	Selling, general and administrative expenses	(4.73) %	(4.10) %	(4.61) %	(4.24) %
Acquisition, integration and restructuring costs	Acquisition, integration and restructuring costs	(0.26) %	(0.21) %	(0.30) %	(0.41) %	Acquisition, integration and restructuring costs	(0.51) %	(0.30) %	(0.37) %	(0.37) %
Operating income	Operating income	1.80 %	1.66 %	1.89 %	1.55 %	Operating income	1.72 %	1.57 %	1.83 %	1.55 %
Interest expense and finance charges, net	Interest expense and finance charges, net	(0.53) %	(0.31) %	(0.54) %	(0.30) %	Interest expense and finance charges, net	(0.48) %	(0.34) %	(0.51) %	(0.31) %
Other expense, net	Other expense, net	(0.03) %	(0.05) %	(0.01) %	(0.03) %	Other expense, net	(0.02) %	(0.01) %	(0.02) %	(0.03) %
Income before income taxes	Income before income taxes	1.24 %	1.30 %	1.34 %	1.22 %	Income before income taxes	1.22 %	1.22 %	1.30 %	1.21 %
Provision for income taxes	Provision for income taxes	(0.29) %	(0.32) %	(0.31) %	(0.31) %	Provision for income taxes	(0.22) %	(0.25) %	(0.28) %	(0.29) %
Net income	Net income	0.95 %	0.98 %	1.03 %	0.91 %	Net income	1.00 %	0.97 %	1.02 %	0.92 %

Certain Non-GAAP Financial Information

In addition to disclosing financial results that are determined in accordance with GAAP, we also disclose certain non-GAAP financial information, including:

- Revenue in constant currency, which is revenue adjusted for the translation effect of foreign currencies so that certain financial results can be viewed without the impact of fluctuations in foreign currency exchange rates, thereby facilitating period-to-period comparisons of our business performance. Revenue in constant currency is calculated by translating the revenue for the three and **six** nine months ended **May 31, 2023** **August 31, 2023** in the billing currency using the comparable prior period currency conversion rate. Generally, when the dollar either strengthens or weakens against other currencies, the growth at constant currency rates will be higher or lower than growth reported at actual exchange rates.
- Non-GAAP gross profit, which is gross profit, adjusted to exclude the portion of purchase accounting adjustments that affected cost of revenue.
- Non-GAAP gross margin, which is non-GAAP gross profit, as defined above, divided by revenue.

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- Non-GAAP operating income, which is operating income, adjusted to exclude acquisition, integration and restructuring costs, amortization of intangible assets, share-based compensation expense and purchase accounting adjustments.
- Non-GAAP operating margin, which is non-GAAP operating income, as defined above, divided by revenue.
- Non-GAAP net income, which is net income, adjusted to exclude acquisition, integration and restructuring costs, amortization of intangible assets, share-based compensation expense, purchase accounting adjustments, income taxes related to the aforementioned items, as well as a capital loss carryback benefit.
- Non-GAAP diluted earnings per common share ("EPS"), which is diluted EPS excluding the per share impact of acquisition, integration and restructuring costs, amortization of intangible assets, share-based compensation expense, purchase accounting adjustments, income taxes related to the aforementioned items, as well as a capital loss carryback benefit.

Acquisition, integration and restructuring costs, **typically consist of acquisition, integration, restructuring and divestiture related costs and which are expensed as incurred.** These expenses **incurred**, primarily represent professional services costs for legal, banking, consulting and advisory services, severance and other personnel related costs, share-based compensation expense and debt extinguishment **fees. fees that are incurred in connection with acquisition, integration, restructuring and divestiture activities.** From time to time, this category may also include transaction-related gains/losses on divestitures/spin-off of businesses, costs related to long-lived assets including impairment charges and accelerated depreciation and amortization expense due to changes in asset useful lives, as well as various other costs associated with the acquisition or divestiture.

Our acquisition activities have resulted in the recognition of finite-lived intangible assets which consist primarily of customer relationships and vendor lists. Finite-lived intangible assets are amortized over their estimated useful lives and are tested for impairment when events indicate that the carrying value may not be recoverable. The amortization of intangible assets is reflected in our statements of operations. Although intangible assets contribute to our revenue generation, the amortization of intangible assets does not directly relate to the sale of our products. Additionally, intangible asset amortization expense typically fluctuates based on the size and timing of our acquisition activity. Accordingly, we believe excluding the amortization of intangible assets, along with the other non-GAAP adjustments which neither relate to the ordinary course of our business nor reflect our underlying business performance, enhances our and our investors' ability to compare our past financial performance with our current performance and to analyze underlying business performance and trends. Intangible asset amortization excluded from the related non-GAAP financial measure represents the entire amount recorded within our GAAP financial statements, and the revenue generated by the associated intangible assets has not been excluded from the related non-GAAP financial measure.

Intangible asset amortization is excluded from the related non-GAAP financial measure because the amortization, unlike the related revenue, is not affected by operations of any particular period unless an intangible asset becomes impaired or the estimated useful life of an intangible asset is revised.

Share-based compensation expense is a non-cash expense arising from the grant of equity awards to employees based on the estimated fair value of those awards. Although share-based compensation is an important aspect of the compensation of our employees, the fair value of the share-based awards may bear little resemblance to the actual value realized upon the vesting or future exercise of the related share-based awards and the expense can vary significantly between periods as a result of the timing of grants of new stock-based awards, including grants in connection with acquisitions. Given the variety and timing of awards and the subjective assumptions that are necessary when calculating share-based compensation expense, we believe this additional information allows investors to make additional comparisons between our operating results from period to period.

Purchase accounting adjustments are primarily related to the impact of recognizing the acquired vendor and customer liabilities from the Merger at fair value. The Company expects the duration of these adjustments to benefit benefited our non-GAAP operating income through a portion the third fiscal quarter of fiscal 2023 based on historical settlement patterns with our vendors and in accordance with the timing defined in our policy for releasing vendor and customer liabilities we deem remote to be paid.

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We believe that providing this additional information is useful to the reader to better assess and understand our base operating performance, especially when comparing results with previous periods and for planning and forecasting in future periods, primarily because management typically monitors the business adjusted for these items in addition to GAAP results. Management also uses these non-GAAP measures to establish operational goals and, in some cases, for measuring performance for compensation purposes. As these non-GAAP financial measures are not calculated in accordance with GAAP, they may not necessarily be comparable to similarly titled measures employed by other companies. These non-GAAP financial measures should not be considered in isolation or as a substitute for the comparable GAAP measures and should be used as a complement to, and in conjunction with data presented in accordance with GAAP.

Three and Six Nine Months Ended May 31, 2023 August 31, 2023 and 2022:

Revenue

The following table summarizes our revenue and change in revenue by segment for the three and six nine months ended May 31, 2023 August 31, 2023 and 2022:

		Three Months Ended			Six Months Ended				Three Months Ended			Nine Months Ended		
		May 31, 2023	May 31, 2022	Percent Change	May 31, 2023	May 31, 2022	Percent Change		August 31, 2023	August 31, 2022	Percent Change	August 31, 2023	August 31, 2022	Percent Change
		(in thousands)			(in thousands)				(in thousands)			(in thousands)		
Revenue in constant currency	Revenue in constant currency							Revenue in constant currency						
Consolidated	Consolidated							Consolidated						
Revenue	Revenue	\$14,062,124	\$15,269,791	(7.9)%	\$29,187,495	\$30,739,768	(5.0)%	Revenue	\$13,960,615	\$15,356,085	(9.1)%	\$43,148,110	\$46,095,853	(6.4)%
Impact of changes in foreign currencies	Impact of changes in foreign currencies	131,639	—		591,298	—		Impact of changes in foreign currencies	(176,615)	—		414,683	—	
Revenue in constant currency	Revenue in constant currency	\$14,193,763	\$15,269,791	(7.0)%	\$29,778,793	\$30,739,768	(3.1)%	Revenue in constant currency	\$13,784,000	\$15,356,085	(10.2)%	\$43,562,793	\$46,095,853	(5.5)%
Americas	Americas							Americas						
Revenue	Revenue	\$ 8,699,342	\$ 9,776,933	(11.0)%	\$17,338,046	\$18,851,206	(8.0)%	Revenue	\$ 8,879,585	\$ 9,900,779	(10.3)%	\$26,217,631	\$28,751,985	(8.8)%
Impact of changes in foreign currencies	Impact of changes in foreign currencies	67,188	—		122,344	—		Impact of changes in foreign currencies	24,979	—		147,323	—	
Revenue in constant currency	Revenue in constant currency	\$ 8,766,530	\$ 9,776,933	(10.3)%	\$17,460,390	\$18,851,206	(7.4)%	Revenue in constant currency	\$ 8,904,564	\$ 9,900,779	(10.1)%	\$26,364,954	\$28,751,985	(8.3)%
Europe	Europe							Europe						
Revenue	Revenue	\$ 4,461,461	\$ 4,652,611	(4.1)%	\$ 9,981,898	\$10,232,399	(2.4)%	Revenue	\$ 4,227,590	\$ 4,681,797	(9.7)%	\$14,209,488	\$14,914,196	(4.7)%
Impact of changes in foreign currencies	Impact of changes in foreign currencies	26,953	—		370,883	—		Impact of changes in foreign currencies	(216,477)	—		154,406	—	

Revenue in constant currency	Revenue in constant currency	\$ 4,488,414	\$ 4,652,611	(3.5)%	\$10,352,781	\$10,232,399	1.2 %	Revenue in constant currency	\$ 4,011,113	\$ 4,681,797	(14.3)%	\$14,363,894	\$14,914,196	(3.7)
APJ	APJ							APJ						
Revenue	Revenue	\$ 901,321	\$ 840,247	7.3 %	\$ 1,867,551	\$ 1,656,163	12.8 %	Revenue	\$ 853,440	\$ 773,509	10.3 %	\$ 2,720,991	\$ 2,429,672	12.0
Impact of changes in foreign currencies	Impact of changes in foreign currencies	37,498	—		98,071	—		Impact of changes in foreign currencies	14,883	—		112,954	—	
Revenue in constant currency	Revenue in constant currency	\$ 938,819	\$ 840,247	11.7 %	\$ 1,965,622	\$ 1,656,163	18.7 %	Revenue in constant currency	\$ 868,323	\$ 773,509	12.3 %	\$ 2,833,945	\$ 2,429,672	16.6

Consolidated Commentary

During the three months ended **May 31, 2023** **August 31, 2023**, consolidated revenue and revenue in constant currency decreased by **\$1.2 billion** **\$1.4 billion** and **\$1.1 billion** **\$1.6 billion**, respectively, as compared to the prior year period. During the **six nine** months ended **May 31, 2023** **August 31, 2023**, consolidated revenue and revenue in constant currency decreased by **\$1.6 billion** **\$2.9 billion** and **\$961.0 million** **\$2.5 billion**, respectively, as compared to the prior year period. The decreases are primarily driven by a decline in our Endpoint Solutions portfolio as the industry experienced a post-pandemic decline in demand for personal computer ecosystem products. This decline was partially offset by **increases an increase** in our Advanced Solutions portfolio and high-growth technologies. portfolio. The shift in product mix resulted in a greater percentage of our revenues being presented on a net basis, which negatively impacted our revenue compared to the prior three and **six nine** months ended **May 31, 2022** **August 31, 2022** by approximately **2% and 3%**, respectively.

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Americas Commentary

During the three months ended **May 31, 2023** **August 31, 2023**, Americas revenue and revenue in constant currency both decreased by **\$1.0 billion**, as compared to the prior year period. During the nine months ended **August 31, 2023**, Americas revenue and revenue in constant currency decreased by **\$1.1 billion** **\$2.5 billion** and **\$1.0 billion**, respectively, as compared to the prior year period. During the six months ended **May 31, 2023**, Americas revenue and revenue in constant currency decreased by **\$1.5 billion** and **\$1.4 billion** **\$2.4 billion**, respectively, as compared to the prior year period. The decreases are primarily due to a decline in our Endpoint Solutions portfolio in the region as the industry experienced a post-pandemic decline in demand for personal computer ecosystem products, partially offset by growth in our Advanced Solutions portfolio. The shift in product mix resulted in a greater percentage of our revenues being presented on a net basis, which negatively impacted our revenue by approximately **2% and 3%** compared to the three and nine months ended **August 31, 2022**, respectively.

Europe Commentary

During the three months ended **August 31, 2023**, Europe revenue and revenue in constant currency decreased by **\$454.2 million** and **\$670.7 million**, respectively, as compared to the prior year period. The decrease is primarily due to a decline in our Endpoint Solutions portfolio and high-growth technologies. in the region as the industry experienced a post-pandemic decline in demand for personal computer ecosystem products. The shift in product mix resulted in a greater percentage of our revenues being presented on a net basis, which negatively impacted our revenue by approximately **3% and 4%** **5%** compared to the three and six months ended **May 31, 2022**, respectively, **August 31, 2022**. The quarter-to-date impact of changes in foreign currencies is primarily due to the strengthening of the euro against the U.S. dollar.

Europe Commentary

During the **three nine** months ended **May 31, 2023** **August 31, 2023**, Europe revenue and revenue in constant currency decreased by **\$191.2 million** **\$704.7 million** and **\$164.2 million** **\$550.3 million**, respectively, as compared to the prior year period. The decreases are period, primarily due to a shift in product product mix that resulted in a greater percentage of our revenues being presented on a net basis, which negatively impacted our revenue by approximately **4%** compared to the **three nine** months ended **May 31, 2022** **August 31, 2022**. The shift in product mix was primarily due to a decline in our Endpoint Solutions portfolio, which was offset by growth in our Advanced Solutions portfolio.

During the six months ended **May 31, 2023**, Europe revenue decreased by **\$250.5 million**, as compared to the prior year period, primarily due to the impact of changes in foreign currencies. The year-to-date impact of changes in foreign currencies is primarily due to the weakening of a weaker average foreign exchange rate for the euro against the U.S. dollar. During dollar during the six months ended **May 31, 2023**, Europe revenue in constant currency increased by **\$120.4 million**, first half of fiscal 2023 as compared to the prior year period, primarily due to growth in our Advanced Solutions portfolio, partially offset by a decline in our Endpoint Solutions portfolio. The shift in product mix resulted in a greater percentage average foreign exchange rate during the first half of our revenues being presented on a net basis, which negatively impacted our revenue by approximately **3%** compared to the six months ended **May 31, 2022**, fiscal 2022.

APJ Commentary

During the three months ended **May 31, 2023** **August 31, 2023**, APJ revenue and revenue in constant currency increased by **\$61.1 million** **\$79.9 million** and **\$98.6 million** **\$94.8 million**, respectively, as compared to the prior year period. During the **six nine** months ended **May 31, 2023** **August 31, 2023**, APJ revenue and revenue in constant currency increased by **\$211.4 million** **\$291.3 million** and **\$309.5 million** **\$404.3 million**, respectively, as compared to the prior year period. The increases are primarily driven by growth in high-growth technologies.

Gross Profit

		Three Months Ended				Percent Change	Six Months Ended				Aug 31, 2023	
				May 31, 2023					May 31, 2022			
		May 31, 2023	May 31, 2022				May 31, 2023	May 31, 2022				
Gross Profit and Gross Margin - Consolidated	Gross Profit and Gross Margin - Consolidated	(in thousands)					(in thousands)					
Revenue	Revenue	\$	14,062,124	\$	15,269,791	(7.9)	%	\$	29,187,495	\$	30,739,768	(
Gross profit	Gross profit	\$	963,410	\$	955,789	0.8	%	\$	1,966,977	\$	1,924,450	
Purchase accounting adjustments	Purchase accounting adjustments		5,170		27,406				12,620		52,485	
Non-GAAP gross profit	Non-GAAP gross profit	\$	968,580	\$	983,195	(1.5)	%	\$	1,979,597	\$	1,976,935	
Gross margin	Gross margin		6.85	%	6.26	%			6.74	%	6.26	%
Non-GAAP gross margin	Non-GAAP gross margin		6.89	%	6.44	%			6.78	%	6.43	%

Our gross margin is affected by a variety of factors, including competition, selling prices, mix of products, product costs along with rebate and discount programs from our suppliers, reserves or settlement adjustments, freight costs, inventory losses and fluctuations in revenue due to factors such as shift in product mix that may result in additional revenues being presented on a net basis.

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Our gross profit increased during the three and six nine months ended May 31, 2023 August 31, 2023, as compared to the prior year periods, period, primarily due to the impact of lower purchase accounting adjustments related to the Merger and our improved gross margin, partially offset by the impact of a decline in revenues in our Endpoint Solutions portfolio. The increase in Our gross margin increased during the three and six nine months ended May 31, 2023 August 31, 2023, as compared to the prior year periods, is period, primarily due to product and customer mix, including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies, as well as the impact of lower purchase accounting adjustments related to the Merger. The shift in product mix resulted in the presentation of additional revenues on a net basis, which positively impacted our gross margin during the three and six nine months ended May 31, 2023 August 31, 2023 by approximately 21 16 and 20 19 basis points, respectively.

During the three and nine months ended May 31, 2023 August 31, 2023, non-GAAP gross profit decreased, as compared to the prior year period, primarily due to the decrease in revenues in our Endpoint Solutions portfolio, partially offset by an improvement in gross margin. During the six months ended May 31, 2023, non-GAAP gross profit slightly increased, as compared to the prior year period, primarily due to an improvement in gross margin, partially offset by the decrease in revenues in our Endpoint Solutions portfolio. During the three and six nine months ended May 31, 2023 August 31, 2023, non-GAAP gross margin increased, as compared to the prior year period, primarily due to product and customer mix, including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies, as well as the presentation of additional revenues on a net basis.

Selling, General and Administrative Expenses

	Three Months Ended							Six Months Ended						
	Three Months Ended			Six Months Ended				Three Months Ended			Nine Months Ended			
			May 31, 2023			May 31, 2022	August 31, 2022			August 31, 2022			August 31, 2022	
	May 31, 2023	May 31, 2022		Percent Change	2023			2022	Percent Change		2022	Percent Change		
	(in thousands)			(in thousands)				(in thousands)			(in thousands)			
Selling, general and administrative expenses	Selling, general and administrative expenses	\$673,698	\$670,574	0.5 %	\$1,327,921	\$1,323,425	0.3 %	Selling, general and administrative expenses	\$659,454	\$628,078	5.0 %	\$1,987,375	\$1,951,1	
Percentage of revenue	Percentage of revenue	4.79 %	4.39 %		4.55 %	4.31 %		Percentage of revenue	4.73 %	4.10 %		4.61 %	4	

Our selling, general and administrative expenses consist primarily of personnel costs such as salaries, commissions, bonuses, share-based compensation and temporary personnel costs. Selling, general and administrative expenses also include cost of warehouses, delivery centers and other non-integration facilities, utility expenses, legal and professional fees, depreciation on certain of our capital equipment, bad debt expense, amortization of our intangible assets, and marketing expenses, offset in part by reimbursements from our OEM suppliers.

During the three and six nine months ended May 31, 2023 August 31, 2023, selling, general and administrative expenses slightly increased, compared to the prior year period, primarily due to higher personnel costs. Selling, general and administrative expenses increased as a percentage of revenue, compared to the prior year period, primarily due to the a decrease in revenue, revenue and higher personnel costs.

Acquisition, Integration and Restructuring Costs

Acquisition, integration and restructuring costs are primarily comprised of costs related to the Merger and costs related to the Global Business Optimization 2 Program initiated by Tech Data prior to the Merger (the "GBO 2 Program").

The Merger

We incurred acquisition, integration and restructuring costs related to the completion of the Merger, including professional services costs, personnel and other costs, long-lived assets charges and termination fees, and stock-based compensation expense. Professional services costs are primarily comprised of IT and other consulting services, as well as legal expenses. Personnel and other costs are primarily comprised of costs related to retention and other bonuses, severance and duplicative labor costs. Long-lived assets charges and termination fees are comprised of include accelerated depreciation and amortization expense of \$5.3 million \$4.7 million and \$11.5 million \$16.2 million recorded during the three and six nine months ended May 31, 2023 August 31, 2023, respectively, and \$52.9 million \$4.4 million and \$57.3 million recorded during the six three and nine months ended May 31, 2022 August 31, 2022, respectively due to changes in asset useful lives in conjunction with the consolidation of certain IT systems, as well as \$2.3 million systems. Long-lived asset charges and \$12.5 million termination fees also include \$0.4 million and \$12.9 million recorded during the three and six nine months ended May 31, 2023 August 31, 2023 for termination fees related to certain IT systems. There were no long-lived assets charges and termination fees systems, along with \$4.3 million recorded during the three and nine months ended May 31, 2022 August 31, 2022 for impairment charges. Stock-based compensation expense primarily relates to costs associated with the conversion of certain Tech Data performance-based equity awards issued prior to the Merger into restricted shares of TD SYNEX (refer to Note 44 – Share-Based Compensation to the Consolidated Financial Statements in Part I, Item 1 of this Report for further information) and expenses for certain restricted stock awards issued in conjunction with the Merger.

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In July 2023, we offered a voluntary severance program ("VSP") to certain co-workers in the United States as part of our cost optimization efforts related to the Merger. We incurred \$37.2 million of costs in connection with the VSP during the three and nine months ended August 31, 2023, including \$30.0 million of severance costs and \$7.2 million of duplicative labor costs.

During the three and six nine months ended May 31, 2023 August 31, 2023 and 2022, acquisition and integration expenses related to the Merger were composed of the following:

		Three Months Ended		Six Months Ended			Three Months Ended		Nine Months Ended		
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022	
(in thousands)						(in thousands)					
Professional services costs	Professional services costs	\$ 4,311	\$ 5,793	\$ 11,121	\$ 13,941	Professional services costs	\$ 5,036	\$ 6,514	\$ 16,157	\$ 20,455	
Personnel and other costs	Personnel and other costs	11,275	4,404	24,282	15,348	Personnel and other costs	9,430	11,699	33,712	27,047	
Long-lived assets charges and termination fees	Long-lived assets charges and termination fees	7,613	—	23,989	52,871	Long-lived assets charges and termination fees	5,078	8,693	29,067	61,564	
Stock-based compensation	Stock-based compensation	11,039	12,889	22,560	26,465	Stock-based compensation	11,912	12,911	34,472	39,376	
Voluntary severance program costs						Voluntary severance program costs	37,178	—	37,178	—	
Total	Total	\$ 34,238	\$ 23,086	\$ 81,952	\$ 108,625	Total	\$ 68,634	\$ 39,817	\$ 150,586	\$ 148,442	

During the three months ended May 31, 2023 August 31, 2023, acquisition and integration expenses related to the Merger increased, compared to the prior year period, due to long-lived assets charges and termination fees, as well as an increase in personnel and other costs primarily due to higher severance costs, costs incurred related to the VSP. During the six nine months ended May 31, 2023 August 31, 2023, acquisition and integration expenses related to the Merger decreased, slightly increased, compared to the prior year period, primarily due to costs incurred related to the VSP, offset by the decrease in long-lived assets charges and termination fees.

GBO 2 Program

Prior to the Merger, Tech Data implemented its GBO 2 Program that includes investments to optimize and standardize processes and apply data and analytics to be more agile in a rapidly evolving environment, increasing productivity, profitability and optimizing net-working capital. TD SYNEX continued this program in conjunction with the Company's integration activities. Acquisition, integration and restructuring expenses related to the GBO 2 Program are primarily comprised of restructuring costs and other costs. Restructuring costs are comprised of severance costs and other associated exit costs, including certain consulting costs. Other costs are primarily comprised of personnel costs, facilities costs and certain professional services fees not related to restructuring activities.

We incurred acquisition, integration and restructuring costs under the GBO 2 Program of \$2.6 million \$3.0 million and \$9.4 million \$6.6 million during the three months ended May 31, 2023 August 31, 2023 and 2022, respectively. We incurred acquisition, integration, and restructuring costs under the GBO 2 Program of \$6.1 million \$9.0 million and \$17.2 million \$23.8 million during the six nine months ended May 31, 2023 August 31, 2023 and 2022, respectively. During the three and six nine months ended May 31, 2023 August 31, 2023, acquisition, integration and restructuring costs under the GBO 2 Program decreased, compared to the prior year period, due to the wind-down of activities as the program is not expected to incur material amounts in future periods.

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Operating Income

The following tables provide an analysis of operating income and non-GAAP operating income on a consolidated and regional basis as well as a reconciliation of operating income to non-GAAP operating income on a consolidated and regional basis for the three and **six nine** months ended **May 31, 2023** **August 31, 2023** and 2022:

	Three Months Ended		Percent Change	Six Months Ended		Percent Change
	May 31, 2023	May 31, 2022		May 31, 2023	May 31, 2022	
Operating Income and Operating Margin - Consolidated	(in thousands)			(in thousands)		
Revenue	\$ 14,062,124	\$ 15,269,791		\$ 29,187,495	\$ 30,739,768	
Operating income	\$ 252,883	\$ 252,737	0.1 %	\$ 551,045	\$ 475,177	16.0 %
Acquisition, integration and restructuring costs	36,829	32,478		88,011	125,848	
Amortization of intangibles	73,519	74,676		146,542	150,812	
Share-based compensation	7,648	7,038		20,722	13,788	
Purchase accounting adjustments	5,170	31,392		12,620	64,553	
Non-GAAP operating income	\$ 376,049	\$ 398,321	(5.6) %	\$ 818,940	\$ 830,178	(1.4) %
Operating margin	1.80 %	1.66 %		1.89 %	1.55 %	
Non-GAAP operating margin	2.67 %	2.61 %		2.81 %	2.70 %	

	Three Months Ended		Percent Change	Nine Months Ended		Percent Change
	August 31, 2023	August 31, 2022		August 31, 2023	August 31, 2022	
Operating Income and Operating Margin - Consolidated	(in thousands)			(in thousands)		
Revenue	\$ 13,960,615	\$ 15,356,085		\$ 43,148,110	\$ 46,095,853	
Operating income	\$ 240,233	\$ 241,534	(0.5) %	\$ 791,278	\$ 716,711	10.4 %
Acquisition, integration and restructuring costs	71,586	46,418		159,597	172,266	
Amortization of intangibles	74,029	73,270		220,571	224,082	
Share-based compensation	8,530	6,643		29,252	20,431	
Purchase accounting adjustments	2,427	30,418		15,047	94,971	
Non-GAAP operating income	\$ 396,805	\$ 398,283	(0.4) %	\$ 1,215,745	\$ 1,228,461	(1.0) %
Operating margin	1.72 %	1.57 %		1.83 %	1.55 %	
Non-GAAP operating margin	2.84 %	2.59 %		2.82 %	2.67 %	

Consolidated operating income **was flat** slightly decreased during the three months ended **May 31, 2023** **August 31, 2023**, compared to the prior year period, primarily due to the decline in revenues in our Endpoint Solutions portfolio, costs incurred related to the VSP and higher personnel costs, offset by an improvement in gross margin due to product and customer mix, including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies, and a decrease in purchase accounting adjustments related to the Merger. Consolidated operating income increased during the nine months ended **August 31, 2023**, compared to the prior year period, primarily due to an improvement in gross margin due to product and customer mix, **and a decrease including an increase in purchase accounting adjustments related to the Merger**, offset by the decline in revenues revenue in our **Endpoint Advanced Solutions portfolio**. Consolidated operating income increased during the six months ended **May 31, 2023**, compared to the prior year period, primarily due to an improvement portfolio and margin expansion in gross margin due to product and customer mix high-growth technologies, and a decrease in purchase accounting adjustments related to the Merger, partially offset by the decline in revenues in our Endpoint Solutions **portfolio. portfolio** and higher personnel costs.

Consolidated operating margin increased during the three and **six nine** months ended **May 31, 2023** **August 31, 2023**, compared to the prior year period, due to an increase in gross margin due to product and customer mix, **including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies**, and a decrease in purchase accounting adjustments related to the Merger, partially offset by higher selling, general and administrative expenses as a percentage of revenue due to the decrease in **revenues**.

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revenues and higher personnel costs.

Consolidated non-GAAP operating income decreased during the three and [six](#) nine months ended [May 31, 2023](#) [August 31, 2023](#), compared to the prior year period, primarily due to the decrease in revenue in our Endpoint Solutions portfolio and higher personnel costs, partially offset by an increase in gross margin due to product and customer [mix](#). [mix](#), including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies. Consolidated non-GAAP operating margin increased during the three and [six](#) nine months ended [May 31, 2023](#) [August 31, 2023](#), compared to the prior year period, primarily due to an increase in gross margin due to product and customer mix, [including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies](#), partially offset by higher selling, general and administrative expenses as a percentage of revenue due to the decrease in [revenues](#).

	Three Months Ended			Percent Change	Six Months Ended			Percent Change		
	May 31, 2023	May 31, 2022			May 31, 2023	May 31, 2022				
Operating Income and Operating Margin - Americas										
	(in thousands)				(in thousands)					
Revenue	\$	8,699,342	\$	9,776,933		\$	17,338,046	\$	18,851,206	
Operating income	\$	187,259	\$	192,823	(2.9)%	\$	366,764	\$	331,342	10.7 %
Acquisition, integration and restructuring costs		27,156		17,889			62,289		69,419	
Amortization of intangibles		42,382		43,568			84,796		87,096	
Share-based compensation		5,389		4,340			14,751		11,090	
Purchase accounting adjustments		—		18,830			—		36,568	
Non-GAAP operating income	\$	262,186	\$	277,450	(5.5)%	\$	528,600	\$	535,515	(1.3)%
Operating margin		2.15 %		1.97 %			2.12 %		1.76 %	
Non-GAAP operating margin		3.01 %		2.84 %			3.05 %		2.84 %	

Americas operating income decreased during the three months ended May 31, 2023, as compared to the prior year period, primarily due to the decrease in revenue [revenues](#) in our Endpoint Solutions portfolio along with an increase in acquisition, integration, and restructuring costs, partially offset by increased gross margin in the region due to product and customer mix, as well as the impact [higher personnel costs](#).

[Table of lower purchase accounting adjustments related to the Merger.](#) [contents](#)

	Three Months Ended			Percent Change	Nine Months Ended			Percent Change
	August 31, 2023	August 31, 2022			August 31, 2023	August 31, 2022		
Operating Income and Operating Margin - Americas								
	(in thousands)				(in thousands)			
Revenue	\$ 8,879,585	\$ 9,900,779			\$ 26,217,631	\$ 28,751,985		
Operating income	\$ 192,606	\$ 180,471	6.7 %		\$ 559,370	\$ 511,813	9.3 %	
Acquisition, integration and restructuring costs	60,393	33,545			122,682	102,964		
Amortization of intangibles	42,437	43,523			127,233	130,619		
Share-based compensation	6,325	5,036			21,076	16,126		
Purchase accounting adjustments	—	19,564			—	56,132		
Non-GAAP operating income	\$ 301,761	\$ 282,139	7.0 %		\$ 830,361	\$ 817,654	1.6 %	
Operating margin	2.17 %	1.82 %			2.13 %	1.78 %		
Non-GAAP operating margin	3.40 %	2.85 %			3.17 %	2.84 %		

Americas operating income increased during the [six](#) three and nine months ended [May 31, 2023](#) [August 31, 2023](#), as compared to the prior year period, primarily due to increased gross margin in the region due to product and customer mix, [including an increase in revenue in our Advanced Solutions portfolio and the impact of lower margin expansion in high-growth technologies](#), and a decrease in purchase accounting adjustments related to the Merger, partially offset by the [decline decrease in revenues](#) revenue in our Endpoint Solutions [portfolio](#). portfolio, costs incurred related to the VSP and higher personnel costs.

Americas operating margin increased during the three and [six](#) nine months ended [May 31, 2023](#) [August 31, 2023](#), compared to the prior year period, primarily due to increased gross margin in the region due to product and customer mix, [as well as the impact of lower](#) including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies, and a decrease in purchase accounting adjustments related to the Merger, partially offset by higher selling, general and administrative expenses as a percentage of revenue due to the decrease in [revenues](#). revenues in our Endpoint Solutions portfolio, costs incurred related to the VSP and higher personnel costs.

Americas non-GAAP operating income decreased during the three and six months ended May 31, 2023, compared to the prior year period, primarily due to the decrease in revenue in our Endpoint Solutions portfolio, partially offset by increased gross margin in the region due to product and customer mix. Americas non-GAAP operating margin increased during the three and six nine months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to increased gross margin in the region due to product and customer mix, including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies, partially offset by the decrease in revenue in our Endpoint Solutions portfolio and higher personnel costs.

Americas non-GAAP operating margin increased during the three and nine months ended August 31, 2023, compared to the prior year period, primarily due to increased gross margin in the region due to product and customer mix, including an increase in revenue in our Advanced Solutions portfolio and margin expansion in high-growth technologies, partially offset by higher selling, general and administrative expenses as a percentage of revenue due to the decrease in revenues, revenues and higher personnel costs.

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		Three Months Ended			Six Months Ended			August Percent Change	Three Months Ended			August Percent Change	Au		
				May 31, 2023			May 31, 2022				August 31, 2022				
		May 31, 2023	May 31, 2022		Change										
Operating Income and Operating Margin - Europe	Operating Income and Operating Margin - Europe							Operating Income and Operating Margin - Europe							
		(in thousands)			(in thousands)				(in thousands)						
Revenue	Revenue	\$ 4,461,461	\$ 4,652,611			\$ 9,981,898	\$ 10,232,399		Revenue	\$ 4,227,590	\$ 4,681,797		\$ 10,232,399		
Operating income	Operating income	\$ 40,057	\$ 40,525	(1.2)%		\$ 128,262	\$ 105,857	21.2 %	Operating income	\$ 29,531	\$ 44,260	(33.3)%	\$ 105,857		
Acquisition, integration and restructuring costs	Acquisition, integration and restructuring costs	8,863	11,070			23,446	50,799		Acquisition, integration and restructuring costs	10,304	11,313				
Amortization of intangibles	Amortization of intangibles	30,514	30,470			60,499	62,440		Amortization of intangibles	30,970	29,103				
Share-based compensation	Share-based compensation	1,866	2,080			5,042	2,080		Share-based compensation	1,809	1,286				
Purchase accounting adjustments	Purchase accounting adjustments	5,170	12,562			12,620	27,985		Purchase accounting adjustments	2,427	10,854				
Non-GAAP operating income	Non-GAAP operating income	\$ 86,470	\$ 96,707	(10.6)%		\$ 229,869	\$ 249,161	(7.7) %	Non-GAAP operating income	\$ 75,041	\$ 96,816	(22.5)%	\$ 249,161		
Operating margin	Operating margin	0.90 %	0.87 %			1.28 %	1.03 %		Operating margin	0.70 %	0.95 %				
Non-GAAP operating margin	Non-GAAP operating margin	1.94 %	2.08 %			2.30 %	2.44 %		Non-GAAP operating margin	1.78 %	2.07 %				

Europe operating income slightly decreased during the three months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to the decline in revenues in our Endpoint Solutions portfolio and an increase in personnel costs, partially offset by an increase in gross margin in the region due to product and customer mix and the impact of lower purchase accounting adjustments related to the Merger. Europe operating income increased during the six nine months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to a decrease in acquisition, integration, and restructuring costs, and the impact of lower purchase accounting adjustments related to the Merger and an increase in gross margin due to product and customer mix, partially offset by the decline in revenues in our Endpoint Solutions portfolio and higher personnel costs.

Europe operating margin increased decreased during the three months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to an increase higher selling, general and administrative expenses as a percentage of revenue due to the decrease in revenues and higher personnel costs, partially offset by improved gross margin in the region due to product and customer mix and the impact of lower purchase accounting adjustments related to the Merger, partially offset by an increase in personnel costs. Merger. Europe operating margin increased during the six nine months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to a decrease in acquisition, integration, and restructuring costs, and the impact of lower purchase accounting adjustments related to the Merger and an increase in gross margin due to product and customer mix, partially offset by higher selling, general and administrative expenses as a percentage of revenue due to the decrease in revenues and an increase in personnel costs.

Europe non-GAAP operating income decreased during the three and nine months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to the decline in revenues in our Endpoint Solutions portfolio and an increase in personnel costs, partially offset by an increase in gross margin in the region due to product and customer mix.

Europe non-GAAP operating income margin decreased during the six three and nine months ended May 31, 2023 August 31, 2023, compared to the prior year period, primarily due to higher selling, general and administrative expenses as a percentage of revenue due to the decline decrease in revenues in our Endpoint Solutions portfolio and an increase in personnel costs. Europe non-GAAP operating margin decreased during the three months ended May 31, 2023, compared to the prior year period, primarily due to an

increase in personnel costs, partially offset by an increase in gross margin due to product and customer mix. Europe non-GAAP operating margin decreased during the six months ended May 31, 2023, compared to the prior year period, primarily due to an increase in personnel costs.

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		Three Months Ended		Six Months Ended			August Percent Change	Three Months Ended			Nine Months Ended	
		May 31, 2023	May 31, 2022	Percent Change	May 31, 2023	May 31, 2022		August 31, 2022	Percent Change	August 31, 2022		
Operating Income and Operating Margin - APJ	Operating Income and Operating Margin - APJ	(in thousands)			(in thousands)			Operating Income and Operating Margin - APJ	(in thousands)			(in thousands)
Revenue	Revenue	\$901,321	\$840,247		\$1,867,551	\$1,656,163		Revenue	\$853,440	\$773,509		\$2,720,997
Operating income	Operating income	\$ 25,567	\$ 19,389	31.9 %	\$ 56,019	\$ 37,978	47.5 %	Operating income	\$ 18,096	\$ 16,803	7.7 %	\$ 74,115
Acquisition, integration and restructuring costs	Acquisition, integration and restructuring costs	810	3,519		2,276	5,630		Acquisition, integration and restructuring costs	889	1,560		3,165
Amortization of intangibles	Amortization of intangibles	623	638		1,247	1,276		Amortization of intangibles	622	644		1,865
Share-based compensation	Share-based compensation	393	618		929	618		Share-based compensation	396	321		1,325
Non-GAAP operating income	Non-GAAP operating income	\$ 27,393	\$ 24,164	13.4 %	\$ 60,471	\$ 45,502	32.9 %	Non-GAAP operating income	\$ 20,003	\$ 19,328	3.5 %	\$ 80,474
Operating margin	Operating margin	2.84 %	2.31 %		3.00 %	2.29 %		Operating margin	2.12 %	2.17 %		2.72 %
Non-GAAP operating margin	Non-GAAP operating margin	3.04 %	2.88 %		3.24 %	2.75 %		Non-GAAP operating margin	2.34 %	2.50 %		2.96 %

During the three months ended August 31, 2023, APJ operating income increased during and non-GAAP operating income were relatively flat, compared to the three and six prior year period. During the nine months ended May 31, 2023 August 31, 2023, APJ operating income and non-GAAP operating income increased, compared to the prior year period, primarily due to increased sales in the region due to high-growth technologies and a decrease in acquisition, integration, and restructuring partially offset by higher personnel costs.

During the three months ended August 31, 2023, APJ operating margin increased during and non-GAAP operating margin were relatively flat, compared to the three and six prior year period. During the nine months ended May 31, 2023 August 31, 2023, APJ operating margin and non-GAAP operating margin increased, compared to the prior year period, primarily due to regional lower selling, general and administrative expenses remaining consistent despite the increase in sales and as a decrease in acquisition, integration and restructuring costs, percentage of revenue.

APJ non-GAAP operating income increased during the three and six months ended May 31, 2023, compared to the prior year period, primarily due to increased sales in the region due to high-growth technologies. APJ non-GAAP operating margin increased during the three and six months ended May 31, 2023, compared to the prior year period, primarily due to regional selling, general and administrative expenses remaining consistent despite the increase in sales.

Interest Expense and Finance Charges, Net

	Three Months Ended		Percent Change	Six Months Ended		Percent Change
	May 31, 2023	May 31, 2022		May 31, 2023	May 31, 2022	
	(in thousands)			(in thousands)		
Interest expense and finance charges, net	\$ 74,285	\$ 47,968	54.9 %	\$ 154,485	\$ 90,311	71.1 %
Percentage of revenue	0.53 %	0.31 %		0.54 %	0.30 %	

	Three Months Ended				Percent Change	Nine Months Ended				Percent Change
	August 31, 2023		August 31, 2022			August 31, 2023		August 31, 2022		
	(in thousands)					(in thousands)				
Interest expense and finance charges, net	\$	67,703	\$	52,119	29.9 %	\$	222,188	\$	142,430	56.0 %
Percentage of revenue		0.48 %		0.34 %			0.51 %		0.31 %	

Amounts recorded in interest expense and finance charges, net, consist primarily of interest expense paid on our Senior Notes, our lines of credit, our accounts receivable securitization facility and our term loans, and fees associated with the sale of accounts receivable, partially offset by income earned on our cash investments.

During the three and six months ended May 31, 2023 August 31, 2023, our interest expense and finance charges, net increased, compared to the prior year period, primarily due to higher average interest rates, along with increased costs associated with the sale of accounts receivable due to higher discount fees, which totaled \$12.0 \$12.5 million and \$23.7 \$36.2 million in the three and six months ended May 31, 2023 August 31, 2023, respectively, compared to \$3.9 \$5.0 million and \$6.9 \$11.9 million in the three and six months ended May 31, 2022 August 31, 2022, respectively.

Other Expense, Net

	Three Months Ended						Six Months Ended						Three Months Ended						Nine Months Ended					
	May 31,		Percent Change	May 31,		Percent Change	August 31,		Percent Change	August 31,		Percent Change	August 31,		Percent Change	August 31,		Percent Change	August 31,		Percent Change			
	2023	2022		2023	2022		2023	2022		2023	2022		2023	2022		2023	2022		2023	2022		2023	2022	
	(in thousands)			(in thousands)			(in thousands)			(in thousands)			(in thousands)			(in thousands)			(in thousands)					
Other expense, net	Other expense, net	\$ 4,164	\$ 6,255	(33.4) %	\$ 4,320	\$ 10,523	(58.9) %	Other expense, net	\$ 2,371	\$ 1,852	28.0 %	\$ 6,691	\$ 12,375	(45.9) %										
Percentage of revenue	Percentage of revenue	0.03 %	0.05 %		0.01 %	0.03 %		Percentage of revenue	0.02 %	0.01 %		0.02 %	0.03 %											

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Amounts recorded as other expense, net include foreign currency transaction gains and losses on certain financing transactions and the related derivative instruments used to hedge such financing transactions, the cost of hedging, investment gains and losses, and other non-operating gains and losses, such as settlements received from class action lawsuits.

During the three and six months ended May 31, 2023 August 31, 2023, our other expense, net was relatively flat, compared to the prior year period. During the nine months ended August 31, 2023, our other expense, net decreased, compared to the prior year period, primarily due to lower foreign currency transaction losses.

Provision for Income Taxes

		Three Months Ended			Six Months Ended				Three Months Ended			Nine Months Ended		
				Percent Change			August 31, 2022				August 31, 2022	Percent Change		Percent Change
		May 31, 2023	May 31, 2022		May 31, 2023	May 31, 2022			August 31, 2022	August 31, 2022				
		(in thousands)			(in thousands)				(in thousands)			(in thousands)		
Provision for income taxes	Provision for income taxes	\$ 41,347	\$ 49,597	(16.6) %	\$ 92,133	\$ 93,102	(1.0) %	Provision for income taxes	\$ 30,897	\$ 38,728	(20.2) %	\$ 123,030	\$ 131,830	(6.7) %
Percentage of income before income taxes	Percentage of income before income taxes	23.70 %	24.98 %		23.49 %	24.87 %		Percentage of income before income taxes	18.16 %	20.65 %		21.88 %	23.46 %	

Income taxes consist of our current and deferred tax expense resulting from our income earned in domestic and foreign jurisdictions. Income taxes for the interim periods presented have been included in the accompanying Consolidated Financial Statements on the basis of an estimated annual effective tax rate.

During the three months ended May 31, 2023 August 31, 2023, our income tax expense decreased, compared to the prior year period, primarily due to lower income during the period, period along with a lower effective tax rate. During the six months ended May 31, 2023 August 31, 2023, our income tax expense slightly decreased, compared to the prior year period, primarily due to a lower effective tax rate. The effective tax rate was lower during the three and six months ended May 31, 2023 August 31, 2023 as compared to the three and six months ended May 31, 2022 August 31, 2022, primarily due to the utilization of tax credits earned in certain jurisdictions and the relative mix of earnings and losses within the taxing jurisdictions in which we operate. operate, partially offset by a tax benefit recorded in the prior year related to a capital loss carryback.

Net Income and Diluted EPS

The following tables present net income and diluted EPS as well as a reconciliation of our most comparable GAAP measures to the related non-GAAP measures presented:

Three Months Ended		Six Months Ended		Three Months Ended		Nine Months Ended	
May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022	August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022

Net Income - Consolidated	Net Income - Consolidated	(in thousands)				Net Income - Consolidated	(in thousands)			
Net income	Net income	\$ 133,087	\$ 148,917	\$ 300,107	\$ 281,241	Net income	\$ 139,262	\$ 148,835	\$ 439,369	\$ 430,076
Acquisition, integration and restructuring costs	Acquisition, integration and restructuring costs	39,125	34,759	92,549	129,961	Acquisition, integration and restructuring costs	73,897	48,730	166,446	178,691
Amortization of intangibles	Amortization of intangibles	73,519	74,676	146,542	150,812	Amortization of intangibles	74,029	73,270	220,571	224,082
Share-based compensation	Share-based compensation	7,648	7,038	20,722	13,788	Share-based compensation	8,530	6,643	29,252	20,431
Purchase accounting adjustments	Purchase accounting adjustments	5,170	31,392	12,620	64,553	Purchase accounting adjustments	2,427	30,418	15,047	94,971
Income taxes related to the above	Income taxes related to the above	(29,569)	(34,525)	(64,325)	(82,408)	Income taxes related to the above	(38,375)	(39,419)	(102,700)	(121,827)
Income tax capital loss carryback benefit	Income tax capital loss carryback benefit	—	—	—	(3,246)	Income tax capital loss carryback benefit	—	(5,053)	—	(8,299)
Non-GAAP net income	Non-GAAP net income	\$ 228,980	\$ 262,257	\$ 508,215	\$ 554,701	Non-GAAP net income	\$ 259,770	\$ 263,424	\$ 767,985	\$ 818,125

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Diluted Earnings per Common Share	Diluted Earnings per Common Share	Three Months Ended		Six Months Ended		Diluted Earnings per Common Share	Three Months Ended		Nine Months Ended	
		May 31, 2023	May 31, 2022	May 31, 2023	May 31, 2022		August 31, 2023	August 31, 2022	August 31, 2023	August 31, 2022
Diluted EPS ⁽¹⁾	Diluted EPS ⁽¹⁾	\$ 1.41	\$ 1.55	\$ 3.17	\$ 2.92	Diluted EPS ⁽¹⁾	\$ 1.49	\$ 1.55	\$ 4.66	\$ 4.47
Acquisition, integration and restructuring costs	Acquisition, integration and restructuring costs	0.41	0.36	0.98	1.35	Acquisition, integration and restructuring costs	0.79	0.50	1.76	1.86
Amortization of intangibles	Amortization of intangibles	0.79	0.77	1.54	1.56	Amortization of intangibles	0.79	0.76	2.34	2.33
Share-based compensation	Share-based compensation	0.08	0.07	0.22	0.14	Share-based compensation	0.09	0.07	0.31	0.21
Purchase accounting adjustments	Purchase accounting adjustments	0.05	0.33	0.13	0.67	Purchase accounting adjustments	0.03	0.32	0.16	0.99
Income taxes related to the above	Income taxes related to the above	(0.31)	(0.36)	(0.68)	(0.86)	Income taxes related to the above	(0.41)	(0.41)	(1.09)	(1.27)
Income tax capital loss carryback benefit	Income tax capital loss carryback benefit	—	—	—	(0.03)	Income tax capital loss carryback benefit	—	(0.05)	—	(0.09)
Non-GAAP diluted EPS	Non-GAAP diluted EPS	\$ 2.43	\$ 2.72	\$ 5.36	\$ 5.75	Non-GAAP diluted EPS	\$ 2.78	\$ 2.74	\$ 8.14	\$ 8.50

⁽¹⁾ Diluted EPS is calculated using the two-class method. Unvested restricted stock awards granted to employees are considered participating securities. For purposes of calculating Diluted EPS, net income allocated to participating securities was approximately 0.8% 0.7% of net income for both the three and six nine months ended May 31, 2023 August 31, 2023, and was approximately 0.7% and 0.6% of net income for both the three and six nine months ended May 31, 2022, respectively, August 31, 2022.

Liquidity and Capital Resources

Cash Conversion Cycle

	Three Months Ended						Three Months Ended				
			May 31, 2023	November 30, 2022	May 31, 2022			August 31, 2023	November 30, 2022	August 31, 2022	
	(Amounts in thousands)						(Amounts in thousands)				
Days sales outstanding ("DSO")	Days sales outstanding ("DSO")					Days sales outstanding ("DSO")					
Revenue	Revenue	(a)	\$ 14,062,124	\$ 16,247,957	\$ 15,269,791	Revenue	(a)	\$ 13,960,615	\$ 16,247,957	\$ 15,356,085	
Accounts receivable, net	Accounts receivable, net	(b)	8,376,421	9,420,999	7,851,536	Accounts receivable, net	(b)	8,892,130	9,420,999	8,114,004	
		(c) = ((b)/(a))*the number of days during the period					(c) = ((b)/(a))*the number of days during the period				
Days sales outstanding	Days sales outstanding		55	53	47	Days sales outstanding		59	53	49	
Days inventory outstanding ("DIO")	Days inventory outstanding ("DIO")					Days inventory outstanding ("DIO")					
Cost of revenue	Cost of revenue	(d)	\$ 13,098,714	\$ 15,188,238	\$ 14,314,002	Cost of revenue	(d)	\$ 12,989,342	\$ 15,188,238	\$ 14,440,055	
Inventories	Inventories	(e)	7,797,497	9,066,620	8,433,997	Inventories	(e)	7,462,162	9,066,620	9,755,228	
		(f) = ((e)/(d))*the number of days during the period					(f) = ((e)/(d))*the number of days during the period				
Days inventory outstanding	Days inventory outstanding		54	54	54	Days inventory outstanding		53	54	62	
Days payable outstanding ("DPO")	Days payable outstanding ("DPO")					Days payable outstanding ("DPO")					
Cost of revenue	Cost of revenue	(g)	\$ 13,098,714	\$ 15,188,238	\$ 14,314,002	Cost of revenue	(g)	\$ 12,989,342	\$ 15,188,238	\$ 14,440,055	
Accounts payable	Accounts payable	(h)	12,134,916	13,988,980	12,521,137	Accounts payable	(h)	12,485,180	13,988,980	13,718,980	
		(i) = ((h)/(g))*the number of days during the period					(i) = ((h)/(g))*the number of days during the period				
Days payable outstanding	Days payable outstanding		85	84	80	Days payable outstanding		89	84	88	
Cash conversion cycle ("CCC")	Cash conversion cycle ("CCC")	(j) = (c)+(f)-(i)	24	23	21	Cash conversion cycle ("CCC")	(j) = (c)+(f)-(i)	23	23	23	

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Cash Flows

Our business is working capital intensive. Our working capital needs are primarily to finance accounts receivable and inventory. We rely heavily on term loans, sales of accounts receivable, our securitization program, our revolver programs and net trade credit from vendors for our working capital needs. We have financed our growth and cash needs to date primarily through cash generated from operations and financing activities. As a general rule, when sales volumes are increasing, our net investment in working capital dollars typically increases, which generally results in decreased cash flow generated from operating activities. Conversely, when sales volumes decrease, our net investment in working capital dollars typically decreases, which generally results in increases in cash flows generated from operating activities. We calculate CCC as days of the last fiscal quarter's revenue outstanding in accounts receivable plus days of supply on hand in inventory, less days of the last fiscal quarter's cost of revenue outstanding in accounts payable. Our CCC was 24 days and 23 days as of May 31, 2023 August 31, 2023, which remained flat as compared to November 30, 2022 and November 30, 2022, respectively. The increase was primarily due August 31, 2022 as our net working capital balances declined on a consistent basis with the decrease in revenues in the current quarter as compared to our DSO, which was impacted by a shift in our product and customer mix to our Advanced Solutions portfolio and high-growth technologies which generally have a slightly longer cash conversion cycle. Our CCC was 24 days and 21 days as of May 31, 2023 and May 31, 2022, respectively. The increase was primarily due to our DSO, which was impacted by changes in product and customer mix and the timing of customer payments, partially offset by an increase in our DPO due to the timing of payments, prior periods.

To increase our market share and better serve our customers, we may further expand our operations through investments or acquisitions. We expect that any such expansions would require an initial investment in working capital, personnel, facilities and operations. These investments or acquisitions would likely be funded primarily by our existing cash and cash equivalents, additional borrowings, or the issuance of securities.

Operating Activities

Net cash provided by operating activities was \$604.8 million \$1.2 billion during the six nine months ended May 31, 2023 August 31, 2023, compared to net cash used in operating activities of \$284.5 \$351.8 million during the six nine months ended May 31, 2022 August 31, 2022. The increase in net cash provided by operating activities was primarily due to a decline in sales volumes which resulted in decreases in inventories and accounts receivable, and inventories, partially offset by a decrease in accounts payable.

Investing Activities

Net cash used in investing activities during the six nine months ended May 31, 2023 August 31, 2023 and 2022 was \$64.5 million \$113.2 million and \$46.7 \$77.0 million, respectively. The increase in cash used in investing activities is primarily due to an increase in integration related capital expenditures due to the Merger.

Financing Activities

Net cash used in financing activities during the six nine months ended May 31, 2023 August 31, 2023 and 2022 was \$247.1 \$405.6 million and \$130.0 \$159.2 million, respectively. The increase in cash used in financing activities is primarily due to an increase in repurchases of common stock under our share repurchase program, which totaled \$174.8 million \$277.8 million during the six nine months ended May 31, 2023 August 31, 2023 compared to \$52.8 million \$83.0 million during the six nine months ended May 31, 2022 August 31, 2022. In addition, we paid stockholder dividends of \$66.2 million \$98.9 million and \$57.6 million \$86.2 million during the six nine months ended May 31, 2023 August 31, 2023 and 2022, respectively.

Capital Resources

Our cash and cash equivalents totaled \$852.1 million \$1.3 billion and \$522.6 million as of May 31, 2023 August 31, 2023 and November 30, 2022, respectively. Our cash and cash equivalents held by international subsidiaries are no longer subject to U.S. federal tax on repatriation into the United States. Repatriation of some foreign balances is restricted by local laws. Historically, we have fully utilized and reinvested all foreign cash to fund our foreign operations and expansion. If in the future our intentions change, and we repatriate the cash back to the United States, we will report in our Consolidated Financial Statements the impact of state and withholding taxes depending upon the planned timing and manner of such repatriation. Presently, we believe we have sufficient resources, cash flow and liquidity within the United States to fund current and expected future working capital, investment and other general corporate funding requirements.

We believe that our available cash and cash equivalents balances, cash flows from operations and our existing sources of liquidity, including available capacity under our borrowing facilities, will be sufficient to enable the repayment of \$700.0 million of our Senior Notes due in August 2024 and satisfy our current and planned working capital and investment needs for the next twelve months in all geographies. We also believe that our longer-term working capital, planned capital expenditures, anticipated stock repurchases, dividend payments and other general corporate funding requirements will be satisfied through cash flows from operations and, to the extent necessary, from our borrowing facilities and future financial market activities.

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Credit Facilities and Borrowings

In the United States, we have an accounts receivable securitization program to provide additional capital for our operations (the "U.S. AR Arrangement"). Under the terms of the U.S. AR Arrangement, we and our subsidiaries that are party to the U.S. AR Arrangement can borrow up to a maximum of \$1.5 billion based upon eligible trade accounts receivable. The U.S. AR Arrangement has a maturity date of December 2024. We also have a credit agreement, dated as of April 16, 2021 and amended May 22, 2023 (as amended, the "TD SYNEX Credit Agreement"), pursuant to which we received commitments for the extension of a senior unsecured revolving credit facility not to exceed an aggregate principal amount of \$3.5 billion, which revolving credit facility (the "TD SYNEX revolving credit facility") may, at our request but subject to the lenders' discretion, potentially be increased by up to an aggregate amount of \$500.0 million. The TD SYNEX Credit Agreement also includes a \$1.5 billion term loan facility that was fully funded in connection with the Merger. The TD SYNEX Credit Agreement has a maturity date of September 2026, in the case of the TD SYNEX revolving credit facility, subject to two one-year extensions upon our prior notice to the lenders and the agreement of the lenders to extend such maturity date. The outstanding amount of our borrowings under the U.S. AR Arrangement and the TD SYNEX revolving credit facility may fluctuate in response to changes in our working capital and other liquidity requirements. There were no amounts outstanding under the U.S. AR Arrangement or the TD SYNEX revolving credit facility at May 31, 2023 August 31, 2023 or November 30, 2022.

We have various other committed and uncommitted lines of credit with financial institutions, finance leases, short-term loans, term loans, credit facilities and book overdraft facilities, totaling approximately \$588.5 million \$589.1 million in borrowing capacity as of May 31, 2023 August 31, 2023. Our borrowings on these facilities vary within the period primarily based on changes in our working capital. There was \$224.7 million \$164.9 million outstanding on these facilities at May 31, 2023 August 31, 2023, at a weighted average interest rate of 6.54% 5.78%, and there was \$193.1 million outstanding at November 30, 2022, at a weighted average interest rate of 4.69%.

Historically, we have renewed our accounts receivable securitization program and our parent company credit facilities on, or prior to, their respective expiration dates. We have no reason to believe that these and other arrangements will not be renewed or replaced as we continue to be in good credit standing with the participating financial institutions. We have had similar borrowing arrangements with various financial institutions throughout our years as a public company.

We had total outstanding borrowings of approximately \$4.1 billion as of May 31, 2023 August 31, 2023 and November 30, 2022. Our outstanding borrowings include Senior Notes of \$2.5 billion at May 31, 2023 August 31, 2023 and November 30, 2022, and term loans under the term loan facility of the TD SYNEX Credit Agreement of approximately \$1.4 billion at May 31, 2023 August 31, 2023 and November 30, 2022. For additional information on our borrowings, see [Note 8](#) - Borrowings to the Consolidated Financial Statements included in Part I, Item 1 of this Report.

Accounts Receivable Purchase Agreements

We have uncommitted supply-chain financing programs under which trade accounts receivable owed by certain customers may be acquired, without recourse, by certain financial institutions. Available capacity under these programs is dependent upon the level of our trade accounts receivable eligible to be sold into these programs and the financial institutions' willingness to purchase such receivables. In addition, certain of these programs also require that we continue to service, administer and collect the sold accounts receivable. At **May 31, 2023** **August 31, 2023** and November 30, 2022, we had a total of **\$1.1 billion** **\$834.5 million** and **\$1.4 billion**, respectively, of trade accounts receivable sold to and held by financial institutions under these programs. Discount fees for these programs totaled **\$12.0 million** **\$12.5 million** and **\$23.7 million** **\$36.2 million** in the three and **six nine** months ended **May 31, 2023** **August 31, 2023**, respectively, and **\$3.9 million** **\$5.0 million** and **\$6.9 million** **\$11.9 million** in the three and **six nine** months ended **May 31, 2022** **August 31, 2022**, respectively.

Covenant Compliance

Our credit facilities have a number of covenants and restrictions that require us to maintain specified financial ratios. They also limit our ability to incur additional debt, create liens, enter into agreements with affiliates, modify the nature of our business, and merge or consolidate. As of **May 31, 2023** **August 31, 2023**, we were in compliance with the financial covenant requirements for the above arrangements.

Related Party Transactions

For a summary of related party transactions, see **Note 11** - Related Party Transactions to the Consolidated Financial Statements, which can be found under Part I, Item 1 of this Report.

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Critical Accounting Policies and Estimates

During the **six nine** months ended **May 31, 2023** **August 31, 2023**, there were no material changes to our critical accounting policies and estimates previously disclosed in our Annual Report on Form 10-K for the fiscal year ended November 30, 2022.

Recently Issued Accounting Pronouncements

For a summary of recent accounting pronouncements and the anticipated effects on our consolidated financial statements, see **Note 2** - Summary of Significant Accounting Policies to the Consolidated Financial Statements, which can be found under Part I, Item 1 of this Report.

ITEM 3. Quantitative and Qualitative Disclosures about Market Risk

For a description of the Company's market risks, see "Part II, Item 7A. Quantitative and Qualitative Disclosures About Market Risk" in our Annual Report on Form 10-K for the fiscal year ended November 30, 2022.

No material changes have occurred in our market risks since November 30, 2022.

ITEM 4. Controls and Procedures

(a) Evaluation of disclosure controls and procedures. We maintain "disclosure controls and procedures," as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the U.S. Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Our disclosure controls and procedures have been designed to meet reasonable assurance standards. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer) have concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

(b) 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) under the Exchange Act) identified in connection with management's evaluation during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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PART II - OTHER INFORMATION

ITEM 1A. Risk Factors

You should carefully review and consider the information regarding certain factors that could materially affect our business, financial condition or future results set forth under Part I, Item 1A "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended November 30, 2022. There have been no material changes to the risk factors

disclosed in our 2022 Annual Report on Form 10-K.

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

In June 2020, our Board of Directors authorized a three-year \$400.0 million share repurchase program, effective July 1, 2020. In January 2023, our Board of Directors authorized a new three-year \$1.0 billion share repurchase program (the "new share repurchase program"), replacing the existing \$400.0 million share repurchase program, pursuant to which we may repurchase our outstanding common stock from time to time in the open market or through privately negotiated transactions. The prior \$400.0 million share repurchase program was terminated on January 4, 2023, when it was replaced by the new share repurchase program, which will expire on January 3, 2026.

The following table presents information with respect to purchases of common stock by the Company under the share repurchase program during the quarter ended **May 31, 2023** August 31, 2023:

Period	Issuer Purchases of Equity Securities (amounts in thousands except for per share amounts)			
	Total number of shares	Average price paid per share	Total number of shares	Maximum dollar value of
	purchased	(1)	purchased as part of publicly announced plans or program	shares that may yet be purchased under the plans or programs
March 1 - March 31, 2023	—	\$ —	—	\$ 901,697
April 1 - April 30, 2023	460	91.18	460	859,715
May 1 - May 31, 2023	204	88.40	204	841,716
Total	664	\$ 90.33	664	

Period	Issuer Purchases of Equity Securities (amounts in thousands except for per share amounts)			
	Total number of shares	Average price paid per share	Total number of shares	Maximum dollar value of
	purchased	(1)	purchased as part of publicly announced plans or program	shares that may yet be purchased under the plans or programs
June 1 - June 30, 2023	—	\$ —	—	\$ 841,716
July 1 - July 31, 2023	905	97.81	905	753,193
August 1 - August 31, 2023	145	99.64	145	738,763
Total	1,050	\$ 98.06	1,050	

(1) Excludes excise taxes, whether accrued or paid, and excludes broker's commissions.

ITEM 5. Other Information

Trading Arrangements

During the three months ended August 31, 2023, none of the Company's directors or officers adopted, amended, or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement", as those terms are defined in Regulation S-K, Item 408.

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ITEM 6. Exhibits

Exhibit Number	Description of Document
3(i).1	Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit 3(i).1 to the Company's Quarterly Report on Form 10-Q for the quarter ended February 28, 2022).
3(ii).1	Amended and Restated Bylaws (incorporated by reference to Exhibit 3(ii).1 to the Company's Annual Report on Form 10-K filed on January 24, 2023), January 24, 2023).
31.1	Rule 13a-14(a) Certification of Chief Executive Officer.
31.2	Rule 13a-14(a) Certification of Chief Financial Officer.
32.1*	Statement of the Chief Executive Officer and Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

* In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibit 32.1 hereto are deemed to accompany this Form 10-Q and will not be deemed "filed" for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

+Schedules (or similar attachments) and certain information have been omitted pursuant to Items 601(a)(5), 601(a)(6) and/or 601(b)(10)(iv) of Regulation S-K. TD SYNEX hereby undertakes to furnish supplementally a copy of any omitted schedule or exhibit to such agreement to the U.S. Securities and Exchange Commission upon request; provided, however, that TD SYNEX may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedules or exhibits so furnished.

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SIGNATURES

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

Date: **July 6, 2023** **October 3, 2023**

TD SYNEX CORPORATION

By: /s/ Richard T. Hume
Richard T. Hume
President and Chief Executive Officer
(Duly authorized officer and principal executive officer)

By: /s/ Marshall W. Witt
Marshall W. Witt
Chief Financial Officer
(Duly authorized officer and principal financial officer)

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Execution Version

Certain information in this document has been omitted and replaced with "[***]". Such identified information has been omitted from this document because it is not material and is of the type that the registrant treats as private or confidential.

AMENDMENT NO. 1 TO CREDIT AGREEMENT

AMENDMENT NO. 1, dated as of May 22, 2023 (this "Amendment"), to that certain CREDIT AGREEMENT, dated as of April 16, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among TD SYNEX CORPORATION (f/k/a SYNEX CORPORATION), a Delaware corporation (the "Borrower"), the banks, financial institutions and other institutional lenders from time to time party thereto (the "Lenders"), CITIBANK, N.A. ("Citibank"), as administrative agent for the Lenders (the "Agent") and a Swingline Lender and Bank of America, N.A. ("Bank of America"), as a Swingline Lender. Capitalized terms used in this Amendment but not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement or the Amended Credit Agreement (as defined below), as applicable.

WHEREAS, pursuant to the Credit Agreement as in effect prior to the Amendment Effective Date (the "Existing Credit Agreement"), the Lenders have agreed to extend credit to the Borrower on the terms and subject to the conditions set forth therein;

WHEREAS, subject to the satisfaction of the conditions precedent to effectiveness set forth in Section 3 hereof, the Borrower has requested, and Citibank and Bank of America have agreed to provide, a swingline facility available to the Borrower on the terms and conditions set forth in the Amended Credit Agreement;

WHEREAS, subject to the satisfaction of the conditions precedent to effectiveness set forth in Section 3 hereof, the Borrower has requested that the Lenders amend certain provisions of the Existing Credit Agreement as set forth in Section 1 hereof to, among other things, implement a LIBOR Successor Rate (as contemplated by Section 2.21 of the Existing Credit Agreement) for Eurocurrency Rate Advances denominated in Dollars; and

WHEREAS, all of the Lenders are willing to amend such provisions of the Existing Credit Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and subject to the conditions set forth herein, the parties hereto hereby agree as follows:

SECTION 1. Amendments. Effective as of the Amendment Effective Date (as defined below), the Existing Credit Agreement will be amended to read as set forth in Annex I hereto, provided, however, that except as set forth in the immediately following sentence, the Schedules and Exhibits thereto will not be amended. In addition, effective as of the Amendment Effective Date, (i) Exhibit B (Form of Notice of Borrowing) to the Existing Credit Agreement will be amended and restated in its entirety to read as set forth in Annex II hereto, (ii) Exhibit A-3 (Form of Swingline Note) will be added as an exhibit to the Amended Credit Agreement, as set forth in Annex III hereto and (iii) Schedule I (Commitments) to the Existing Credit Agreement will be amended and restated in its entirety to read as set forth in Annex IV hereto. The Existing Credit Agreement, as amended hereby, is referred to as the "Amended Credit Agreement".

SECTION 2. Representations and Warranties. To induce the other parties to enter into this Amendment, the Borrower hereby represents and warrants to the Agent and the Lenders that the following statements are true and correct:

- (a) the Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
- (b) the execution, delivery and performance by the Borrower of this Amendment are within the Borrower's corporate power, have been duly authorized by all necessary corporate action, and do not contravene (i) the Borrower's charter or by-laws or (ii) any material law or any material contractual restriction binding on or affecting the Borrower; and
- (c) no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery and performance by the Borrower of this Amendment.

SECTION 3. Effectiveness. This Amendment shall become effective as of the date the following conditions precedent are satisfied (the "Amendment Effective Date"):

(a) the Agent shall have received counterparts of this Amendment that, when taken together, bear the signatures of the Borrower, the Agent and all of the Lenders;

(b) as of the Amendment Effective Date, no Default or Event of Default shall have occurred and be continuing;

(c) each representation and warranty made by the Borrower in or pursuant to the Credit Agreement is true and correct in all material respects on and as of the Amendment Effective Date, except to the extent such representation and warranty expressly relates to an earlier date (in which case such representation and warranty is true and correct in all material respects as of such earlier date); provided that any representation and warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language is true and correct (after giving effect to any qualification therein) in all respects on such respective dates; and

(d) the Borrower shall have paid (or shall have caused to be paid) all fees and reasonable out-of-pocket expenses (including expenses of counsel for the Agent with respect hereto) required to be paid on or prior to the Amendment Effective Date (in the case of expenses, to the extent invoiced at least two Business Days prior to the Amendment Effective Date (except as otherwise agreed to by the Borrower)).

SECTION 4. Conversion to SOFR Borrowings; No Breakage. Notwithstanding anything set forth in the Existing Credit Agreement or the Amended Credit Agreement, the parties hereto agree that, as of the Amendment Effective Date, all of the Eurocurrency Rate Borrowings denominated in Dollars that are outstanding on the Amendment Effective Date immediately prior to giving effect to this Amendment shall remain outstanding as such until the conclusion of such applicable Interest Period, at which point such Eurocurrency Rate Borrowings shall be Converted in accordance with the Amended Credit Agreement. From and after the Amendment Effective Date, (i) the Borrower shall not be permitted to request that any Lender fund, and no Lender shall

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fund, any Eurocurrency Rate Advances denominated in Dollars, and (ii) no then-existing Eurocurrency Rate Advances denominated in Dollars may be continued as such.

SECTION 5. Credit Agreement. Except as expressly set forth herein, this Amendment (a) shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Agent, or the Borrower under the Existing Credit Agreement and (b) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle the Borrower to any future consent to, or waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement in similar or different circumstances. After the date hereof, any reference to the Credit Agreement shall mean the Amended Credit Agreement.

SECTION 6. Applicable Law; Submission to Jurisdiction and Waivers; Waiver of Jury Trial.

(a) THIS AMENDMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER ARISING IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY AGREES AS SET FORTH IN SECTIONS 8.12 AND 8.19 OF THE EXISTING CREDIT AGREEMENT AS IF SUCH SECTIONS WERE SET FORTH IN FULL HEREIN.

SECTION 7. Counterparts; Electronic Execution. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by telecopier shall be effective as delivery of a manually executed counterpart of this Amendment. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or electronic (in "pdf" or "tif" format) transmission shall be as effective as delivery of a manually executed

counterpart hereof. For purposes hereof, the words “execution,” “execute,” “executed,” “signed,” “signature” and words of like import shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formulations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transaction Act.

SECTION 8. Miscellaneous.

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(a) This Amendment is binding and enforceable as of the Amendment Effective Date against each party hereto and their respective successors and permitted assigns.

(b) Section headings used in this Amendment are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first written above.

TD SYNnex CORPORATION,
as the Borrower

By: /s/ Scott Walker
Name: Scott Walker
Title: Treasurer

[TD Synnex – Amendment No. 1 Signature Page]

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CITIBANK, N.A.,
as the Agent and a Swingline Lender

By: /s/ Daniel Boselli

Name: Daniel Boselli

Title: Vice President

[TD Synnex – Amendment No. 1 Signature Page]

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

By: /s/ Dylan Honza

Name: Dylan Honza

Title: Vice President

[TD Synnex – Amendment No. 1 Signature Page]

The Bank of Nova Scotia,
as a Lender

By: /s/ Luke Copley

Name: Luke Copley

Title: Director

[TD Synnex – Amendment No. 1 Signature Page]

Wells Fargo Bank, N.A.,
as a Lender

By: /s/ Sid Khanolkar

Name: Sid Khanolkar

Title: Managing Director

[TD Synnex – Amendment No. 1 Signature Page]

HSBC Bank USA, National Association,
as a Lender

By: /s/ Aleem Shamji
Name: Aleem Shamji
Title: Managing Director
[TD Synnex – Amendment No. 1 Signature Page]

MUFG Bank, Ltd.,
as a Lender

By: /s/ Lillian Kim
Name: Lillian Kim
Title: Director
[TD Synnex – Amendment No. 1 Signature Page]

SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

By: /s/ Irlen Mak
Name: Irlen Mak
Title: Director
[TD Synnex – Amendment No. 1 Signature Page]

The Toronto-Dominion Bank, New York Branch, as a Lender

By: /s/ David Perlman
Name: David Perlman
Title: Authorized Signatory
[TD Synnex – Amendment No. 1 Signature Page]

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as a Lender

By: /s/ Jill Wong
Name: Jill Wong
Title: Director

By: /s/ Gordon Yip
Name: Gordon Yip
Title: Director
[TD Synnex – Amendment No. 1 Signature Page]

JP Morgan Chase Bank, N.A.,
as a Lender

By: /s/ Richard Ong Pho
Name: Richard Ong Pho
Title: Executive Director
[TD Synnex – Amendment No. 1 Signature Page]

Mizuho Bank, Ltd.,
as a Lender

By: /s/ Tracy Rahn
Name: Tracy Rahn
Title: Executive Director
[TD Synnex – Amendment No. 1 Signature Page]

BNP PARIBAS,
as a Lender

By: /s/ George Ko
Name: George Ko
Title: Director

By: /s/ My-Linh Yoshiike
Name: My-Linh Yoshiike
Title: Vice President
[TD Synnex – Amendment No. 1 Signature Page]

BARCLAYS BANK PLC,
as a Lender

By: /s/ Warren Veech III
Name: Warran Veech III
Title: Vice President
[TD Synnex – Amendment No. 1 Signature Page]

PNC BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Carmen Campise Jr.
Name: Carmen Campise Jr.
Title: Senior Vice President
[TD Synnex – Amendment No. 1 Signature Page]

U.S. BANK NATIONAL ASSOCIATION,
as a Lender

By: /s/ Alexander Wilson
Name: Alexander Wilson
Title: Vice President
[TD Synnex – Amendment No. 1 Signature Page]

Fifth Third Bank, National Association,
as a Lender

By: /s/ Ryan Sonkin
Name: Ryan Sonkin
Title: Associate
[TD Synnex – Amendment No. 1 Signature Page]

KeyBank National Association,
as a Lender

By: /s/ Michael G Kousaie
Name: Michael G Kousaie
Title: Vice President
[TD Synnex – Amendment No. 1 Signature Page]

BANO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH,
as a Lender

By: /s/ Brian Crowley
Name: Brian Crowley
Title: Managing Director

By: /s/ Miriam Trautmann
Name: Miriam Trautmann
Title: Managing Director

[TD Synnex – Amendment No. 1 Signature Page]

Capital One, N.A.,
as a Lender

By: /s/ Charlie Trisiripisal
Name: Charlie Trisiripisal
Title: Duly Authorized Signatory

[TD Synnex – Amendment No. 1 Signature Page]

Citizens Bank, N.A.,
as a Lender

By: /s/ Robert F. Roden
Name: Robert F. Roden
Title: Managing Director

[TD Synnex – Amendment No. 1 Signature Page]

The Huntington National Bank,
as a Lender

By: /s/ Scott Pritchett

Name: Scott Pritchett

Title: Vice President

[TD Synnex – Amendment No. 1 Signature Page]

UniCredit Bank AG, New York Branch,
as a Lender

By: /s/ Priya Trivedi

Name: Priya Trivedi

Title: Director

By: /s/ Jakub Gazi

Name: Jakub Gazi

Title: Senior Associate

[TD Synnex – Amendment No. 1 Signature Page]

GOLDMAN SACHS BANK USA,
as a Lender

By: /s/ Keshia Leday

Name: Keshia Leday

Title: Authorized Signatory

[TD Synnex – Amendment No. 1 Signature Page]

SOCIETE GENERALE,
as a Lender

By: /s/ Richard Bernal
Name: Richard Bernal
Title: Managing Director
[TD Synnex – Amendment No. 1 Signature Page]

STANDARD CHARTERED BANK,
as a Lender

By: /s/ Kristopher Tracy
Name: Kristopher Tracy
Title: Director, Financing Solutions
[TD Synnex – Amendment No. 1 Signature Page]

Comerica Bank,
as a Lender

By: /s/ Cailyn Coburn
Name: Cailyn Coburn
Title: Portfolio Manager
[TD Synnex – Amendment No. 1 Signature Page]

Skandinaviska Enskilda Banken AB (publ),
as a Lender

By: /s/ Penny Neville-Park
Name: Penny Neville-Park
Title: Authorised Signatory

By: /s/ Andrew Moore
Name: Andrew Moore
Title: Authorized Signatory

[TD Synnex – Amendment No. 1 Signature Page]

Bank of China, Los Angeles Branch,
as a Lender

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

[TD Synnex – Amendment No. 1 Signature Page]

Agricultural Bank of China, New York Branch,
as a Lender

By: /s/ Nelson Chou
Name: Nelson Chou
Title: SVP & Head of Corporate Banking
Department

[TD Synnex – Amendment No. 1 Signature Page]

CREDIT SUISSE AG, NEW YORK BRANCH,
as a Lender

By: /s/ Doreen Barr
Name: Doreen Barr
Title: Authorized Signatory

By: /s/ Wing Yee Lee-Cember
Name: Wing Yee Lee-Cember
Title: Authorized Signatory

[TD Synnex – Amendment No. 1 Signature Page]

DBS BANK LTD.,
as a Lender


By: /s/ Kate Khoo
Name: Kate Khoo
Title: Vice President

[TD Synnex – Amendment No. 1 Signature Page]

Annex I

Amended Credit Agreement

(see attached)

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CREDIT AGREEMENT

Dated as of April 16, 2021,
as amended as of May 22, 2023

Among

TD SYNnex Corporation

as Borrower

and


THE INITIAL LENDERS NAMED HEREIN

as Initial Lenders

and

CITIBANK, N.A.

as Agent

 0001177394-23-000048image_0.jpg

CITIBANK, N.A.,

BANK OF AMERICA, N.A.,

THE BANK OF NOVA SCOTIA,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

HSBC BANK USA, N.A.,

MUFG BANK, LTD.,

as Joint Lead Arrangers and Joint Lead Bookrunners for the Facilities, and

SUMITOMO MITSUI BANKING CORPORATION

as Joint Lead Arranger and Joint Lead Bookrunner for the Term Facility,

BANK OF AMERICA, N.A.,

THE BANK OF NOVA SCOTIA,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

HSBC BANK USA, N.A.,

MUFG BANK, LTD.,

as Documentation Agents

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CREDIT AGREEMENT

Dated as of April 16, 2021,
[as amended by Amendment No. 1, dated as of May 22, 2023](#)

TD SYNEX Corporation, [\(f/k/a SYNEX Corporation\)](#), a Delaware corporation (the “**Company**”), the banks, financial institutions and other institutional lenders (the “**Initial Lenders**”) listed on [Schedule I](#) hereto, CITIBANK, N.A. (“**Citibank**”), as administrative agent (the

"Agent" for the Lenders (as hereinafter defined), Citibank, Bank of America, N.A., The Bank of Nova Scotia, Wells Fargo Bank, National Association, HSBC Bank USA, N.A., MUFG Bank, Ltd. and, with respect to the Term Facility only, Sumitomo Mitsui Banking Corporation, as joint lead arrangers and joint lead bookrunners, and Bank of America, N.A., The Bank of Nova Scotia, Wells Fargo Bank, National Association, HSBC Bank USA, N.A. and MUFG Bank, Ltd., as documentation agents, agree as follows:

PRELIMINARY STATEMENT.

Subject to the satisfaction of the conditions set forth in **Section 3.01**, the parties hereto ~~agree~~**agreed** to enter into this Agreement, which provides for a five year senior unsecured revolving credit facility in an initial amount of \$3,500,000,000 and a five year senior unsecured term A loan in the amount of \$1,500,000,000.

ARTICLE I.

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined, as the context may require):

"Acquired Company" means Tech Data Corporation, a Florida corporation.

"Acquisition" means the acquisition by the Company of all of the issued and outstanding Equity Interests of the Acquired Company from the equity holders thereof pursuant to the Merger Agreement.

"Adjusted Daily Simple SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Daily Simple SOFR for such calculation plus (b) the SOFR Adjustment; provided that if Adjusted Daily Simple SOFR as so determined shall be less than zero, then Adjusted Daily Simple SOFR shall be deemed to be zero.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall be less than zero, then Adjusted Term SOFR shall be deemed to be zero.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

"Advance" means a Revolving Credit Advance, a Swingline Advance or a Term Advance.

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

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term **"control"** (including the terms **"controlling"**, **"controlled by"** and **"under common control with"**) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Agent" has the meaning specified in the Preamble.

"Agent's Account" means

(a) in the case of Advances denominated in Dollars, the account of the Agent maintained by the Agent at Citibank at its office at One Penns Way, OPS 2/2, New Castle, Delaware 19720, Account No. 36852248, Attention: Agency Operations,

(b) in the case of Advances denominated in any Committed Currency, the account of the Agent designated in writing from time to time by the Agent to the Company and the Lenders for such purpose and

(c) in any such case, such other account of the Agent as is designated in writing from time to time by the Agent to the Company and the Lenders for such purpose.

"Agreement" means this Credit Agreement (as [amended by Amendment No. 1 and as](#) may be [further](#) amended, supplemented, restated or otherwise modified in accordance with the terms hereof).

"Amendment No. 1" means that certain [Amendment No. 1 to Credit Agreement, dated as of May 22, 2023, entered into by and among the Borrower, the Agent and the Lenders party thereto.](#)

"Amendment No. 1 Effective Date" means [May 22, 2023.](#)

"Anniversary Date" has the meaning specified in [Section 2.20\(a\).](#)

"Anti-Corruption Laws" means the Foreign Corrupt Practices Act of 1977, and the rules and regulations thereunder, and all other laws, rules, and regulations of any jurisdiction applicable to the Company or its Subsidiaries concerning or relating to bribery, corruption or money laundering.

"Applicable Lending Office" means, with respect to each Lender, such Lender's Domestic Lending Office in the case of a Base Rate Advance, [such Lender's SOFR Lending Office in the case of a SOFR Advance](#) and such Lender's Eurocurrency Lending Office in the case of a Eurocurrency Rate Advance.

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"Applicable Margin" means as of any date, a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

Public Debt Rating S&P/Moody's/Fitch	Revolving Credit Facility		Term Facility	
	Applicable Margin for SOFR Advances and Eurocurrency Rate Advances	Applicable Margin for Base Rate Advances	Applicable Margin for SOFR Advances and Eurocurrency Rate Advances	Applicable Margin for Base Rate Advances
Level 1 BBB+ / Baa1 / BBB+ or above	1.125%	0.125%	1.125%	0.125%
Level 2 BBB / Baa2 / BBB	1.250%	0.250%	1.250%	0.250%
Level 3 BBB- / Baa3 / BBB-	1.375%	0.375%	1.375%	0.375%
Level 4 BB+ / Ba1 / BB+	1.625%	0.625%	1.625%	0.625%
Level 5 Lower than Level 4 or unrated	1.750%	0.750%	1.750%	0.750%

"Applicable Percentage" means, as of any date a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

Public Debt Rating S&P/Moody's/Fitch	Applicable Percentage
Level 1 BBB+ / Baa1 / BBB+ or above	0.125%
Level 2 BBB / Baa2 / BBB	0.150%
Level 3 BBB- / Baa3 / BBB-	0.175%
Level 4 BB+ / Ba1 / BB+	0.250%
Level 5 Lower than Level 4 or unrated	0.300%

"Appropriate Lender" means, at any time, with respect to any ~~of the Revolving Credit Facility or Term~~ Facility, a Lender that has a Commitment with respect to such Facility at such time.

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"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.

"Arranger" means any of Citibank, Bank of America, N.A., The Bank of Nova Scotia, Wells Fargo Bank, National Association, HSBC Bank USA, N.A., MUFG Bank, Ltd. and, with respect to the Term Facility only, Sumitomo Mitsui Banking Corporation, each in its capacity as a joint lead arranger and a joint bookrunner.

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"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 8.07](#)), and accepted by the Agent, in substantially the form of [Exhibit C](#) hereto.

"Assuming Lender" has the meaning specified in [Section 2.18\(d\)](#).

"Assumption Agreement" has the meaning specified in [Section 2.18\(d\)\(ii\)](#).

"Attributable Debt" means, with respect to any Person on any date, (a) in respect of any Capital Lease Obligations, 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, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease, (c) in respect of any Securitization Program, the outstanding principal amount of such financing determined in accordance with GAAP and (d) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

"Available Amount" of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing).

"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 BRRD, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule; and

(b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other

financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bankruptcy Law" means any law or proceeding of the type referred to in **Section 6.01(e)** or Title 11, U.S. Code, or any similar foreign, federal, state or provincial law for the relief of debtors.

"Base Rate" means a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be not less than zero and equal to the highest of:

(a) the rate of interest announced publicly by Citibank in New York, New York, from time to time, as Citibank's base rate;

(b) ½ of one percent per annum above the Federal Funds Rate; and

(c) ~~the ICE Benchmark Administration Settlement Rate (or the successor thereto if the ICE Benchmark Administration is no longer making such a rate available) applicable to Dollars~~ **Adjusted Term SOFR** for a period of one month (~~"One Month LIBOR"~~) **plus 1.00% (for the avoidance of doubt, the One Month LIBOR for any day shall be based on the rate appearing on the applicable Bloomberg screen (or other commercially available source providing such quotations as designated by the Agent and approved by the Company from time to time) at approximately 11:00 a.m. London time on such day or if such day is not a Business Day, the previous Business Day) in effect on the Base Rate Term SOFR Determination Day plus 1.00%; provided** that if ~~One Month LIBOR~~ **Adjusted Term SOFR** shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Base Rate Advance" means an Advance denominated in Dollars that bears interest as provided in **Section 2.07(a)(i)**.

"Base Rate Term SOFR Determination Day" ~~has the meaning specified in the definition of "Term SOFR".~~

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

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

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Internal Revenue 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 Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"Borrower" means the Company.

"Borrowing" means a Revolving Credit Borrowing, **a Swingline Borrowing** or a Term Borrowing.

"Business Day" means (i) a day of the year on which banks are not required or authorized by law to close in New York City and, if the applicable Business Day relates to any Eurocurrency Rate Advances, on which ~~dealings are carried on in the London interbank market and~~ banks are open for business ~~in London and~~ in the country of issue of the currency of such Eurocurrency Rate Advance (or, in the case of an Advance denominated in Euro, on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open) for the settlement of payments in Euros) and (ii) in the case of any SOFR Advance, a day that is also a U.S. Government Securities Business Day.

"Capital Lease Obligations" means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP; and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"CDOR" has the meaning assigned to that term in "Eurocurrency Rate" definition.

"Closing Date" has the meaning specified in Section 3.02.

"Commitment" means a Revolving Credit Commitment, a Letter of Credit Commitment, a Swingline Commitment or a Term Commitment.

"Commitment Date" has the meaning specified in Section 2.18(b).

"Commitment Increase" has the meaning specified in Section 2.18(a).

"Committed Currencies" means Euros and the lawful currency of Canada ~~and the currency of Switzerland~~ and any additional currency that the Borrower and the Agent shall agree to include at a later date in accordance with Section 1.07.

"Company" has the meaning specified in the Preamble.

"Company Information" has the meaning specified in Section 8.08.

"Competitor" means, as of any date, any Person that is (a) any provider of information technology distribution, systems design and integration services or (b) any affiliate of a competitor of the Borrower or any of its Subsidiaries, in each case, which Person has been designated by the Company as a "Competitor" by written notice to the Agent and the Lenders (including by posting such notice to the Platform) effective five Business Days after such notice is so given; **provided** that "Competitor" shall exclude any Person that the Company has designated as no longer being a "Competitor" by written notice delivered to the Agent from time to time.

"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" refers to the consolidation of accounts in accordance with GAAP.

"Consolidated Tangible Assets" means all assets of a Person, other than assets that are considered to be intangible assets under GAAP, measured on a Consolidated basis.

"Convert", "Conversion" and "Converted" each refers to a conversion of Advances of one Type under the Revolving Credit Facility or the Term Facility into Advances of the other Type under such Facility pursuant to Section 2.08 or 2.09. For the avoidance of doubt, Swingline Advances may not be Converted.

"Daily Simple SOFR" means, for any day (a "Daily Simple SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, "Daily Simple SOFR Determination Day") that is five (5) U.S. Government Securities Business Days prior to (i) if such Daily Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Daily Simple SOFR Rate Day or (ii) if such Daily Simple SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Daily Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. If by 5:00 p.m. (New York City Time) on the second U.S. Government Securities Business Day immediately following any Daily Simple SOFR Determination Day, SOFR in respect of such Daily Simple SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then the SOFR for such Daily Simple SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive Daily Simple SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"Daily Simple SOFR Advance" means an Advance that bears interest at a rate based on Adjusted Daily Simple SOFR.

"Daily Simple SOFR Determination Day" has the meaning specified in the definition of "Daily Simple SOFR".

"Daily Simple SOFR Rate Day" has the meaning specified in the definition of "Daily Simple SOFR".

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

(a) all obligations, whether current or long-term, for borrowed money (including Advances hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all purchase money indebtedness;

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(c) the maximum amount available to be drawn under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(d) all obligations in respect of the deferred purchase price of property or services (other than (i) trade accounts payable, intercompany charges of expenses, deferred revenue and other accrued liabilities (including deferred payments in respect of services by employees), in each case incurred in the ordinary course of business, and (ii) any earn-out obligation or other post-closing balance sheet adjustment prior to such time as it becomes a liability on the balance sheet of such Person in accordance with GAAP);

(e) the Attributable Debt of Capital Lease Obligations, Synthetic Lease Obligations, Sale and Leaseback Transactions and Securitization Programs;

(f) the Hedge Termination Value of any Hedge Agreements;

(g) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(h) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Termination Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interests, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(i) without duplication, all Guarantees in respect of any of the foregoing; and

(j) all Debt of the types referred to in **clauses (a)** through **(i)** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent that such Debt is expressly made non-recourse to such Person (except for customary exceptions to non-recourse provisions such as fraud, misappropriation of funds and environmental liabilities).

For the avoidance of doubt, notwithstanding anything to the contrary contained in this Agreement, the following shall not constitute Debt: (i) trade payables created in the ordinary course of business in connection with the acquisition of inventory (including (x) inventory subject to a Lien described under **Section 5.02(a)(xv)** and (y) Receivables and Related Assets subject to a Lien described under **Section 5.02(a)(xvi)**) and (ii) overdraft lines.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Defaulting Lender" means, subject to **Section 2.19(d)**, at any time, any Lender that, at such time

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(a) has failed to perform any of its funding obligations hereunder, including in respect of its Advances or participations in respect of Letters of Credit **or then-outstanding Swingline Advances**, within two Business Days of the date required to be funded by it hereunder, unless such Lender reasonably determines in good faith, and so notifies the Agent and the Company in writing, that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied,

(b) has notified the Company, any Issuing Bank or the Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such Lender reasonably determines in good faith, and so notifies the Agent and the Company in writing, that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied) or generally under other agreements in which it commits to extend credit,

(c) has failed, within three Business Days after written request by the Agent (based on its reasonable belief that such Lender may not fulfill its funding obligations hereunder), to confirm in a manner reasonably satisfactory to the Agent that it will comply with its funding obligations hereunder, **provided** that a Lender shall cease to be a Defaulting Lender upon the Agent's and the Company's receipt of such written confirmation, or

(d) has, or has a direct or indirect parent company that has,

(i) become the subject of a proceeding under any debtor relief law,

(ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it,

(iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or

(iv) become the subject of a Bail-In Action;

provided that

(A) a Lender shall not be a Defaulting Lender solely by virtue of the control, ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a governmental authority or the exercise of control over such Lender or any direct or indirect parent company thereof by a governmental authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or

writs of attachment on its assets or permit such Lender (or such governmental authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender and

(B) if the condition(s) precedent to funding that form the basis of a Lender's determination in **clause (a)** or **(b)** have been effectively waived in accordance with this Agreement, such Lender shall be a Defaulting Lender if such failure to fund continues after the effectiveness of such waiver.

Any determination by the 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 2.19(d)**) upon delivery of written notice of such determination to the Company and each Lender.

"Disclosure Letter" means the disclosure letter, dated as of the Closing Date, delivered by the Borrower to the Agent for the benefit of the Lenders, as amended or otherwise modified from time to time

"Dollars" and the "\$" sign each means lawful currency of the United States of America.

"Domestic Lending Office" means, with respect to any Lender, the office or branch of such Lender specified as its "Domestic Lending Office" in its Administrative Questionnaire delivered to the Agent, or such other office, branch or Affiliate of such Lender as such Lender may from time to time specify to the Company and the Agent.

"EBITDA" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Net Income for such period plus

(a) the following to the extent deducted in calculating such Net Income:

(i) Interest Charges for such period,

(ii) the provision for federal, state, local and foreign income taxes payable for such period,

(iii) depreciation and amortization expense for such period,

(iv) non-cash stock based compensation expense,

(v) all other non-cash charges, non-cash expenses and non-cash losses in such period but only to the extent that, as of the date of determination, the Borrower does not reasonably anticipate that cash payments will be made or be required to be made with respect thereto in any future period,

(vi) any fees, expenses or charges (other than depreciation or amortization expense as described in the preceding **subclause (iii)**) related to the repurchase or issuance of Equity Interests or Debt, investments, acquisitions, dispositions (including the spin-off by the Borrower of its Concentrix customer experience services business segment), recapitalizations or the incurrence, modification, redemption, retirement or repayment of Debt permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (x) such fees, expenses or charges related to the this Agreement (and, in each case, any refinancing in respect thereof) and (y) any amendment or other modification of this Agreement or other Debt and, in each case,

outside of the ordinary course of business; **provided** that the aggregate amount of fees, expenses or charges added pursuant to this **clause (vi)** and **clause (vii)** below shall not, in the aggregate, exceed 15% of EBITDA (calculated without giving effect to **clause (vii)**) for such period, and

(vii) fees and business optimization and other expenses and non-recurring charges, including severance and restructuring charges, and closing or consolidation expenses relating to businesses or locations thereof, incurred in connection with investments, acquisitions or dispositions, **provided** that the aggregate amount of fees and expenses and non-recurring charges added pursuant to this **clause (vii)** and **clause (vi)** above shall not, in the aggregate, exceed 15% of EBITDA (calculated without giving effect to this **clause (vii)**) for such period, minus

(b) to the extent included in calculating such Net Income: non-cash gains for such period.

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

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

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

"Effective Date" has the meaning specified in **Section 3.01**.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under **Section 8.07(b)(iii), (v) and (vi)** (subject to such consents, if any, as may be required under **Section 8.07(b)(iii)**).

"Environmental Action" means (a) any notice of non-compliance or violation, notice of liability or potential liability, proceeding, consent order or consent agreement by any governmental or regulatory authority with jurisdiction or (b) any litigation, case, suit, demand, demand letter or claim by any governmental or regulatory authority or any third party relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials, including, without limitation, (x) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (y) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"Environmental Law" means any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or

guidance relating to pollution or protection of the environment or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials, to the extent applicable to the operations of the Company or any of its Subsidiaries.

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any Environmental Law for the operations of the Company or any of its Subsidiaries.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust

interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Equivalent" in Dollars of any Committed Currency on any date means the equivalent in Dollars of such Committed Currency determined by using the spot rate of exchange that appears at 11:00 A.M. (London time), on the display page applicable to the relevant currency on the Oanda website on such date, and the "Equivalent" in any Committed Currency of Dollars means the equivalent in such Committed Currency of Dollars determined by using the spot rate of exchange that appears at 11:00 A.M. (London time), on the display page applicable to the relevant currency on the Oanda website on such date; **provided** that, if there shall at any time no longer exist such a page on such website, the spot rate of exchange shall be determined by reference to another similar rate publishing service selected by the Agent, and **provided, further**, that **"Equivalent in Dollars"** or **"Dollar Equivalent"** other than in the specific context of Committed Currencies means the sum of amounts in Dollars and the Equivalent in Dollars of amounts in a Committed Currency unless the context otherwise requires.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of the Company's controlled group, or under common control with the Company, within the meaning of Section 414 of the Internal Revenue Code.

"ERISA Event" means (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Pension Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC, or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Pension Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Pension Plan; (c) the provision by the administrator of any Pension Plan of a notice of intent to terminate such Plan pursuant to

Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of the Company or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by the Company or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for the imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Pension Plan; or (g) the institution by the PBGC of proceedings to terminate a Pension Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Pension Plan.

"Erroneous Payment" has the meaning assigned to in [Section 7.11\(a\)](#).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in [Section 7.11\(d\)](#).

"Erroneous Payment Impacted Class" has the meaning assigned to it in [Section 7.11\(d\)](#).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in [Section 7.11\(d\)](#).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in [Section 7.11\(d\)](#).

"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.

"EURIBOR" has the meaning assigned to that term in ["Eurocurrency Rate" definition](#).

"Euro" means the lawful currency of the European Union as constituted by the Treaty of Rome which established the European Community, as such treaty may be amended from time to time and as referred to in the EMU legislation.

"Eurocurrency Lending Office" means, with respect to any Lender, the office or branch of such Lender specified as its **"EurodollarEurocurrency Lending Office"** in its Administrative Questionnaire delivered to the Agent, or such other office, branch or Affiliate of such Lender as such Lender may from time to time specify to the Company and the Agent.

"Eurocurrency Liabilities" ~~has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time;~~

"Eurocurrency Rate" means, subject to **Section 2.21**, for any Interest Period for each Eurocurrency Rate Advance comprising part of the same Borrowing, an interest rate per annum equal to the rate ~~per annum obtained by dividing~~ **for Advances denominated in**

~~(a) (i) for Advances denominated in Dollars or any Committed Currency other than Canadian Dollars, Euros or Swiss Francs, the rate per annum (rounded upward to the~~

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~~nearest whole multiple of 1/100 of 1% per annum) appearing on the applicable Bloomberg screen (or other commercially available source providing such quotations as designated by the Agent and approved by the Company from time to time) as the London interbank offered rate for deposits in Dollars or the applicable Committed Currency at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period;~~

(a) **[reserved]**.

(b) ~~(ii) for Advances denominated in~~ Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate ("**CDOR**"), or a comparable or successor rate which rate is approved by the Agent, as published on the applicable Bloomberg screen (or such other commercially available source providing such quotations as may be designated by the Agent and approved by the Company from time to time) at or about 10:00 a.m. (Toronto, Ontario time) on the first day of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Agent) (or if such day is not a Business Day, then on the immediately preceding Business Day with a term equivalent to such Interest Period);

(c) ~~(iii) for Advances denominated in~~ Euros, the rate per annum equal to the Euro interbank offered rate administered by the European Money Market Institute ("**EURIBOR**"), or a comparable or successor rate which rate is approved by the Agent, as published on the applicable Thomas Reuters screen (or such other commercially available source providing such quotations as may be designated by the Agent and approved by the Company from time to time) at or about 11:00 a.m. (Brussels, Netherlands time) two Business Days prior to the first day of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Agent) (or if such day is not a Business Day, then on the immediately preceding Business Day with a term equivalent to such Interest Period);

~~(iv) for Advances denominated in Swiss Francs, the rate per annum equal to the CHF LIBOR Rate ("**CHF LIBOR**"), or a comparable or successor rate which rate is approved by the Agent, as published by reference to the ICE Benchmark Administration Interest Settlement Rates (or such other commercially available source providing such quotations as may be designated by the Agent and approved by the Company from time to time) at or about 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Agent) (or if such day is not a Business Day, then on the immediately preceding Business Day with a term equivalent to such Interest Period); by~~

~~(b) a percentage equal to 100% minus the Eurocurrency Rate Reserve Percentage for such Interest Period;~~

provided that

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(x) if the Eurocurrency Rate shall not be available at such time for such Interest Period (an ***“Impacted Interest Period”***) with respect to the applicable currency then the Eurocurrency Rate shall be the rate per annum (rounded upward to the nearest whole multiple of 1/100 of 1% per annum) determined by the Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (A) the Eurocurrency Rate for the longest period for which the Eurocurrency Rate is available for the applicable currency that is shorter than the Impacted Interest Period; and (B) the Eurocurrency Rate for the shortest period (for which that Eurocurrency Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time and

(y) if the Eurocurrency Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Eurocurrency Rate Advance” means a Revolving Credit Advance denominated in ~~Dollars or~~ a Committed Currency, ~~or a Term Advance denominated in Dollars that bears interest as provided in Section 2.97(a)(ii).~~

~~***“Eurocurrency Rate Reserve Percentage”*** for any Interest Period for all Eurocurrency Rate Advances comprising part of the same Borrowing means the reserve percentage applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the interest rate on Eurocurrency Rate Advances is determined) having a term equal to such Interest Period;~~

“Events of Default” has the meaning specified in **Section 6.01**.

“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 Note or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Note or Commitment (other than pursuant to an assignment request by the Company under **Section 8.16**) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 2.14**, amounts with respect to such Taxes were payable

either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office,

(c) Taxes attributable to such Recipient’s failure to comply with **Section 2.14(e)** and

(d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreements” means (i) that certain Asset Based Credit Agreement, dated as of June 30, 2020, among the Acquired Company, the lenders parties thereto and Citibank, as agent, (ii) that certain Credit Agreement, dated as of November 27, 2013, among the

Company, the lenders parties thereto and Bank of America, N.A, as administrative agent, and (iii) that certain Credit Agreement, dated as of August 9, 2018, among the Company, the lenders parties thereto and JPMorgan Chase Bank, N.A., in each case, as amended, restated, amended and restated, supplemented or modified.

"Existing Debt" has the meaning specified in [Section 5.02\(c\)\(ii\)](#).

"Facility" means the Revolving Credit Facility, the Letter of Credit Sublimit, [the Swingline Sublimit](#) or the Term Facility.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the ~~date of this Agreement~~[Amendment No. 1 Effective Date](#) (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue 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 Internal Revenue Code.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it; **provided** that, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

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

"Financial Stability Board" means the Financial Stability Board established after the G20 London summit in April 2009 as a successor to the Financial Stability Forum (or any successor or replacement organization from time to time).

"Fitch" means Fitch, Inc., a subsidiary of Finlac, S.A., and any successor to its rating agency business.

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

"Foreign Subsidiary" means any Subsidiary that is not a U.S. Person.

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

"Funded Debt" means, to any Person as of any date of determination, without duplication, all of the following types of Debt, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations, whether current or long-term, for borrowed money (including Advances hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all purchase money Debt;

(c) the maximum amount available to be drawn under all outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);

(e) all Attributable Debt;

(f) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Termination Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(g) without duplication, all Guarantees with respect to outstanding Debt of the types specified in **clauses (a)** through **(e)** above of another Person; and

(h) all Debt of the types referred to in **clauses (a)** through **(e)** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent that such indebtedness is expressly made non-recourse to such Person (except for customary exceptions to non-recourse provisions such as fraud, misappropriation of funds and environmental liabilities).

"GAAP" has the meaning specified in **Section 1.03**.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to

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government (including any supranational bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person,

(a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the **"primary obligor"**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect,

(i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation,

(ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation,

(iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or

(iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or

(b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien).

The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Hazardous Materials" means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic under any Environmental Law, located on or under or emanating from real property owned or operated by the Company or any of its Subsidiaries.

"Hedge Agreements" means interest rate swap, cap or collar agreements, interest rate future or option contracts and other similar agreements (for the avoidance of doubt, Hedge Agreements do not include currency swap agreements and currency future or option contracts).

"Hedge Termination Value" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been

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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 Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

"Immaterial Subsidiary" means any Subsidiary of the Company as to which the aggregate value of assets of any such Subsidiary does not exceed 5.00% of Consolidated total assets of the Company and its Subsidiaries (based on the Consolidated balance sheet of the Company and its Subsidiaries), as of the last day of the Fiscal Year of the Company most recently ended for which financial statements have been delivered pursuant to **Section 5.01(h)**; **provided** that the aggregate value of all such Subsidiaries shall not exceed 10.0% of Consolidated total assets of the Company and its Subsidiaries (based on the Consolidated balance sheet of the Company and its Subsidiaries), as of the last day of the Fiscal Year of the Company most recently ended for which financial statements have been delivered pursuant to **Section 5.01(h)**.

"Increase Date" has the meaning specified in **Section 2.18(a)**.

"Increasing Lender" has the meaning specified in **Section 2.18(b)**.

"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 the Borrower under this Agreement or the Notes or any other documents to be delivered hereunder and (b) to the extent not otherwise described in **clause (a)**, Other Taxes.

"Information Memorandum" means the information memorandum dated March 24, 2021 issued by the Agent in connection with the syndication of the Commitments.

"Initial GAAP" has the meaning specified in **Section 1.03**.

"Initial Lenders" has the meaning specified in the Preamble.

"Interest Charges" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of

(a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus

(b) the portion of rent expense with respect to such period under capital leases that is treated as interest in accordance with GAAP plus

(c) the implied interest component of Synthetic Lease Obligations with respect to such period.

"Interest Period" means, for each **Term SOFR Advance or Eurocurrency Rate Advance** comprising part of the same Borrowing, the period commencing on the date of such **Term SOFR Advance or Eurocurrency Rate Advance** or the date of the Conversion of any Base Rate

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Advance or Daily Simple SOFR Advance into such Term SOFR Advance or Eurocurrency Rate Advance and ending on the last day of the period selected by the Borrower requesting such Borrowing pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one, three or six months, ~~and subject to clause (c) of this definition, twelve months,~~ as the Borrower may, upon notice received by the Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; **provided, however,** that

(d) the Borrower may not select any Interest Period with respect to any Term SOFR Advance or Eurocurrency Rate ~~Borrowing~~ Advance under a Facility that ends after any scheduled principal repayment installment date for such Facility unless, after giving effect to such selection, the aggregate outstanding principal amount of Base Rate Advances and ~~of~~ Daily Simple SOFR Advances, together with the outstanding principal amount of Term SOFR Advances and Eurocurrency Rate Advances having Interest Periods that end on or prior to such principal repayment installment date for such Facility, as applicable, shall be at least equal to the aggregate principal amount of Advances under such Facility due and payable on or prior to such date;

(e) Interest Periods commencing on the same date for Term SOFR Advances or Eurocurrency Rate Advances comprising part of the same Borrowing shall be of the same duration; **provided** that, for the avoidance of doubt, more than one Borrowing may be made on the same day and such Borrowings may have Interest Periods of different duration;

~~(c) the Borrower shall not be entitled to select an Interest Period having a duration of twelve months unless, by 2:00 P.M. (New York City time) on the third Business Day prior to the first day of such Interest Period, each Appropriate Lender notifies the Agent that such Lender will be providing funding for such Borrowing with such Interest Period (the failure of any Appropriate Lender to so respond by such time being deemed for all purposes of this Agreement as an objection by such Lender to the requested duration of such Interest Period); provided that, if any or all of the Appropriate Lenders object to the requested duration of such Interest Period, the duration of the Interest Period for such Borrowing shall be one, three or six months, as specified by the Borrower requesting such Borrowing in the applicable Notice of Borrowing as the desired alternative to an Interest Period of twelve months;~~

(f) [reserved];

(g) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, **provided, however,** that, in the case of an Interest Period of one month or longer, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day;

(h) whenever the first day of any Interest Period of one month or longer occurs on a day of an initial calendar month for which there is no numerically corresponding day in the

calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month¹.

~~(f) the Borrower may select, for any Interest Period commencing on the Closing Date, an Interest Period ending as of last day of the next calendar month or fiscal quarter of the Borrower and~~

~~(g) (i) twelve-month Interest Periods may not be selected for Eurocurrency Rate Advances denominated in a currency other than USD,~~

~~(ii) six-month Interest Periods may not be selected in respect of Eurocurrency Rate Advances denominated in a currency other than USD if such Interest Period would end after December 31, 2021 and~~

~~(iii) an Advance denominated in USD may not be maintained as Eurocurrency Rate Advance if the Interest Period therefor would end after June 30, 2023.~~

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Invested Amounts" means the amounts invested or otherwise loaned by investors that are not Affiliates of the Company in connection with any Securitization Program and paid to the Company or its Subsidiaries, as reduced by the aggregate amounts received by such investors from the payment of receivables or payments of loans and applied to reduce such invested amounts.

"Issuance" with respect to any Letter of Credit means the issuance, amendment, renewal or extension of such Letter of Credit.

"Issuing Bank" means a Lender that has a **"Letter of Credit Commitment"** opposite such Lender's name on **Schedule I** hereto or any other Lender that expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank.

"L/C Cash Deposit Account" means an interest bearing cash deposit account to be established and maintained by the Agent, over which the Agent shall have sole dominion and control, upon terms as may be satisfactory to the Agent and the Issuing Banks.

"L/C Related Documents" has the meaning specified in **Section 2.06(b)(i)**.

"Lenders" means each Initial Lender, each Issuing Bank, each Swingline Lender, each Assuming Lender that shall become a party hereto pursuant to **Section 2.18** and each Person that shall become a party hereto pursuant to **Section 8.07**.

"Letter of Credit" has the meaning specified in **Section 2.01(b)**.

"Letter of Credit Agreement" has the meaning specified in **Section 2.03(a)**.

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"Letter of Credit Commitment" means as to any Lender (a) the Dollar amount set forth opposite such Lender's name on **Schedule I** hereto as such Lender's "Letter of Credit Commitment" or (b) if such Lender has entered into an Assignment and Assumption or has otherwise agreed to act as an Issuing Bank hereunder, the Dollar amount set forth for such Lender in the Register maintained by the Agent pursuant to **Section 8.07(c)** as such Lender's "Letter of Credit Commitment", as such amount may be reduced pursuant to **Section 2.05**.

"Letter of Credit Sublimit" means, at any time, an amount equal to the lesser of (a) \$200,000,000 and (b) the aggregate amount of the Revolving Credit Commitments.

"Lien" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

"Material Adverse Change" means any material adverse change in the business, financial condition or operations of the Company and its Subsidiaries taken as a whole.

"Material Adverse Effect" means (a) a material adverse effect on the business, financial condition or operations of the Company and its Subsidiaries taken as a whole, (b) a material impairment of the ability of the Agent or any Lender to enforce or collect any obligations of

the Borrower under this Agreement or any Note or (c) a material impairment of the ability of the Borrower to perform its obligations under this Agreement or any Note.

"Merger Agreement" means that certain Agreement and Plan of Merger, dated as of March 22, 2021, entered into by and among the Company, Tiger Parent (AP) Corporation, a Delaware corporation, Spire Sub I, Inc., a Delaware corporation and Spire Sub II, LLC, a Delaware limited liability company (as amended, restated, amended and restated, supplemented or modified)

"Merger Agreement Termination Date" mean the **"Termination Date"** (as defined in the Merger Agreement, as may be extended in accordance with the terms thereof (it being understood the Termination Date shall not be later than June 22, 2022)).

"Moody's" means Moody's Investors Service, Inc., and any successor to its ratings agency business.

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

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Company or any ERISA Affiliate and at least one Person other than the Company and the ERISA Affiliates or (b) was so maintained and in respect of which the Company or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

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"Net Income" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, net income for such period; **provided** that Net Income shall exclude

(a) unusual, infrequent or extraordinary items for such period in accordance with GAAP,

(b) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its organization documents or law applicable to such Subsidiary during such period, except that the Borrower's equity in any net loss of any such Subsidiary for such period shall be included in determining Net Income and

(c) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except to the extent that such income (or loss) for such period would be included in Net Income of the Borrower and its Subsidiaries when calculating Net Income in accordance with GAAP.

"Non-Extending Lender" has the meaning specified in [Section 2.20\(b\)](#).

"Note" means a Revolving Credit Note, [a Swingline Note](#) or a Term Note.

"Notice of Borrowing" has the meaning specified in [Section 2.02\(a\)](#).

"Notice of Issuance" has the meaning specified in [Section 2.03\(a\)](#).

"Other Connection Taxes" means, with respect to the Agent or any Lender, Taxes imposed as a result of a present or former connection between the Agent or such Lender and the jurisdiction imposing such tax (other than connections arising from the Agent or such Lender 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, enforced, or sold or assigned an interest under, this Agreement or the Notes or any other documents to be delivered hereunder).

"Participant" has the meaning assigned to such term in [Section 8.07\(d\)](#).

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

"Payment Office" means, for any Committed Currency, such office of Citibank as shall be from time to time selected by the Agent and notified by the Agent to the Company and the Lenders.

"Payment Recipient" has the meaning assigned to in **Section 7.11(a)**.

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

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"Pension Funding Rules" means the rules regarding minimum required contributions to Pension Plans set forth in Sections 302, 303, 304 and 305 of ERISA and Sections 412, 430, 431, 432 and 436 of the Code.

"Pension Plan" means any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Company or an ERISA Affiliate or to which the Company or an ERISA Affiliate contributes or has an obligation to contribute.

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

"Permitted Liens" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced:

(a) Liens for taxes, assessments and governmental charges or levies to the extent not required to be paid under **Section 5.01(b)** hereof;

(b) Liens imposed by law (and ordinary course of business contractual Liens in respect of such Liens), such as materialmen's, mechanics', carriers', workmen's, repairmen's and landlord's Liens and other similar Liens arising in the ordinary course of business securing obligations that are not overdue for a period of more than 90 days or are being contested in good faith by appropriate proceedings and for which reasonable reserves are being maintained;

(c) pledges or deposits to directly or indirectly secure obligations under workers' compensation laws, unemployment insurance laws or similar legislation or to directly or indirectly secure public or statutory obligations, including obligations to governmental entities in respect of value added taxes, duties, customs, excise taxes, franchises, licenses, rents and the like, or surety, customs or appeal bonds;

(d) good faith deposits (or security for obligations in lieu of good faith deposits) to directly or indirectly secure bids, tenders, contracts or leases for a purpose other than borrowing money or obtaining credit, including rent or equipment lease security deposits,

(e) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable or materially adversely affect the use of such property for its present purposes,

(f) contractual and common law rights of setoff against (which may include grants of Liens) or contractual Liens on, deposit or securities accounts or other property in transit to or in the possession of or maintained by the lienor, in the absence of any agreement to maintain a balance or deliver property against which such right may be exercised, and contractual and common law rights of set-off against claims against the lienor,

(g) Liens pursuant to supply or consignment contracts or otherwise for the receipt of goods or services, encumbering only the goods covered thereby, where the contracts are not overdue by more than 90 days or are being contested in good faith by appropriate proceedings and for which reasonable reserves are being maintained,

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(h) attachment Liens and Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under **Section 6.01(f)**,

(i) licenses, leases or subleases granted to others not interfering in any material respect with the business of the Borrower or any Subsidiary,

(j) any interest of title of a lessor under, and Liens arising from Uniform Commercial Code financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement,

(k) Liens deemed to exist in connection with investments in repurchase agreements not prohibited by this Agreement,

(l) Liens arising on any real property as a result of any eminent domain, condemnation or similar proceeding being commenced with respect to such real property,

(m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and deposits as security for contested custom or import duties;

(n) rights of first refusal, voting, redemption, transfer or other restrictions with respect to the Equity Interests in any joint venture entities or other Persons that are not Subsidiaries acquired in connection with any transaction not prohibited by this Agreement;

(o) Liens on cash and cash equivalents arising in connection with the defeasance, discharge, redemption or termination (including by way of cash collateralization) of Debt to the extent such defeasance, discharge, redemption or termination is not prohibited by this Agreement, and

(p) preferential arrangements in the form of subordination and intercreditor agreements in favor of creditors of the customers of the Borrower and its Subsidiaries.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"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 Debt Rating" means, as of any date, the rating that has been most recently announced by any of S&P, Moody's or Fitch, as the case may be, for any class of non-credit enhanced long-term senior unsecured debt issued by the Company or, if no such Debt of the Company is then outstanding, the corporate credit rating most recently announced by any of S&P, Moody's or Fitch, as the case may be, **provided**, if any such rating agency shall have issued more than one such rating, the lowest such rating issued by such rating agency. For purposes of the foregoing,

(a) if only one of any of S&P, Moody's and Fitch shall have in effect a Public Debt Rating, the Applicable Margin and the Applicable Percentage shall be determined by reference to the available rating;

(b) if none of S&P, Moody's or Fitch shall have in effect a Public Debt Rating, the Applicable Margin and the Applicable Percentage will be set in accordance with Level 5 under the definition of "**Applicable Margin**" or "**Applicable Percentage**", as the case may be;

(c) if each of S&P, Moody's and Fitch provide the same rating, the Applicable Margin and the Applicable Percentage shall be based upon such rating;

(d) if each of S&P, Moody's and Fitch provide a rating with such ratings of different levels, the Applicable Margin and the Applicable Percentage shall be based upon the ratings of two of the agencies falling within the same level, unless each agency's ratings is at a separate level, in which case the applicable level will be deemed to be the middle level of the distribution of the three ratings;

(e) if the ratings established by two of S&P, Moody's and Fitch shall fall within different levels, the Applicable Margin and the Applicable Percentage shall be based upon the higher rating of two levels, unless one of the two ratings is two or more levels lower than the other, in which case the relevant Applicable Margin and the Applicable Percentage shall be determined by reference to the level immediately below the level of the higher of the two ratings; and

(f) if the ratings established by two of S&P, Moody's and Fitch shall fall within the same level, the Applicable Margin and the Applicable Percentage shall be based upon such rating.

"Ratable Share" of any amount means, with respect to any Lender under any Facility at any time, the product of such amount times a fraction the numerator of which is the amount of such Lender's Commitment under such Facility at such time (or, if the Commitments under such Facility shall have been terminated pursuant to **Section 2.05** or **6.01**, such Lender's Commitments under such Facility as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Commitments under such Facility at such time (or, if the Commitments under such Facility shall have been terminated pursuant to **Section 2.05** or **6.01**, the aggregate amount of all Commitments under such Facility as in effect immediately prior to such termination).

"Receivables and Related Assets" means (a) accounts receivable (including all rights to payment created by or arising from the sales of goods, leases of goods or the rendition of services, no matter how evidenced (including in the form of chattel paper) and whether or not earned by performance) and (b) any interest in such accounts receivable and all collateral securing such accounts receivable (including any originator accounts (as defined in any securitization documents), all contracts and contract rights, purchase orders, security interests, financing statements or other documentation in respect of such accounts receivable, any guarantees, indemnities, warranties or other obligations in respect of such accounts receivable, any equipment and any other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions or

factoring arrangements or financing of recurring revenue service contracts involving receivables similar to such accounts receivable and any collections or proceeds of any of the foregoing).

"Recipient" means (a) the Agent, (b) any Lender or (c) any Issuing Bank, as applicable.

"Refinancing Liens" has the meaning specified in **Section 5.02(a)(xviii)**.

"Register" has the meaning specified in **Section 8.07(c)**.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means (a) with respect to a Benchmark Replacement in respect of any then current Benchmark in Dollars, the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto and (b) with respect to a Benchmark Replacement in any then current Benchmark in a Committed Currency, (i) the central bank for the currency in which such Benchmark Replacement is denominated, or any central bank or other supervisor which is responsible for supervising either (A) such

Benchmark Replacement or (B) the administrator of such Benchmark Replacement or (ii) any working group or committee officially endorsed or convened by (A) the central bank for the currency in which such Benchmark Replacement is denominated, (B) any central bank or other supervisor that is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement, (C) a group of those central banks or other supervisors or (D) the Financial Stability Board or any part thereof.

"Required Lenders" means at any time Lenders owed or holding at least a majority in interest of the sum of

- (a) the aggregate principal amount of the Advances (based on the Equivalent in Dollars at such time) outstanding at such time,
- (b) the aggregate Available Amount of all Letters of Credit outstanding at such time,
- (c) the aggregate unused Term Commitments at such time and
- (d) the aggregate Unused Revolving Credit Commitments at such time,

provided that if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lenders at such time the Revolving Credit Commitments, the Swingline Commitments and the unused Term Commitments of such Lender at such time. For purposes of this definition, the Available Amount of each Letter of Credit shall be considered to be owed to the Revolving Credit Lenders ratably in accordance with their respective Revolving Credit Commitments.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

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"Revolving Credit Advance" means an advance by a Revolving Credit Lender to the Borrower as part of a Revolving Credit Borrowing and refers to a Base Rate Advance, a Term SOFR Advance, a Daily Simple SOFR Advance or a Eurocurrency Rate Advance (each of which shall be a **"Type"** of Revolving Credit Advance).

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous Revolving Credit Advances of the same Type made by each of the Revolving Credit Lenders pursuant to **Section 2.01(a)**.

"Revolving Credit Borrowing Minimum" means,

- (a) in respect of Revolving Credit Advances denominated in Dollars, \$5,000,000,
- (b) in respect of Revolving Credit Advances denominated in Euros, €5,000,000, and
- (c) in respect of Revolving Credit Advances denominated in Canadian Dollars, CN \$10,000,000, and

~~(d) in respect of Revolving Credit Advances denominated in Swiss Francs, CHF 10,000,000.~~

"Revolving Credit Borrowing Multiple" means,

- (a) in respect of Revolving Credit Advances denominated in Dollars, \$1,000,000,
- (b) in respect of Revolving Credit Advances denominated in Euros, €1,000,000, and
- (c) in respect of Revolving Credit Advances denominated in Canadian Dollars, CN \$1,000,000, and

~~(d) in respect of Revolving Credit Advances denominated in Swiss Francs, CHF 1,000,000.~~

"Revolving Credit Commitment" means as to any Lender

(a) the Dollar amount set forth opposite such Lender's name on **Schedule I** hereto as such Lender's "Revolving Credit Commitment",

(b) if such Lender has become a Lender hereunder pursuant to an Assumption Agreement, the Dollar amount set forth in such Assumption Agreement or

(c) if such Lender has entered into an Assignment and Assumption, the Dollar amount set forth for such Lender in the Register maintained by the Agent pursuant to **Section 8.07(c)** as such Lender's "Revolving Credit Commitment", as such amount may be reduced pursuant to **Section 2.05** or increased pursuant to **Section 2.18**.

"Revolving Credit Facility" means, at any time, the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time and the provisions herein related to Revolving Credit Advances and Letters of Credit.

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"Revolving Credit Lender" means any Lender that has a Revolving Credit Commitment or, if the Revolving Credit Commitments have terminated or expired, a Lender with outstanding Revolving Credit Advances and/or outstanding Letters of Credit.

"Revolving Credit Note" means a promissory note of the Borrower payable to a Revolving Credit Lender, delivered pursuant to a request made under **Section 2.16** in substantially the form of **Exhibit A-1** hereto, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Revolving Credit Advances made by such Lender.

"S&P" means S&P Global Ratings, an S&P Global Inc. business, and any successor thereto.

"Sale and Leaseback Transaction" means, with respect to any Person, any arrangement, directly or indirectly, whereby such Person shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sanctioned Country" means, at any time, a country, region or territory which is the subject or target of comprehensive Sanctions.

"Sanctioned Person" means, at any time and insofar as Sanctions prohibit or restrict dealings with a Person, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any EU member state, the Government of Canada, the government of Japan or other relevant authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person majority owned or, where relevant under applicable Sanctions, controlled by any such Person described in **clauses (a) or (b)**.

"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 the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom, the Government of Canada, the government of Japan or other relevant authority.

"Securitization Program" means, with respect to any Person, any financing or sales transaction or series of financing or sales transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may, directly or indirectly, sell, convey, or otherwise transfer, or grant a security interest in Receivables and Related Assets, accounts, payments, or receivables (whether such accounts, payments, or receivables are then existing or arising in the future), collections and other proceeds arising therefrom, any rights to future lease payments or residuals or similar rights to payment to, or any securitization related property to a special purpose Subsidiary or Affiliate of such Person.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Company or any ERISA Affiliate and no

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Person other than the Company and the ERISA Affiliates or (b) was so maintained and in respect of which the Company or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, 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.

"SOFR Advance" means any Daily Simple SOFR Advance or Term SOFR Advance.

"SOFR Adjustment" means a percentage equal to 0.10% (10 basis points) per annum.

"SOFR Lending Office" means, with respect to any Lender, the office or branch of such Lender specified as its "SOFR Lending Office" in its Administrative Questionnaire delivered to the Agent, or such other office, branch or Affiliate of such Lender as such Lender may from time to time specify to the Company and the Agent.

"SONIA" means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator's Website on the immediately succeeding Business Day or any other replacement rate published by the SONIA Administrator.

"SONIA Administrator" means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

"SONIA Administrator's Website" means the Bank of England's website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

"Specified Merger Agreement Representations" means such of the representations made by Tiger Parent (AP) Corporation with respect to Tiger Parent (AP) Corporation and its subsidiaries in the Merger Agreement as are material to the interests of the Lenders, but only to the extent that the Company (or its affiliates) have the right (taking into account any applicable cure provisions) to terminate its (and/or their) obligations under the Merger Agreement or the right to decline to consummate the Acquisition in accordance with the terms thereof as a result of a breach of such representations in the Merger Agreement.

"Specified Representations" means the representations and warranties of the Company set forth in **Sections 4.01(a), 4.01(b)(i), 4.01(d), 4.01(g), 4.01(h), 4.01(t), and 4.01(u) and, use of proceeds not in violation of **Sections 4.01(j) or (k)**.**

"Standby Letters of Credit" means standby letters of credit issued to support trade transactions or for any other lawful purposes of the Borrower and its Subsidiaries.

"Subsidiary" of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or

might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"Subsidiary Guarantee" means each Subsidiary Guarantee, in a form to be agreed to by the Borrower and the Agent, as may be executed and delivered from time to time by any other Subsidiary, as the same may be amended, supplemented or otherwise modified from time to time.

"Swingline Advance" means an advance by a Swingline Lender to the Borrower as part of a Swingline Borrowing, and refers to a Base Rate Advance or a Daily Simple SOFR Advance (in each case, to the extent that a Swingline Lender has agreed to make available Swingline Advances as Base Rate Advances or Daily Simple SOFR Advances as permitted by the Notice of Borrowing).

"Swingline Borrowing" means a borrowing consisting of Swingline Advances made by a Swingline Lender pursuant to Section 2.01(d).

"Swingline Commitment" means as to any Lender (a) the Dollar amount set forth opposite such Lender's name on Schedule I hereto as such Lender's "Swingline Commitment" or (b) if such Lender has entered into an Assignment and Assumption or has otherwise agreed to act as a Swingline Lender hereunder, the Dollar amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 8.07(c) as such Lender's "Swingline Commitment", as such amount may be reduced pursuant to Section 2.05.

"Swingline Sublimit" means, at any time, an amount equal to the lesser of (a) \$300,000,000 and (b) the aggregate amount of the Swingline Commitments.

"Swingline Lender" means any Lender that has a Swingline Commitment or, if the Swingline Commitments have terminated or expired, a Lender with outstanding Swingline Advances.

"Swingline Note" means a promissory note of the Borrower payable to a Swingline Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A-3 hereto, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Swingline Advances made by such Lender.

"Synthetic Lease" shall mean, as to any Person, (i) a synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of real or personal property, in each case, creating obligations that may not appear on the balance sheet of such Person but which, upon the application of any Bankruptcy Law to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Synthetic Lease Obligation" means the monetary obligation of a Person under a Synthetic Lease.

"Tax" 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 Advance" means an advance by a Term Lender to the Company as part of a Term Borrowing and refers to a Base Rate Advance or a Eurocurrency Rate, a Term SOFR Advance, or a Daily Simple SOFR Advance (each of which shall be a "Type" of Term Advance).

"Term Borrowing" means a borrowing consisting of simultaneous Term Advances of the same Type made by the Term Lenders pursuant to Section 2.01(c).

"Term Commitment" means as to any Lender (a) the Dollar amount set forth opposite such Lender's name on Schedule I hereto as such Lender's "Term Commitment" or (b) if such Lender has entered into any Assignment and Assumption, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 8.07(c) as such Lender's "Term Commitment", in each case, as such amount may be reduced pursuant to Section 2.05.

"Term Facility" means, at any time, the aggregate amount of the Term Lenders' Term Commitments and the outstanding Term Advances extended at such time, and the provisions herein related to Term Advances.

"Term Lender" means any Lender that has a Term Commitment and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption in respect of any Term Commitment or Term Advances, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Term Loan Maturity Date" means the fifth anniversary of the Closing Date.

"Term Note" means a promissory note of the Company payable to a Term Lender, delivered pursuant to a request made under **Section 2.16** in substantially the form of **Exhibit A-2** hereto, evidencing the indebtedness of the Company to such Lender resulting from the Term Advances made by such Lender.

"Term SOFR" means,

(a) for any calculation with respect to a Term SOFR Advance, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government

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Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to any Base Rate Advance on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

"Term SOFR Advance" means an Advance that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of "Base Rate".

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR that has been selected or recommended by the Term SOFR Administrator.

"Termination Date" means the earliest of

(a) with respect to any Revolving Credit Lender or any Swingline Lender, the fifth anniversary of the Closing Date, subject to the extension thereof pursuant to **Section 2.20** with respect to such Revolving Credit Lender or Swingline Lender;

(b) the date of termination in whole of the Commitments under the applicable Facility pursuant to [Section 2.05](#) or [6.01](#);

(c) if the Closing Date does not occur prior to such date, the date that is five Business Days after the Merger Agreement Termination Date; and

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(d) prior to the consummation of the Transactions, the termination of the Merger Agreement by Borrower in a signed writing in accordance with the terms of the Merger Agreement;

provided, however, that the Termination Date of any Revolving Credit Lender [or Swingline Lender](#) that is a Non-Extending Lender or any Issuing Bank that is not an extending Issuing Bank, in each case, to any requested extension pursuant to [Section 2.20](#) shall be the Termination Date in effect immediately prior to the applicable Anniversary Date for all purposes of this Agreement.

“Trade Letters of Credit” means letters of credit issued in support of trade obligations of the Borrower and its Subsidiaries incurred in the ordinary course of business.

“Transactions” means, collectively, (a) the consummation of the Acquisition, (b) the funding of the applicable Advances on the Closing Date and the consummation of the other transactions contemplated by this Agreement, (c) the issuance and sale of senior unsecured notes and/or other securities and/or the funding of a senior unsecured term bridge facility, (d) the consummation of the Closing Date Refinancing, (e) the consummation of any other transactions in connection with the foregoing (including in connection with the Merger Agreement) and (f) the payment of the fees and expenses incurred in connection with any of the foregoing.

“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.

“Unissued Letter of Credit Commitment” means, with respect to any Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Borrower or its Subsidiaries in an amount equal to the excess of (a) the amount of its Letter of Credit Commitment over (b) the aggregate Available Amount of all Letters of Credit issued by such Issuing Bank.

“Unused Revolving Credit Commitment” means, with respect to each Revolving Credit Lender at any time, (a) such Lender’s Revolving Credit Commitment at such time minus (b) the sum of (i) the aggregate principal amount of all Revolving Credit Advances made by such Lender (in its capacity as a Revolving Credit Lender) and outstanding at such time, plus (ii) such Lender’s Ratable Share of (A) the aggregate Available Amount of all the Letters of Credit outstanding at such time ~~and~~, (B) the aggregate principal amount of all Revolving Credit Advances outstanding at such time made by each Issuing Bank pursuant to [Section 2.03\(c\)](#) that have not been funded by such Lender and (C) the aggregate principal amount of all Swingline Advances outstanding at such time made by each Swingline Lender pursuant to Section 2.01(d) that have not been funded by such Lender.

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"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person" means any Person that is a **"United States Person"** as defined in Section 7701(a)(30) of the Internal Revenue Code.

"Voting Stock" means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right to so vote has been suspended by the happening of such a contingency.

"Withholding Agent" means the Borrower and the Agent.

"Write-Down and Conversion Powers" means:

(a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and

(b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with United States generally accepted accounting principles as in effect in the United States from time to time ("**GAAP**"), **provided** that (a) if there is any change in GAAP from such principles applied in the preparation of the audited financial statements referred to in **Section 4.01(e)** ("**Initial GAAP**"), that is material in respect of the calculation of compliance with the covenants set forth in **Section 5.02** or **5.03**, the Company shall give prompt notice of such change to the Agent and the Lenders and (b) if the Company notifies the Agent that the Company requests an amendment of any provision hereof to eliminate the effect of any change in GAAP (or the application thereof) from Initial GAAP (or if the Agent or the Required Lenders request an amendment of any provision hereof for such purpose), regardless of whether such notice is given before or after such change in GAAP (or the application thereof), then such provision shall be applied on the basis of such generally accepted accounting principles as in effect and applied immediately before such change shall have become

effective until such notice shall have been withdrawn or such provision is amended in accordance herewith.

SECTION 1.04. Classification of Permitted Items. For purposes of determining compliance at any time with **Section 5.02(a)** or **(c)**, in the event that any Lien or Debt meets the criteria of more than one of the categories of transactions permitted pursuant to any clause of such **Sections 5.02(a)** or **(c)**, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses as determined by the Company in its sole discretion at such time of determination, and may be reclassified from time to time to be permitted under any one or more of such clauses to the extent meeting the criteria thereunder as of the time of reclassification.

SECTION 1.05. Divisions. For all purposes under this Agreement, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.06. Disclaimer. Without prejudice to any other provision of this Agreement, each of the Company, ~~the Borrower~~, the Agent and each Lender acknowledges and agrees for the benefit of each of the other parties hereto:

(a) ~~the Term SOFR, Daily Simple SOFR and~~ Eurocurrency Rate (i) may be subject to methodological or other changes which could affect its value, (ii) may not comply with applicable laws and regulations (such as the Regulation (EU) 2016/1011 of the European Parliament and of the Council, as amended (EU Benchmarks Regulation)) and/or (iii) may be permanently discontinued; and

(b) the occurrence of any of the aforementioned events and/or the implementation of a Benchmark Replacement may have adverse consequences which may materially impact the economics of the financing transactions contemplated under this Agreement.

SECTION 1.07. Additional Currencies

(a) The Borrower may from time to time request that Revolving Credit Advances be made in a currency other than Dollars or a Committed Currency; **provided** that such requested currency is a lawful currency that is readily available and freely transferable and convertible into Dollars. Such request shall be subject to the approval of the Agent and the Revolving Credit Lenders. Notwithstanding the foregoing, pound sterling shall be deemed a “Committed Currency” upon request of the Borrower (without the consent of the Agent or any other party to this Agreement) so long as ~~if applicable, the replacement~~ Eurocurrency Rate in respect thereof is based upon SONIA.

(b) Any such request shall be made to the Agent not later than 11:00 a.m., 10 Business Days prior to the date of the desired Revolving Credit Advance (or such other time or date as may be agreed by the Agent, in its sole discretion). The Agent shall promptly notify each

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Revolving Credit Lender thereof. Each Revolving Credit Lender shall notify the Agent, not later than 11:00 a.m., 5 Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Revolving Credit Advances in such requested currency.

(c) Any failure by a Revolving Credit Lender to respond to such request within the time period specified in the preceding sentence shall be deemed a refusal by such Revolving Credit Lender to permit Revolving Credit Advances to be made in such requested currency. If the Agent and all Revolving Credit Lenders consent to making Revolving Credit Advances in such requested currency, the Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be a “Committed Currency” hereunder for purposes of any Borrowings of Revolving Credit Advances or Letters of Credit. If the Agent shall fail to obtain consent to any request for an additional currency under this **Section 1.07** the Agent shall promptly so notify the applicable Borrower.

ARTICLE II.

AMOUNTS AND TERMS OF THE ADVANCES AND LETTERS OF CREDIT

SECTION 2.01. The Advances and Letters of Credit.

(a) The Revolving Credit Advances.

~~(i)~~ Each Revolving Credit Lender severally agrees, on the terms and conditions hereinafter set forth, to make (or, at the option of the Revolving Credit Lender, to cause any domestic or foreign branch, office or Affiliate of such Revolving Credit Lender to make) Revolving Credit Advances to the Borrower from time to time on any Business Day during the period from (and including) the Closing Date until the Termination Date applicable to such Lender in an amount (based in respect of any Advances to be denominated in a Committed Currency by reference to the Equivalent thereof in Dollars determined on the date of delivery of the applicable Notice of Borrowing) not to exceed such Lender’s Unused Revolving Credit Commitment; **provided**, that any exercise of such option shall not affect the obligation of the Borrower to repay such Revolving Credit Advance in accordance with the terms of this Agreement and other than for purposes of **Section 2.14**, such Revolving Credit Advance shall be deemed to have been made and held by such Revolving Credit Lender and the obligation of the Borrower to repay such Revolving Credit Advance shall nevertheless be to such Lender for the account of such domestic or foreign branch, office or Affiliate of such Revolving Credit Lender. Each Revolving Credit Borrowing shall be in an amount not less than the Revolving Credit Borrowing Minimum or the Revolving Credit Borrowing Multiple in excess thereof and shall consist of Revolving Credit Advances of the same Type and in

the same currency made on the same day by the Revolving Credit Lenders ratably according to their respective Revolving Credit Commitments. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, the Borrower may borrow under this **Section 2.01(a)(i)**, prepay pursuant to **Section 2.10** and reborrow under this **Section 2.01(a)(i)**.

(ii) Limit on Revolving Credit Advances denominated in Swiss Francs. The aggregate principal amount of Revolving Credit Advances denominated in Swiss Francs shall not exceed the Dollar Equivalent of \$500,000,000 at any time outstanding.

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(b) **Letters of Credit.** The Borrower may request any Issuing Bank to issue, and such Issuing Bank shall, on the terms and conditions hereinafter set forth and in reliance upon the agreements of the other Lenders set forth in this Agreement, issue standby letters of credit (each, a "**Letter of Credit**") denominated in Dollars or a Committed Currency for the account of the Borrower or its Subsidiaries from time to time on any Business Day during the period from the Closing Date until 30 days before the latest Termination Date applicable to any Revolving Credit Lender in an aggregate Available Amount

(i) for all Letters of Credit not to exceed at any time the Letter of Credit Sublimit at such time,

(ii) for all Letters of Credit issued by such Issuing Bank not to exceed at any time the Letter of Credit Commitment of such Issuing Bank and

(iii) for each such Letter of Credit not to exceed an amount equal to the Unused Revolving Credit Commitments of the Revolving Credit Lenders having a Termination Date no earlier than the expiration date of such Letter of Credit at such time.

No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than the earlier of one year after the Issuance thereof (or one year after its renewal or extension) and 10 Business Days before the latest Termination Date applicable to any Revolving Credit Lender. Within the limits referred to above, the Borrower may from time to time request the Issuance of Letters of Credit under this **Section 2.01(b)**. Each letter of credit listed on **Schedule 2.01(b)** to the Disclosure Letter shall be deemed to constitute a Letter of Credit issued hereunder, and each Lender that is an issuer of such a Letter of Credit shall, for purposes of **Section 2.03**, be deemed to be an Issuing Bank for each such letter of credit, **provided** that any renewal or replacement of any such letter of credit on or after the **date hereof** **Closing Date** shall be re-issued by an Issuing Bank pursuant to the terms of this Agreement.

(c) **The Term Advances.** Each Term Lender severally agrees, on the terms and conditions hereinafter set forth, to make **advances** **(each, a "Term Advance")** denominated in Dollars to the Company on the Closing Date in an aggregate amount equal to such Lender's Term Commitment. The Term Borrowings shall consist of Term Advances of the same Type made simultaneously by the Term Lenders ratably according to their Term Commitments. Amounts borrowed under this **Section 2.01(c)** and repaid or prepaid may not be reborrowed.

(d) **The Swingline Advances.**

(i) **Each Swingline Lender severally agrees, on the terms and conditions hereinafter set forth, to make a Swingline Advance denominated in Dollars to the Borrower from time to time on any Business Day during the period from the Amendment No. 1 Effective Date until the Termination Date in an aggregate amount not to exceed (x) the Swingline Sublimit, (y) such Swingline Lender's Swingline Commitment and (z) when the aggregate amount of outstanding Swingline Advances of each Swingline Lender is combined with the aggregate amount of Revolving Credit Advances made by a Revolving Credit Lender acting as a Swingline Lender plus such Revolving Credit Lender's Ratable Share of all the**

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Letters of Credit outstanding at such time, the Revolving Credit Commitment of such Revolving Credit Lender acting as a Swingline Lender; *provided* that no Swingline Lender shall be required to (but may at its option) make a Swingline Advance to refinance an outstanding Swingline Advance. Each Swingline Borrowing shall be in an amount not less than \$5,000,000 or any multiple in excess of \$1,000,000 and shall consist of Swingline Advances made on the same day by one or more Swingline Lenders in an aggregate amount not to exceed the limits set forth in this Section 2.01(d)(i). Within the limits of each Swingline Lender's Swingline Commitment, the Borrower may borrow under this Section 2.01(d)(i), prepay pursuant to Section 2.10 and reborrow under this Section 2.01(d)(i). A Swingline Advance may be refinanced on any Business Day with a Revolving Credit Advance pursuant to Section 2.06(d) and Section 2.02(a).

(ii) To request a Swingline Advance, the Borrower shall give one or more Swingline Lenders notice thereof (with a copy delivered to the Agent) by telecopier, email or other electronic transmission not later than 1:00 P.M. (New York City time) on the date of the proposed Swingline Borrowing. Each such notice of a Swingline Borrowing shall be in substantially the form of Exhibit B hereto, specifying therein the requested date, the aggregate amount of such Swingline Borrowing and the applicable wiring instructions of the Borrower. Thereafter, the applicable Swingline Lender(s) shall promptly, but not later than 4:00 P.M. (New York City time) on the borrowing date specified in such notice make the amount of the requested Swingline Advances available to the Borrower by means of a credit to an account designated by the Borrower in the applicable notice of a Swingline Borrowing; *provided* that any such Swingline Advance made by any Swingline Lender shall be in an aggregate amount not to exceed the limits set forth in Section 2.01(d)(i).

(iii) Following the funding of any Swingline Advance, the Swingline Lender(s) may, by written notice given to the Agent, require that the Revolving Credit Lenders acquire participations in all or a portion of the outstanding Swingline Advances. Such notice shall specify the aggregate amount of Swingline Advances in which Revolving Credit Lenders will participate. Promptly upon receipt of such notice, the Agent will give notice thereof to each Revolving Credit Lender, specifying in such notice such Lender's Ratable Share of such Swingline Advances. Each Revolving Credit Lender hereby absolutely and unconditionally agrees, promptly upon receipt of such notice from the Agent (and in any event, if such notice is received by 11:00 a.m. (New York City time) on a Business Day, no later than 3:00 p.m. (New York City time) on such Business Day and, if received after 11:00 a.m. (New York City time) on a Business Day, no later than 11:00 a.m. (New York City time) on the immediately succeeding Business Day), to pay to the Agent, for the account of the Swingline Lender(s), such Lender's Ratable Share of such Swingline Advances funded by such Swingline Lender(s), and the Agent shall promptly pay to the Swingline Lender(s) the amounts so received by it from the Revolving Credit Lenders. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Swingline Advances is absolute and unconditional and shall not be affected by any

circumstance whatsoever, including (A) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender may have against the applicable Swingline Lender, the Borrower, any Subsidiary or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default, (C) any reduction or termination of the Revolving Credit Commitments, or (D) any other occurrence, event or condition, whether or not similar to any of the foregoing, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Credit Lender further acknowledges and agrees that its participation in any Swingline Advance will be automatically adjusted to reflect such Lender's Ratable Share of any Swingline Advances at each time such Lender's Revolving Credit Commitment is amended pursuant to a Commitment Increase pursuant to Section 2.18, an assignment in accordance with Section 8.07 or otherwise pursuant to this Agreement. The Agent shall notify the Borrower of any participations in any Swingline Advance acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Advance shall be made to the Agent and not to the Swingline Lender(s). Any amounts received by the Swingline Lender(s) from the Borrower (or other party on behalf of such Borrower) in respect of a Swingline Advance after receipt by the Swingline Lender(s) of the proceeds of a sale of participations therein shall be promptly remitted to the Agent; any such amounts received by the Agent

shall be promptly remitted by the Agent to the Revolving Credit Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender(s), as their interests may appear. The purchase of participations in a Swingline Advance pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

SECTION 2.02. Making the Advances.

(a) Except as otherwise provided in [Section 2.01\(d\)](#) and [Section 2.03\(c\)](#), each Borrowing shall be made on notice, given not later than

(x) 1:00 P.M. (New York City time) on the third Business Day ~~(or in the case of any Eurocurrency Rate Advance to be made on the Closing Date, such shorter period as the Agent may agree)~~ prior to the date of the proposed Borrowing in the case of a Revolving Credit Borrowing or Term Borrowing consisting of ~~Eurocurrency Rate~~ [SOFR](#) Advances denominated in Dollars,

(y) 1:00 P.M. (New York City time) on the fourth Business Day ~~(or in the case of any Eurocurrency Rate Advance to be made on the Closing Date, such shorter period as the Agent may agree)~~ prior to the date of the proposed Borrowing in the case of a Revolving Credit Borrowing consisting of Eurocurrency Rate Advances denominated in any Committed Currency, or

(z) 1:00 P.M. (New York City time) on the date of the proposed Borrowing in the case of a Revolving Credit Borrowing or Term Borrowing consisting of Base Rate Advances,

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by the Borrower to the Agent, which shall give to each Appropriate Lender prompt notice thereof by telecopier, email or other electronic transmission. Each such notice of a Borrowing (a “**Notice of Borrowing**”) shall be by telecopier, email or other electronic transmission in substantially the form of [Exhibit B](#) hereto, specifying therein the requested

- (i) date of such Borrowing,
- (ii) Type of Advances comprising such Borrowing,
- (iii) aggregate amount of such Borrowing,
- (iv) in the case of a Borrowing consisting of [Term SOFR Advances or](#) Eurocurrency Rate Advances, initial Interest Period and
- (v) in the case of a Revolving Credit Borrowing consisting of Eurocurrency Rate Advances, currency for each such Advance.

Each Appropriate Lender shall, before 2:00 P.M. (New York City time) on the date of such Borrowing, in the case of a Borrowing consisting of Advances denominated in Dollars, and before 11:00 A.M. (London time) on the date of such Borrowing, in the case of a Revolving Credit Borrowing consisting of Eurocurrency Rate Advances denominated in any Committed Currency, make available for the account of its Applicable Lending Office to the Agent at the applicable Agent’s Account, in same day funds, such Lender’s ratable portion of such Borrowing. After the Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in the applicable section of [Article III](#), the Agent will make such funds available to the Borrower requesting the Borrowing at the account specified in the wiring instructions in the applicable Notice of Borrowing or, if no account is so specified, at the Agent’s address referred to in [Section 8.02](#).

(b) Anything in [subsection \(a\)](#) above to the contrary notwithstanding,

(i) the Borrower may not select [SOFR Advances or](#) Eurocurrency Rate Advances for any Revolving Credit Borrowing if the aggregate amount of such Revolving Credit Borrowing is less than the Revolving Credit Borrowing Minimum or if the obligation of the Lenders to make [SOFR Advances or](#) Eurocurrency Rate Advances shall then be suspended pursuant to [Section 2.08](#) or [2.12](#),

(ii) the Company may not select [SOFR Advances or](#) Eurocurrency Rate Advances for any Term Borrowing if the aggregate amount of such Term Borrowing is less than \$5,000,000 or if the obligation of the Lenders to make [SOFR Advances or](#) Eurocurrency Rate Advances shall then be suspended pursuant to [Section 2.08](#) or [2.12](#) and

(iii) the [SOFR Advances and Eurocurrency Rate Advances](#) may not be outstanding as part of more than 10 separate Revolving Credit Borrowings or more than six separate Term Borrowings, [it being understood and agreed that all outstanding Daily Simple SOFR Advances shall be consolidated and deemed to be a single Borrowing.](#)

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(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower requesting the Borrowing; **provided**, the Notice of Borrowing for Advances to be made on the Closing Date may be conditioned upon the consummation of the Acquisition. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of [Term SOFR Advances or Eurocurrency Rate Advances](#), the Borrower shall indemnify each Appropriate Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in the applicable section of [Article III](#), including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Advance to be made by such Lender as part of such Borrowing when such Advance, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from an Appropriate Lender prior to the time of any Borrowing under a Facility under which such Lender has a Commitment that such Lender will not make available to the Agent such Lender's ratable portion of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with [subsection \(a\)](#) of this [Section 2.02](#), as applicable, and the Agent may, in reliance upon such assumption, make available to the Borrower requesting the Borrowing on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Agent, such Lender and the Borrower severally agree to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at

(i) in the case of the Borrower, the higher of (A) the interest rate applicable at the time to the Advances comprising such Borrowing and (B) the cost of funds incurred by the Agent in respect of such amount and

(ii) in the case of such Lender, **provided** that the Agent has given notice to the Borrower of such obligation as soon as practicable but in any event not later than the Business Day following such funding by the Agent,

(iii) the Federal Funds Rate in the case of Advances denominated in Dollars or

(iv) the cost of funds incurred by the Agent in respect of such amount in the case of Advances denominated in Committed Currencies.

If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Advance as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on the date of any Borrowing.

(f) [This Section 2.02 shall not apply to Swingline Advances.](#)

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SECTION 2.03. Issuance of and Drawings and Reimbursement Under Letters of Credit

(a) Request for Issuance.

(i) Each Letter of Credit shall be issued upon notice, given not later than 11:00 A.M. (New York City time) on the fifth Business Day prior to the date of the proposed Issuance of such Letter of Credit (or on such shorter notice as the applicable Issuing Bank may agree), by the Borrower to any Issuing Bank, and such Issuing Bank shall give the Agent, prompt notice thereof. Each such notice by the Borrower of Issuance of a Letter of Credit (a **"Notice of Issuance"**) shall be by telecopier, email or other electronic transmission, specifying therein the requested

(A) date of such Issuance (which shall be a Business Day),

(B) (1) Available Amount of such Letter of Credit and (2) the currency of such Letter of Credit, which shall be a Committed Currency or USD,

(C) expiration date of such Letter of Credit (which shall not be later than the earlier of (1) one year (or in the case of Trade Letters of Credit, 180 days or such longer period as is acceptable to each individual Issuing Bank in its sole discretion) after its renewal or extension and (2) ten Business Days before the latest Termination Date of Revolving Credit Lenders having Revolving Credit Commitments equal to an amount not less than the Available Amount of such Letter of Credit),

(D) name and address of the beneficiary of such Letter of Credit and

(E) form of such Letter of Credit,

such Letter of Credit shall be issued pursuant to such application and agreement for letter of credit as such Issuing Bank and the Borrower shall agree for use in connection with such requested Letter of Credit (a **"Letter of Credit Agreement"**). If the requested form of such Letter of Credit is acceptable to such Issuing Bank in its reasonable discretion (it being understood that any such form shall have only explicit documentary conditions to draw and shall not include discretionary conditions), such Issuing Bank will, if in its reasonable discretion it elects to do so, and unless any Revolving Credit Lender gives prior notice to such Issuing Bank or the Agent that the applicable conditions of applicable section of **Article III** would not be satisfied at the time of such Issuance, upon fulfillment of the applicable conditions set forth in **Section 3.03**, make such Letter of Credit available to the Borrower at its office referred to in **Section 8.02** or as otherwise agreed with the Borrower in connection with such Issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(ii) Notwithstanding the foregoing,

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(A) no Issuing Bank shall be required to issue Trade Letters of Credit unless it agrees in writing to do so in its sole discretion,

(B) the Borrower shall remain primarily liable in the case of a Letter of Credit issued for the account of a Subsidiary of the Borrower and the Borrower shall be the applicant or coapplicant in respect of such Letter of Credit and

(C) the applicable Issuing Bank shall not be obligated to issue Letters of Credit if

(1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit,

(2) the issuance of such Letter of Credit would violate any applicable law, rule or regulation binding upon such Issuing Bank,

(3) the issuance of the Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally,

(4) if any Lender is at such time a Defaulting Lender hereunder, unless the amount of such Letter of Credit has been reallocated among non-Defaulting Lenders in accordance with [Section 2.19](#) or the Issuing Bank has otherwise entered into satisfactory arrangements with the Borrower or such Defaulting Lender to eliminate the Issuing Bank's risk of full reimbursement with respect to such Letter of Credit,

(5) if amounts demanded to be paid under any Letter of Credit will not be in Dollars or a Committed Currency,

(6) the aggregate amount of outstanding Letters of Credit issued by such Issuing Bank would be greater than such Issuing Bank's Revolving Credit Commitment.

An Issuing Bank shall not issue a Letter of Credit if the beneficiary of the Letter of Credit is either resident in Ireland or, where such beneficiary is a legal person, has its place of establishment to which the Letter of Credit relates in Ireland unless the Issuing Bank is either (x) authorized under the laws of Ireland to issue such Letters of Credit to such beneficiary or (y) exempted from the requirement to have any such authorization under the laws of Ireland.

(b) **Participations.** By the Issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing or decreasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Credit Lenders, such Issuing Bank hereby grants to each Revolving Credit Lender, and each Revolving Credit Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Credit Lender's Ratable Share of the Available Amount of such Letter of Credit. The Borrower hereby agrees to each such participation. In consideration and in furtherance of the foregoing,

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each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of such Issuing Bank, in same day funds, such Lender's Ratable Share of each drawing made under a Letter of Credit funded by such Issuing Bank and not reimbursed by the Borrower on the date made, or of any reimbursement payment required to be refunded to the Borrower for any reason, which amount will be advanced, and deemed to be a Revolving Credit Advance to the Borrower hereunder, regardless of the satisfaction of the conditions set forth in [Section 3.03](#). Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire 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 reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Credit Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Ratable Share of the Available Amount of such Letter of Credit at each time such Lender's Revolving Credit Commitment is amended pursuant to a Commitment Increase pursuant to [Section 2.18](#), an assignment in accordance with [Section 8.07](#) or otherwise pursuant to this Agreement.

(c) **Drawing and Reimbursement.**

(i) The payment by an Issuing Bank of a draft drawn under any Letter of Credit which is not reimbursed by the Borrower on the date made shall constitute for all purposes of this Agreement the making by any such Issuing Bank of a Revolving Credit Advance, which shall be a Base Rate Advance denominated in Dollar in the amount of such draft (it being understood that if such Letter of Credit is denominated in a Committed Currency, automatically and with no further action required, the Borrower's obligation to reimburse the applicable drawing shall be permanently converted into an obligation to reimburse the Dollar Equivalent of such drawing), without regard to whether the making of such an Advance would exceed such Issuing Bank's Unused Revolving Credit Commitment. Each Issuing Bank shall give prompt notice of each drawing under any Letter of Credit issued by it to the Borrower and the Agent. Upon written demand by such Issuing Bank, with a copy of such demand to the Agent and the Borrower, each Revolving Credit Lender shall pay to the Agent such Lender's Ratable Share of such outstanding Revolving Credit Advance pursuant to [Section 2.03\(b\)](#).

(ii) Each Revolving Credit Lender acknowledges and agrees that its obligation to make Revolving Credit Advances pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including

(A) any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments,

(B) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein,

(C) any draft or other document presented under a Letter of Credit not complying in whole or in part with the terms of the applicable Letter of Credit or

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proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect,

(D) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or

(E) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.

and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(iii) Promptly after receipt thereof, the Agent shall transfer such funds to such Issuing Bank. Each Revolving Credit Lender agrees to fund its Ratable Share of an outstanding Revolving Credit Advance on (i) the Business Day on which demand therefor is made by such Issuing Bank, **provided** that notice of such demand is given not later than 11:00 A.M. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Revolving Credit Lender shall not have so made the amount of such Revolving Credit Advance available to the Agent, such Revolving Credit Lender agrees to pay to the Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank until the date such amount is paid to the Agent, at the Federal Funds Rate for its account or the account of such Issuing Bank, as applicable.

(iv) if such Revolving Credit Lender shall pay to the Agent such amount for the account of any such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Revolving Credit Advance made by such Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Revolving Credit Advance made by such Issuing Bank shall be reduced by such amount on such Business Day.

(d) **Letter of Credit Reports.** Each Issuing Bank shall furnish

(A) to the Agent (with a copy to the Company) on the last Business Day of each month a written report summarizing Issuance and expiration dates of Letters of Credit issued by such Issuing Bank during such month and drawings during such month under all Letters of Credit and

(B) to the Agent (with a copy to the Company) on the last Business Day of each calendar month a written report setting forth the average daily aggregate Available Amount during such calendar month of all Letters of Credit issued by such Issuing Bank.

(e) **Failure to Make Advances.** The failure of any Revolving Credit Lender to make the Advance to be made by it on the date specified in **Section 2.03(c)** shall not relieve any other

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Revolving Credit Lender of its obligation hereunder to make its Advance on such date, but no Revolving Credit Lender shall be responsible for the failure of any other Revolving Credit Lender to make the Advance to be made by such other Revolving Credit Lender on such date.

SECTION 2.04. Fees

(a) **Commitment Fee.** The Company agrees to pay to the Agent for the account of each Revolving Credit Lender a commitment fee on the daily aggregate unused amount of such Lender's Revolving Credit Commitment(s) from the Closing Date in the case of each Initial Lender and in the case of each other Revolving Credit Lender, from the later of (i) the effective date specified in the Assumption Agreement or in the Assignment and Assumption pursuant to which it became a Lender and (ii) the Closing Date, until the Termination Date applicable to such Lender at a rate per annum equal to the Applicable Percentage in effect from time to time, payable in arrears quarterly on the last day of each fiscal quarter of the Company, commencing with the first fiscal quarter ending after the Closing Date, and on the later of the Termination Date applicable to such Lender and the date all Advances made by such Lender are paid in full; **provided** that no Defaulting Lender shall be entitled to receive any commitment fee in respect of its Revolving Credit Commitment(s) for any period during which that Lender is a Defaulting Lender (and the Company shall not be required to pay such fee that otherwise would have been required to have been paid to that Defaulting Lender), other than a commitment fee, as described above, on the aggregate principal amount of Advances funded by such Defaulting Lender outstanding from time to time; **provided, further, that the Swingline Advances shall not be counted towards or consider usage of the Revolving Credit Commitments for purposes of determining such commitment fee.**

(b) **Letter of Credit Fees.**

(i) The Borrower shall pay to the Agent for the account of each Revolving Credit Lender a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit issued for the account of the Borrower and outstanding from time to time at a rate per annum equal to the Applicable Margin for **SOFR Advances and Eurocurrency Rate Advances** under the Revolving Credit Facilities in effect from time to time during such calendar quarter, payable in arrears quarterly on the last day of each fiscal quarter of the Company, commencing with the first fiscal quarter ending after the Closing Date and on the Termination Date applicable to such Lender; **provided**, that no Defaulting Lender shall be entitled to receive any commission in respect of Letters of Credit for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay such commission to that Defaulting Lender but shall pay such commission as set forth in **Section 2.19**); **provided, further**, that the Applicable Margin shall be 2% above the Applicable Margin in effect upon the occurrence and during the continuation of an Event of Default if the Borrower is required to pay default interest pursuant to **Section 2.07(b)**.

(ii) The Borrower shall pay to each Issuing Bank, for its own account, a fronting fee equal as agreed between the Borrower and each Issuing Bank, and such other commissions, issuance fees, transfer fees and other fees and charges in connection with the Issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree.

(c) **Agent's Fees.** The Company shall pay to the Agent for its own account such fees as may from time to time be agreed between the Company and the Agent.

(d) **Ticking Fee.** The Company agrees to pay to the Agent for the account of each Lender a ticking fee on the aggregate amount of such Lender's Revolving Credit Commitment and Term Commitment from the later of (i) June 20, 2021 and (ii) the Effective Date until the Closing Date at a rate per annum equal to 0.175%, payable in arrears on, and subject to the occurrence of, the Closing Date.

(e) For purposes of computing the aggregate principal amount of Revolving Credit Advances and Available Amount of Letters of Credit, in each case, to the extent denominated in a Committed Currency, such amounts shall be calculated by multiplying (i) the average daily balance of each Letter of Credit and Revolving Credit Advance denominated in a Committed Currency (expressed in such Committed Currency) for the applicable period by (ii) the Dollar Equivalent for the Committed Currency in which such Letter of Credit or Revolving Credit Advance is denominated in effect on the last Business Day of such period or by such other reasonable method that the Agent deems appropriate.

SECTION 2.05. Termination or Reduction of the Commitments.

(a) **Optional Ratable Termination or Reduction.** The Company shall have the right, from time to time at any time after the Effective Date, upon at least three Business Days' notice to the Agent (or one Business Day's notice at any time prior to the Closing Date), to terminate in whole or permanently reduce ratably in part the Unused Revolving Credit Commitments, the Unissued Letter of Credit Commitments, any unused Swingline Commitments and/or any unused Term Commitments, **provided** that each partial reduction of a Facility (i) shall be in the aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and (ii) shall be made ratably among the Appropriate Lenders in accordance with their Commitments with respect to such Facility.

(b) **Termination of Defaulting Lender.** The Company may terminate the Unused Revolving Credit Commitment of any Lender that is a Defaulting Lender (determined after giving effect to any reallocation of participations in Letters of Credit as provided in **Section 2.19**) upon prior notice of not less than one Business Day to the Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of **Section 2.19(e)** shall apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, commitment fees, Letter of Credit commissions or other amounts), **provided** that (i) no Event of Default shall have occurred and be continuing and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Agent, any Issuing Bank or any Lender may have against such Defaulting Lender.

(c) To the extent not already terminated, all Commitments hereunder shall terminate automatically on the applicable Termination Date. All Term Commitments hereunder shall terminate automatically upon the making of the initial Term Advance on the Closing Date.

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SECTION 2.06. Repayment of Advances and Letter of Credit Drawings.

(a) **Revolving Credit Advances.** The Borrower shall repay to the Agent for the ratable account of each Revolving Credit Lender on the Termination Date applicable to such Lender the aggregate principal amount of the Revolving Credit Advances made to it and then outstanding.

(b) **Letter of Credit Drawings.** The obligations of the Borrower under any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit issued for the account of the Borrower shall be absolute, unconditional and irrevocable, and shall be paid in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Borrower is without prejudice to, and does not constitute a waiver of, any rights the Borrower might have or might acquire as a result of the payment by any Issuing Bank of any draft or the reimbursement by the Borrower thereof, including as provided in **Section 9.15**):

(i) any lack of validity or enforceability of this Agreement, any Note, any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (all of the foregoing being, collectively, the "**L/C Related Documents**");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any

Issuing Bank, the Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(iv) any statement or any other document presented under a 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;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor.

The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of an Issuing Bank, such Issuing Bank shall be deemed to have exercised reasonable care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(c) **Term Advances.** The Company shall repay to the Agent for the ratable account of the Term Lenders the aggregate outstanding principal amount of the Term Advances in quarterly installments on the last day of each fiscal quarter commencing with the first full fiscal quarter after Closing Date in an amount equal to 1.25% of the aggregate principal amount of the Term Advances on the Closing Date (as the same may be adjusted in accordance with **Section 2.10**) and, on the Term Loan Maturity Date, the aggregate principal amount of the Term Advances outstanding on such date.

(d) **Swingline Advances.** Unless the Agent shall have notified the Borrower of any participations in any Swingline Advance acquired pursuant to Section 2.01(d)(iii), the Borrower shall repay to the applicable Swingline Lender for the account of such Swingline Lender(s) the unpaid principal amount of such Swingline Advances made to it and then outstanding on the earlier of the Termination Date applicable to such Swingline Lender and the tenth (10th) Business Day after such Swingline Advances are made; provided that, on each date that a Revolving Credit Advance is made, if there are any then-outstanding Swingline Advances, the proceeds of any such Revolving Credit Advance shall be applied by the Agent, first, to repay any Swingline Advances outstanding (with such proceeds applied, first, to each Swingline Advance with the then-nearest maturity) and, second, any remaining amount shall be applied as directed by the Borrower.

SECTION 2.07. Interest on Advances.

(a) **Scheduled Interest.** The Borrower shall pay interest on the unpaid principal amount of each Advance made to it and owing to each Lender from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) **Base Rate Advances.** During such periods as such Advance is a Base Rate Advance (selected in accordance with the applicable Notice of Borrowing), a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time plus (y) the Applicable Margin in effect from time to time, payable in arrears quarterly on the last day of each February, May, August and November during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) **Eurocurrency Rate Advances.** During such periods as such Advance is a Eurocurrency Rate Advance, a rate per annum equal at all times during each Interest Period for such Eurocurrency Rate Advance to the sum of (x) the Eurocurrency Rate for such

Interest Period for such Eurocurrency Rate Advance plus (y) the Applicable Margin in effect from time to time, payable in arrears on the last day of such Interest Period and,

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if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Eurocurrency Rate Advance shall be Converted or paid in full.

(iii) Daily Simple SOFR Advances. During such periods as such Advance is a Daily Simple SOFR Advance (selected in accordance with the applicable Notice of Borrowing), a rate per annum equal at all times to the sum of (x) Adjusted Daily Simple SOFR in effect from time to time plus (y) the Applicable Margin in effect from time to time, payable in arrears quarterly on the last day of each February, May, August and November during such periods and on the date such Daily Simple SOFR Advance shall be Converted or paid in full.

(iv) Term SOFR Advances. During such periods as such Advance is a Term SOFR Advance, a rate per annum equal at all times during each Interest Period for such Term SOFR Advance to the sum of (x) Adjusted Term SOFR for such Interest Period for such Term SOFR Advance plus (y) the Applicable Margin in effect from time to time, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Term SOFR Advance shall be Converted or paid in full.

(b) **Default Interest.** Upon the occurrence and during the continuance of an Event of Default under **Section 6.01(a)** or **(e)**, the Agent may with the consent, and upon the request, of the Required Lenders shall, require the Borrower (or automatically during the continuance of an Event of Default under **Section 6.01(e)**), to pay interest ("**Default Interest**") on

(i) the unpaid principal amount of each Advance owing to each Lender, payable in arrears on the dates referred to in **clause (a)(i)** or **(a)(ii)** above, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Advance pursuant to **clause (a)(i)** or **(a)(ii)** above and

(ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Advances pursuant to **clause (a)(i)** above.

provided, however, that following automatic acceleration of the Advances pursuant to an Event of Default under **Section 6.01(e)**, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

SECTION 2.08. Interest Rate Determination.

(a) The Agent shall give prompt notice to the Company and the Appropriate Lenders of the applicable interest rate determined by the Agent for purposes of **Section 2.07(a)(i) or (ii)**.

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(iii) or (iv) (other than with respect to the interest rate for the outstanding Swingline Advances which shall be determined by each applicable Swingline Lender).

(b) ~~Subject to~~ To the extent the circumstances described in Section 2.21 shall not have occurred, if, with respect to any SOFR Advance or Eurocurrency Rate ~~Borrowing~~ Advance under any Facility, ~~(x) the Agent determines (which determination shall be conclusive and binding absent manifest error) that the Term SOFR Reference Rate, Daily Simple SOFR or any applicable Eurocurrency Rate, as applicable, cannot be determined pursuant to the definition thereof (or, in the case of Daily Simple SOFR, shall no longer be determined pursuant to the proviso in the definition thereof), or (y) the Lenders owed at least 51% of the aggregate principal amount thereof~~ notify the Agent that

~~(i) determine that for any reason in connection with any request for a SOFR Advance or Eurocurrency Rate Advance, or a Conversion thereto or a continuation thereof, that they are unable to obtain matching deposits in the London inter-bank market at or about 11:00 A.M. (London time) on the second Business Day before the making of a Borrowing in sufficient amounts to fund their respective Eurocurrency Rate Advances as a part of such Borrowing during its Interest Period or~~

~~(ii) the Term SOFR Reference Rate or any applicable Eurocurrency Rate for any requested Interest Period for such Advances will, or Daily Simple SOFR, as applicable, with respect to a proposed SOFR Advance or Eurocurrency Rate Advance does not adequately and fairly reflect the cost to such Lenders of making, funding or and maintaining their respective Eurocurrency Rate Advances for such Interest Period, such Advance, and the Lenders owed at least 51% of the aggregate principal amount thereof have provided notice of such determination to the Agent shall forthwith, the Agent will promptly so notify the Company and the Borrower and each~~ Appropriate ~~Lenders~~ Lender, whereupon

~~(A) the Borrower of such Eurocurrency Rate Advances will, on the last day of the then-existing Interest Period thereof, (1) if such Eurocurrency Rate Advances are denominated in Dollars, either (x) prepay such Advances or (y) Convert such Advances into Base Rate Advances and (2) if such Eurocurrency Rate Advances are denominated in any Committed Currency, either (x) prepay such Advances or (y) exchange such Advances into an Equivalent amount of Dollars and Convert such Advances into Base Rate Advances and~~

~~(BA) the obligation of the Appropriate Lenders to make Term SOFR Advances, Daily Simple SOFR Advances, or Eurocurrency Rate Advances, as applicable, and any right of the Borrower to continue any such affected SOFR Advances or Eurocurrency Rate Advances, as applicable, or to Convert Base Rate Advances into, to such affected SOFR Advances or Eurocurrency Rate Advances, as applicable, shall be suspended until the Agent shall notify the Company and the Lenders that the circumstances causing such suspension no longer exist, (to the extent of the affected SOFR Advances or Eurocurrency Rate Advances, as applicable, or affected Interest Periods, as applicable) until the Agent (with respect to clause (y), at the instruction of the Lenders owing at least 51% of the aggregate principal amount thereof) revokes such notice;~~

~~(B) Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, Conversion to or continuation of SOFR Advances or Eurocurrency Rate Advances, as applicable (to the extent of the affected SOFR Advances or Eurocurrency Rate Advances, as applicable, or affected Interest Periods, as applicable) or, failing that, the Borrower will be deemed to have Converted any such request into a request for a Borrowing of, or Conversion to, (A) if the request applies to both the Term SOFR Reference Rate and Daily Simple SOFR, Base Rate Advances in the amount specified therein, (B) if the request applies to Daily Simple SOFR but not the Term SOFR Reference Rate, Term SOFR Advances with an Interest Period of one-month in the amount specified therein (or, if the Term SOFR Reference Rate shall be no longer available at such time, into Base Rate Advances in the amount specified therein), (C) if the request applies to the Term SOFR Reference Rate but not Daily Simple SOFR, Daily Simple SOFR Advances in the amount specified therein (or, if Daily Simple SOFR shall be no longer available at such time, into Base Rate Advances in the amount specified therein), and (D) if the request applies to any applicable Eurocurrency Rate, then such request shall be ineffective, and (ii) (A) any outstanding affected Term SOFR Advances, if applicable, will be deemed to have been Converted into Daily Simple SOFR Advances at the end of the applicable Interest Period (or, if Daily Simple SOFR shall be no longer available at such time, into Base Rate Advances), (B) any outstanding affected Daily~~

Simple SOFR Advances, if applicable, will be deemed to have been Converted into Term SOFR Advances with an Interest Period of one-month (or, if the Term SOFR Reference Rate shall be no longer available at such time, into Base Rate Advances) and (C) any outstanding affected Eurocurrency Rate Advances, if applicable, at the Borrower's election, shall (I) be Converted into Base Rate Advances denominated in Dollars (in an amount equal to the Dollar Equivalent of such Committed Currency), at the end of the applicable Interest Period, (II) be Converted into Daily Simple SOFR Advances denominated in Dollars (in an amount equal to the Dollar Equivalent of such Committed Currency), at the end of the applicable Interest Period, (III) be Converted into Term SOFR Advances denominated in Dollars (in an amount equal to the Dollar Equivalent of such Committed Currency) with an Interest Period of one-month, at the end of the applicable Interest Period or (IV) be prepaid in full immediately or at the end of the applicable Interest Period; *provided, that, with respect to any Eurocurrency Rate Advance, if no election is made by the Borrower by the earlier of (x) the date that is three Business Days after receipt by the Borrower of such notice and (y) the last day of the current Interest Period for the applicable Eurocurrency Rate Advance, the Borrower shall be deemed to have elected clause (I) above. 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 8.04(c). Subject to Section 2.21, if the Agent determines (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Advances shall be determined by the Agent without reference to clause (c) of the definition of "Base Rate" until the Agent revokes such determination.*

(c) If the Borrower shall fail to:

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(i) ~~(c) If the Borrower shall fail to~~ select the duration of any Interest Period for any Term SOFR Advances or Eurocurrency Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Agent will forthwith so notify the Borrower and the Appropriate Lenders and such Advances will automatically, on the last day of the then existing Interest Period therefor,

(A) ~~(i) if such Eurocurrency Rate in the case of Term SOFR Advances are denominated in Dollars,~~ Convert into Base Rate Term SOFR Advances with an Interest Period of one month, and

(B) ~~(ii) if such in the case of Eurocurrency Rate Advances are denominated in a,~~ Convert into a Eurocurrency Rate Advance in the same Committed Currency, ~~be exchanged for an Equivalent amount of Dollars and Convert into Base Rate Advances with an Interest Period of one month; and~~

(ii) notify the Agent that a Daily Simple SOFR Advance will Convert into an Advance of another Type in accordance with Section 2.09, then such Daily Simple SOFR Advance shall continue to remain outstanding as a Daily Simple SOFR Advance.

(d) On the date on which the aggregate unpaid principal amount of Term SOFR Advances or Eurocurrency Rate Advances comprising any Revolving Credit Borrowing shall be reduced, by payment or prepayment or otherwise, to less than the Revolving Credit Borrowing Minimum, such Advances shall automatically (i) ~~if such Eurocurrency Rate in the case of Term SOFR Advances are denominated in Dollars,~~ Convert into Daily Simple SOFR Advances (or, if Daily Simple SOFR shall be no longer available at such time, into Base Rate Advances), and (ii) ~~if such in the case of Eurocurrency Rate Advances are denominated in a Committed Currency,~~ be exchanged for an Equivalent amount of Dollars and Convert into Base Rate Advances.

(e) Upon the occurrence and during the continuance of any Event of Default, (i) each Term SOFR Advance or Eurocurrency Rate Advance will automatically, on the last day of the then existing Interest Period therefor, (A) ~~if such Eurocurrency Rate in the case of such Term SOFR Advances are denominated in Dollars,~~ be Converted into Base Rate Advances and (B) ~~if in the case of such Eurocurrency Rate Advances are denominated in any Committed Currency,~~ be exchanged for an Equivalent amount of Dollars and be Converted into Base Rate Advances and (ii) the obligation of the Lenders to make, or to Convert Advances into, Term SOFR Advances or Eurocurrency Rate Advances shall be suspended.

(f) Subject to [Section 2.21](#), if the applicable Bloomberg screen is unavailable for determining the Eurocurrency Rate for any Eurocurrency Rate Advances, and no other commercially available source providing quotations of the Eurocurrency Rate have been agreed by the Agent and the Company,

(i) the Agent shall forthwith notify the Borrower and the Appropriate Lenders that the interest rate cannot be determined for such Eurocurrency Rate Advances;

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(iii) each such Advance will automatically, on the last day of the then existing Interest Period therefor, (A) if such Eurocurrency Rate Advance is denominated in Dollars, Convert into a Base Rate Advance and (B) if such Eurocurrency Rate Advance is denominated in any Committed Currency, be prepaid by the Borrower or be automatically exchanged for an Equivalent amount of Dollars and be Converted into a Base Rate Advance (or if such Advance is then a Base Rate Advance, will continue as a Base Rate Advance); and

(iii) the obligation of the Appropriate Lenders to make Eurocurrency Rate Advances or to Convert Advances comprising a Borrowing into Eurocurrency Rate Advances shall be suspended until the Agent shall notify the Company and the Appropriate Lenders that the circumstances causing such suspension no longer exist;

SECTION 2.09. Optional Conversion of Advances.

The Borrower of any Advance made as a part of a Borrowing may on any Business Day, upon notice given to the Agent not later than 1:00 P.M. (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of [Sections 2.08](#) and [2.12](#), Convert all or any portion of the Advances made as a part of a Borrowing denominated in Dollars of one Type comprising the same Borrowing into Advances denominated in Dollars of the other Type; **provided, however**, that any Conversion of [Term SOFR Advances or Eurocurrency Rate Advances](#) into Base Rate Advances [or Daily Simple SOFR Advances](#) shall be made only on the last day of an Interest Period for such [Term SOFR Advances or Eurocurrency Rate Advances](#), any Conversion of Base Rate Advances [into or Daily Simple SOFR Advances, Term SOFR Advances or Eurocurrency Rate Advances](#) shall be in an amount not less than the minimum amount specified in [Section 2.02\(b\)](#), no Conversion of any Advances shall result in more separate Borrowings than permitted under [Section 2.02\(b\)](#) and each Conversion of Advances comprising part of the same Borrowing under any Facility shall be made ratably among the Appropriate Lenders in accordance with their Commitments under such Facility. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Dollar denominated Advances to be Converted, and (iii) if such Conversion is into [Term SOFR Advances or Eurocurrency Rate Advances](#), the duration of the initial Interest Period for each such Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower giving such notice.

SECTION 2.10. Prepayments of Advances.

(a) **Optional.** The Borrower may, upon notice, at least two Business Days' prior to the date of such prepayment, in the case of Eurocurrency Rate Advances, [or at least three Business Days' prior to the date of such prepayment, in the case of SOFR Advances \(including any Swingline Advance, or such fewer number of days prior to the date of prepayment if agreed by the applicable Swingline Lender\)](#), and not later than 1:00 P.M. (New York City time) on the date of such prepayment, in the case of Base Rate Advances [\(including any Swingline Advance\)](#), to the Agent [\(and, in each case of prepayment of Swingline Advances, the Swingline Lenders\)](#) stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding principal amount of the Advances comprising part of the same Borrowing in whole or ratably in part,

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together with accrued interest to the date of such prepayment on the principal amount prepaid; **provided, however**, that

(i) ~~(x)~~ each partial prepayment of Revolving Credit Advances shall be in an aggregate principal amount of not less than the Revolving Credit Borrowing Minimum or a Revolving Credit Borrowing Multiple in excess thereof and (y) each partial prepayment of Swingline Advances shall be in an aggregate principal amount of not less than \$5,000,000.

(ii) each partial prepayment of Term Advances shall be in an aggregate principal amount of not less than \$10,000,000,

(iii) in the event of any such prepayment of a SOFR Advance or a Eurocurrency Rate Advance, the Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to **Section 8.04(c)** and

(iv) each partial prepayment of Term Advances shall be applied to the payments of Term Advances and the installments thereof as the Company may direct.

(b) **Mandatory.**

(i) **Revolving Credit Facility.** If, on any date, the Agent notifies the Company that, on any interest payment date, the sum of (A) all Revolving Credit Advances denominated in Dollars plus the aggregate Available Amount of all Letters of Credit then outstanding plus (B) the Equivalent in Dollars (determined on the third Business Day prior to such interest payment date) of the aggregate principal amount of all Revolving Credit Advances denominated in Committed Currencies then outstanding exceeds 103% of the aggregate Revolving Credit Commitments on such date, the Borrower shall, as soon as practicable and in any event within two Business Days after receipt of such notice, prepay the outstanding principal amount of any Revolving Credit Advances owing by the Borrower in an aggregate amount equal to such excess; **provided** that if the Company has cash collateralized Letters of Credit in accordance with **Section 2.19(a)**, for purposes of this **Section 2.10(b)** the Available Amount of outstanding Letters of Credit shall be deemed to have been reduced by the amount of such cash collateral.

~~(ii) **Swiss Francs Usage.** If, on any date, the Agent notifies the Company that, on any interest payment date, the Equivalent in Dollars (determined on the third Business Day prior to such interest payment date) of the aggregate principal amount of all Revolving Credit Advances denominated in Swiss Francs then outstanding exceeds \$500,000,000, the Borrower shall, as soon as practicable and in any event within two Business Days after receipt of such notice, prepay the outstanding principal amount of any Revolving Credit Advances denominated in Swiss Francs owing by the Borrower in an aggregate amount sufficient to reduce such aggregate principal by such excess on such date.~~ [Reserved].

(iii) Each prepayment made pursuant to this **Section 2.10(b)** shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Term SOFR Advance or a

Eurocurrency Rate Advance on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Borrower shall be obligated to reimburse to the Lenders in respect thereof pursuant to **Section 8.04(c)**.

(iv) The Agent shall calculate on the date of each Notice of Borrowing or Notice of Issuance and on each interest payment date the sum of

(A) the aggregate principal amount of all Advances denominated in Dollars plus the aggregate Available Amount of all Letters of Credit then outstanding plus

(B) the Equivalent in Dollars (determined on the third Business Day prior to such interest payment date) of the aggregate principal amount of all Advances denominated in Committed Currencies

and shall give prompt notice (and in any event no later than thirty days) of any prepayment required under this **Section 2.10(b)** to the Company and the Appropriate Lenders.

SECTION 2.11. Increased Costs.

(a) If, due to either (i) the introduction or phase in of or any change in or in the interpretation of any law, rule, guideline, decision, directive, treaty or regulation or (ii) the compliance with any guideline or request from any central bank or other governmental authority including, without limitation, any agency of the European Union or similar monetary or multinational authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining **SOFR Advances or Eurocurrency Rate Advances** or of agreeing to issue or of issuing or maintaining or participating in Letters of Credit (excluding for purposes of this **Section 2.11** any such increased costs resulting from (A) Indemnified Taxes, (B) Taxes described in **clauses (b)** through **(d)** of the definition of Excluded Taxes and (C) Connection Income Taxes), then the Company shall from time to time, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; **provided, however**, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such designation would avoid the need for, or reduce the amount of, such increased cost and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Company and the Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law), in each case, that comes into effect after the Closing Date, affects or would affect the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital or liquidity is increased by or based upon the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder and other commitments of such type or the

Issuance or maintenance of or participation in the Letters of Credit (or similar contingent obligations), then, upon demand by such Lender (with a copy of such demand to the Agent), the Company shall pay to the Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital or liquidity to be allocable to the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder or to the Issuance or maintenance of or participation in any Letters of Credit. A certificate as to such amounts submitted to the Company and the Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; **provided** that the Company shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Company of the change in law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof). Such demand for compensation shall be in reasonable detail and shall certify that the claim for additional amounts referred to therein is generally consistent with such Lender's treatment of similarly situated customers of such Lender whose transactions with such Lender are similarly affected by the change in circumstances giving rise to such payment, but such Lender shall not be required to disclose any confidential or proprietary information therein.

(d) Notwithstanding anything herein to the contrary, for the purposes of this **Section 2.11**, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives by a governmental authority thereunder or issued by a governmental authority in connection therewith (whether or not having the force of law) and (ii) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of

law), in case for this **clause (ii)** pursuant to Basel III, shall in each case be deemed to be a change in law regardless of the date enacted, adopted, issued, promulgated or implemented.

SECTION 2.12. Illegality.

Notwithstanding any other provision of this Agreement (other than **Section 2.21**), if any Lender shall notify the Agent that the introduction of or any change in or in the interpretation of any law or regulation, in each case, after the Closing Date, makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Lender or its **SOFR Lending Office or** Eurocurrency Lending Office to perform its obligations hereunder to make **SOFR Advances in Dollars or** Eurocurrency Rate Advances in ~~Dollars or~~ any Committed Currency or to fund or maintain **SOFR Advances in Dollars or** Eurocurrency Rate Advances in ~~Dollars or~~ any Committed Currency hereunder, (a) each **SOFR Advance or** Eurocurrency Rate Advance will automatically, upon such notification (i) ~~if such Eurocurrency Rate~~ **(A) in the case applicable to both a Term SOFR Advance is denominated in Dollars and a Daily Simple**

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SOFR Advance, be Converted into a Base Rate Advance ~~and (ii) if such, (B) in the case applicable to a Daily Simple SOFR Advance only, be Converted into a Term SOFR Advance with an Interest Period of one-month, (C) in the case applicable to a Term SOFR Advance only, be Converted into a Daily Simple SOFR Advance, and (D) in the case applicable to any~~ Eurocurrency Rate Advance ~~is denominated in any Committed Currency~~, be exchanged into an Equivalent amount of Dollars and, ~~at the Borrower's election, (I) be Converted into a Base Rate Advance, (II) be Converted into a Term SOFR Advance with an Interest Period of one-month or (II) be Converted into a Daily Simple SOFR Advance, provided, that if no election is made by the Borrower by the date that is three Business Days after receipt by the Borrower of any applicable notice by the Agent, the Borrower shall be deemed to have elected clause (I) above,~~ and (b) the obligation of the Lenders to make **SOFR Advances or** Eurocurrency Rate Advances **denominated in the affected currency** or to Convert Advances into **affected SOFR Advances or** Eurocurrency Rate Advances **denominated in such affected currency** shall be suspended until the Agent shall notify the Company and the Lenders that the circumstances causing such suspension no longer exist; **provided, however**, that before making any such notification, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different **SOFR Lending Office or** Eurocurrency Lending Office if the making of such designation would allow such Lender or its **SOFR Lending Office or** Eurocurrency Lending Office to continue to perform its obligations to make **SOFR Advances or** Eurocurrency Rate Advances or to continue to fund or maintain **SOFR Advances or** Eurocurrency Rate Advances and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

SECTION 2.13 Payments and Computations.

(a) The Borrower shall make each payment hereunder (except with respect to principal of, interest on, and other amounts relating to, Advances denominated in a Committed Currency), irrespective of any right of counterclaim or set-off, not later than 1:00 P.M. (New York City time) on the day when due in Dollars to the Agent at the applicable Agent's Account in same day funds. The Borrower shall make each payment hereunder with respect to principal of, interest on, and other amounts relating to, Advances denominated in a Committed Currency, irrespective of any right of counterclaim or set-off, not later than 1:00 P.M. (at the Payment Office for such Committed Currency) on the day when due in such Committed Currency to the Agent, by deposit of such funds to the applicable Agent's Account in same day funds. Any amounts received after such time on any date may, in the discretion of the Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest, fees or commissions ratably (other than amounts payable pursuant to **Section 2.03, 2.04(b), 2.11, 2.14 or 8.04(c)**) to the Appropriate Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender becoming a Lender hereunder as a result of a Commitment Increase pursuant to **Section 2.18** or an extension of the Termination Date pursuant to **Section 2.20**, and upon the Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Increase Date or

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Anniversary Date, as the case may be, the Agent shall make all payments hereunder and under any Notes issued in connection therewith in respect of the interest assumed thereby to the Assuming Lender. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register pursuant to [Section 8.07\(c\)](#), from and after the effective date specified in such Assignment and Assumption, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest based on Citibank's announced base rate shall be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, and all computations of interest based on the [Term SOFR Reference Rate](#), [Daily Simple SOFR](#), Eurocurrency Rate, the Federal Funds Rate or [clauses \(b\) and \(c\)](#) of the definition of Base Rate and of fees and Letter of Credit commissions shall be made by the Agent on the basis of a year of 360 days (or, in each case of Advances denominated in Committed Currencies where market practice differs, in accordance with market practice), in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fee or commission, as the case may be; **provided, however**, that, if such extension would cause payment of interest on or principal of [Term SOFR Advances or](#) Eurocurrency Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Appropriate Lenders hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Appropriate Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at (i) the Federal Funds Rate in the case of Advances denominated in Dollars or (ii) the cost of funds incurred by the Agent in respect of such amount in the case of Advances denominated in Committed Currencies.

(e) To the extent that the Agent receives funds for application to the amounts owing by the Borrower under or in respect of this Agreement or any Note in currencies other than the currency or currencies required to enable the Agent to distribute funds to the Lenders in accordance with the terms of this [Section 2.13](#), the Agent shall be entitled to convert or exchange such funds into Dollars or into a Committed Currency or from Dollars to a Committed Currency or from a Committed Currency to Dollars, as the case may be, to the extent necessary to enable

the Agent to distribute such funds in accordance with the terms of this [Section 2.13](#); **provided** that the Borrower and each of the Appropriate Lenders hereby agree that the Agent shall not be liable or responsible for any loss, cost or expense suffered by the Borrower or such Lender as a result of any conversion or exchange of currencies affected pursuant to this [Section 2.13\(e\)](#) or as a result of the failure of the Agent to effect any such conversion or exchange; and **provided, further**, that the Borrower agrees to indemnify the Agent and each Lender, and hold the Agent and each Lender harmless, for any and all losses, costs and expenses incurred by the Agent or any Lender for

any conversion or exchange of currencies (or the failure to convert or exchange any currencies) in accordance with this **Section 2.13(e)**, absent gross negligence, bad faith or willful misconduct (as determined by a final non-appealable judgement by a court of competent jurisdiction) on the part of the Agent or such Lender, respectively.

(f) Notwithstanding anything to the contrary, to the extent the Agent receives a payment or other amount after the date such payment or other amount is due, the Agent, in its sole discretion, may distribute such payment or other amount to the relevant Lender of record (or other Person of record entitled to such payment) as of the date such payment or other amount is received by the Agent.

SECTION 2.14. Taxes.

(a) Any and all payments by or on account of the Borrower to or for the account of any Lender or the Agent hereunder or under the Notes shall be made, in accordance with **Section 2.13** or the applicable provisions of such other documents, free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any Withholding Agent shall be required by law (as determined in the good faith discretion of an applicable Withholding Agent) to deduct or withhold any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender or the Agent, (i) 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, (ii) if such Tax is an Indemnified Tax, then the sum payable by the Borrower 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 2.14**), such Lender or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) In addition, the Company shall timely pay any present or future stamp or documentary, intangible, recording, filing or similar Taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the Notes hereunder or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the Notes, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 8.16**) (hereinafter referred to as "**Other Taxes**").

(c) The Borrower shall (without duplication) indemnify each Lender and the Agent for and hold it harmless against the full amount of Indemnified Taxes or Other Taxes (including, without limitation, Indemnified Taxes imposed or asserted on amounts payable under this **Section 2.14**) imposed on or paid by such Lender or the Agent or required to be withheld or deducted from a payment to such Recipient (as the case may be) and any reasonable expenses

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arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. This indemnification shall be made within 10 days from the date such Lender or the Agent (as the case may be) makes written demand therefor. A certificate as to the amount of such payment or liability delivered to the Company by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for

(i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so),

(ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 8.07(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 Agent in connection herewith or in connection with the Notes, 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 Agent shall be conclusive

absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender hereunder or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this **paragraph (d)**.

(e) Within 30 days after the date of any payment of Taxes to a Governmental Authority pursuant to this **Section 2.14**, the Borrower shall furnish to the Agent, at its address referred to in **Section 8.02**, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent.

(f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under this Agreement or the Notes shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent in writing 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 Agent in writing, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the 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 **paragraphs (e)(ii)(A), (ii)(B) and (ii)(D)** of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would

subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of Internal Revenue Service 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 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 Agreement (and from time to time thereafter upon the reasonable request of the Company or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under this Agreement, the Notes, or any other documents to be delivered hereunder, executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under this Agreement, the Notes, or any other documents to be delivered hereunder, Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of Internal Revenue Service 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 Internal Revenue Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax**

Compliance Certificate") and (y) executed copies of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E; or

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(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of Internal Revenue Service Form W-8IMY, accompanied by Internal Revenue Service Form W-8ECI, Internal Revenue Service Form W-8BEN, Internal Revenue Service Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-2** or Exhibit D-3, Internal Revenue Service 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 D-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 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 Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the 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 Agent to determine the withholding or deduction required to be made; and

(D) If a payment made to a Lender hereunder or under the Notes would be subject to United States 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 Internal Revenue Code, as applicable), such Lender shall deliver to the Company and the Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Company or the Agent as may be necessary for the Company or the Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, "FATCA" shall include any amendments made to FATCA after the **date of this Agreement** **Amendment No.1 Effective Date**.

Each Lender agrees that if any form or certification it previously delivered in relation to this **Section 2.14** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so

(g) 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 (including by the payment of additional amounts pursuant to this Section), 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

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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 (g)** (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 (g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **paragraph (g)** 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. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) For purposes of this **Section 2.14**, the term “**Lender**” includes any Issuing Bank.

SECTION 2.15. Sharing of Payments, Etc.

If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Advances owing to it (other than (x) as payment of an Advance made by an Issuing Bank pursuant to the first sentence of **Section 2.03(c)** or (y) pursuant to **Section 2.06(b)**, **2.11**, **2.14**, **2.19** or **8.04(c)**) in excess of its pro rata share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; **provided, however**, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered; **provided, further**, that, so long as the maturity of the obligations under this Agreement and the Notes shall not have been accelerated, any excess payment received by any Appropriate Lender in respect of any Facility shall be shared on a pro rata basis only with other Appropriate Lenders. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 2.15** may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

SECTION 2.16. Evidence of Debt.

(a) 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 Advance 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 in respect of Advances. The

Borrower agrees that upon notice by any Lender to the Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Advances owing to, or to be made by, such Lender, the Borrower shall promptly execute and deliver to such Lender a Revolving Credit Note ~~and~~, a Term Note ~~and a Swingline Note~~, as applicable, in substantially the form of ~~Exhibits A-1 and A-2 and A-3~~ hereto, respectively, payable to such Lender in a principal amount equal to the Revolving Credit Commitment(s) ~~and~~, the Term Commitment ~~and the Swingline Commitments~~, respectively, of such Lender.

(b) The Register maintained by the Agent pursuant to **Section 8.07(c)** shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Advances comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assumption Agreement and each Assignment and Assumption delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from the Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to **subsection (b)** above, and by each Lender in its account or accounts pursuant to **subsection (a)** above, 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 account or accounts, such Lender, under this Agreement, absent manifest error; **provided, however**, that the failure of the 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 Agreement.

(d) In addition to the accounts and records referred to in Section 2.16(a), each Revolving Credit Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Swingline Advances. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

SECTION 2.17. Use of Proceeds.

The proceeds of the Revolving Credit Advances shall be available on the Closing Date (and the Borrower agrees that it shall use such proceeds) solely to pay the fees and expenses incurred in connection with the Transactions and, thereafter, for general corporate purposes (including acquisitions) of the Borrower and its Subsidiaries. The proceeds of the Term Advances shall be used by the Company solely to finance the Transactions. Following the Amendment No. 1 Effective Date, the proceeds of the Swingline Advances shall be used for general corporate purposes (including acquisitions) of the Borrower and its Subsidiaries.

SECTION 2.18. Increase in the Aggregate Revolving Credit Commitments.

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(a) The Company may, at any time but in any event not more than twice in any calendar year prior to the latest Termination Date with respect to a Revolving Credit Facility (or as many additional times as may be agreed by the Agent), by notice to the Agent, request that the aggregate amount of the Commitments under such Revolving Credit Facility be increased by an amount of \$50,000,000 or an integral multiple thereof (each a "**Commitment Increase**") to be effective as of a date that is at least 90 days prior to the latest scheduled Termination Date with respect to such Revolving Credit Facility (the "**Increase Date**") as specified in the related notice to the Agent; **provided, however** that (i) in no event shall the aggregate amount of the Commitment Increases at any time exceed \$500,000,000 and (ii) on the date of any request by the Company for a Commitment Increase and on the related Increase Date the applicable conditions set forth in **Section 3.03** shall be satisfied.

(b) The Agent shall promptly notify the Lenders and such Eligible Assignees as are identified by the Company of the request by the Company for a Commitment Increase, which notice shall include (i) the proposed amount and Revolving Credit Facility of such requested Commitment Increase, (ii) the proposed Increase Date and (iii) the date by which Lenders wishing to participate in the Commitment Increase and such Eligible Assignees must commit to (x) in the case of a Lender, an increase in the amount of their respective applicable Revolving Credit Commitments or (y) in the case of an Eligible Assignee, to assume an applicable Revolving Credit Commitment hereunder (the "**Commitment Date**"). Each Lender and Eligible Assignee that is willing to participate in such requested Commitment Increase (each an "**Increasing Lender**") shall, in its sole discretion, give written notice to the Agent on or prior to the Commitment Date of the amount by which it is willing to participate in such increase; **provided, however**, that the applicable Revolving Credit Commitment of each such Eligible Assignee shall be in an amount of \$10,000,000 or more. If the Lenders and such Eligible Assignees notify the Agent that they are willing to participate in such increase by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among the Lenders willing to participate therein and such Eligible Assignees in such amounts as are agreed between the Company and the Agent. Each Lender's and each Eligible Assignee's proposed increased Revolving Credit Commitment shall be subject to the prior written approval of each Issuing Bank.

(c) Promptly following each Commitment Date, the Agent shall notify the Company as to the amount, if any, by which the Lenders and Eligible Assignees are willing to participate in the requested Commitment Increase.

(d) On each Increase Date, each Eligible Assignee that accepts an offer to participate in a requested Commitment Increase in accordance with **Section 2.18(b)** (each such Eligible Assignee, an "**Assuming Lender**") shall become a Lender party to this Agreement as of

such Increase Date and the applicable Revolving Credit Commitment of each Increasing Lender for such requested Commitment Increase shall be so increased by such amount (or by the amount allocated to such Lender pursuant to **Section 2.18(b)**) as of such Increase Date; **provided, however**, that the Agent shall have received on or before such Increase Date the following, each dated such date:

(i) (A) certified copies of resolutions of the Board of Directors of the Company or the Executive Committee of such Board approving the Commitment Increase and the corresponding modifications to this Agreement and (B) an opinion of

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counsel for the Company (which may be in-house counsel), in form and substance satisfactory to the Agent;

(ii) an assumption agreement from each Assuming Lender, if any, in form and substance satisfactory to the Company and the Agent (each an **"Assumption Agreement"**), duly executed by such Eligible Assignee, the Agent and the Company; and

(iii) confirmation from each Increasing Lender of the increase in the amount of its applicable Revolving Credit Commitment in a writing satisfactory to the Company and the Agent.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this **Section 2.18(d)**, the Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Company, on or before 1:00 P.M. (New York City time), by telecopier or other electronic communication, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date. Each Increasing Lender and each Assuming Lender shall, before 2:00 P.M. (New York City time) on the Increase Date, purchase at par that portion of outstanding applicable Revolving Credit Advances of the other applicable Revolving Credit Lenders or take such other actions as the Agent may determine to be necessary to cause the applicable Revolving Credit Advances to be held pro rata by the Appropriate Lenders in accordance with the Commitments with respect to the applicable Revolving Credit Facility.

SECTION 2.19. Defaulting Lenders.

(a) If ~~any Letters of Credit are outstanding~~ at the time a Lender becomes a Defaulting Lender, any Letters of Credit or Swingline Advances are outstanding, and the Revolving Credit Commitments have not been terminated in accordance with **Section 6.01**, then:

(i) so long as no Default has occurred and is continuing, all or any part of the Available Amount of outstanding Letters of Credit and each Revolving Credit Lender's obligation to fund its participation in Swingline Advances pursuant to Section 2.01(d) (iii), shall be reallocated among the Revolving Credit Lenders that are not Defaulting Lenders ("**non-Defaulting Lenders**") in accordance with their respective Ratable Shares (disregarding any Defaulting Lender's Revolving Credit Commitment) but only to the extent that

(x) the sum of

(A) the aggregate principal amount of all Revolving Credit Advances made by such non-Defaulting Lenders (in their capacity as Revolving Credit Lenders) and outstanding at such time, plus

(B) such non-Defaulting Lenders' Ratable Shares (before giving effect to the reallocation contemplated herein) of the Available Amount of all outstanding Letters of Credit, plus

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(C) the aggregate principal amount of all Revolving Credit Advances made by each Issuing Bank pursuant to **Section 2.03(c)** that have not been ratably funded by Lenders and outstanding at such time, plus

(D) such Defaulting Lender's Ratable Share of the Available Amount of such Letters of Credit, **plus**

(E) such non-Defaulting Lenders' Ratable Shares (before giving effect to the reallocation contemplated herein) of the participation interest in all outstanding Swingline Advances, plus

(F) such Defaulting Lenders' Ratable Shares (before giving effect to the reallocation contemplated herein) of the participation interest in all outstanding Swingline Advances,

does not exceed the total of all non-Defaulting Lenders' Revolving Credit Commitments; and

(y) the sum of

(A) the aggregate principal amount of all Revolving Credit Advances made by any non-Defaulting Lender (in its capacity as a Revolving Credit Lender) and outstanding at such time, plus

(B) such non-Defaulting Lender's participation interest (after giving effect to the reallocation contemplated herein) in the Available Amount of all outstanding Letters of Credit and Revolving Credit Advances made by each Issuing Bank pursuant to **Section 2.03(c)** that have not been ratably funded by Lenders; **plus**

(C) such non-Defaulting Lender's participation interest (after giving effect to the reallocation contemplated herein) in all outstanding Swingline Advances made by each Swingline Lender pursuant to Section 2.01(d) that have not been ratably funded by Revolving Credit Lenders,

does not exceed such non-Defaulting Lender's Revolving Credit Commitment;

provided, that subject to **Section 9.20**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation;

(ii) if the reallocation described in **clause (i)** above cannot, or can only partially, be effected, the Borrower shall within two Business Days following notice by

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any Issuing Bank, cash collateralize such Defaulting Lender's Ratable Share of the Available Amount of such Letters of Credit (after giving effect to any partial reallocation pursuant to **clause (i)** above), by paying cash collateral in such amount to such Issuing Bank; **provided** that, so long as no Default shall be continuing, such cash collateral shall be released promptly upon the earliest of

(A) the reallocation of the Available Amount of outstanding Letters of Credit among non-Defaulting Lenders in accordance with **clause (i)** above,

(B) the termination of the Defaulting Lender status of the applicable Lender or

(C) such Issuing Bank's good faith determination that there exists excess cash collateral (in which case, the amount equal to such excess cash collateral shall be released);

(iii) if the Ratable Shares of Letters of Credit of the non-Defaulting Lenders are reallocated or cash collateralized pursuant to this **Section 2.19(a)**, then the fees payable to the Revolving Credit Lenders pursuant to **Section 2.04(b)(i)** shall be adjusted in accordance with such non-Defaulting Lenders' Ratable Shares of the Letters of Credit that are not cash collateralized; or

(iv) If any Defaulting Lender's Ratable Share of Letters of Credit is neither cash collateralized nor reallocated pursuant to [Section 2.19\(a\)](#), then, without prejudice to any rights or remedies of any Issuing Bank or any Lender hereunder, all letter of credit fees payable under [Section 2.04\(b\)\(i\)](#) with respect to such Defaulting Lender's Ratable Share of Letters of Credit shall be payable to the applicable Issuing Bank until such Defaulting Lender's Ratable Share of Letters of Credit is cash collateralized and/or reallocated.

(b) So long as any Revolving Credit Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend or increase any Letter of Credit unless it is satisfied that the related exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with [Section 2.19\(a\)](#), and participating interests in any such newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with [Section 2.19\(a\)\(i\)](#) (and Defaulting Lenders shall not participate therein).

(c) No Revolving Credit Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this [Section 2.19](#), performance by the Borrower of its obligations shall not be excused or otherwise modified as a result of the operation of this [Section 2.19](#). The rights and remedies against a Defaulting Lender under this [Section 2.19](#) are in addition to any other rights and remedies which the Borrower, the Agent, any Issuing Bank or any Lender may have against such Defaulting Lender.

(d) If the Borrower, the Agent and each Issuing Bank agree in writing in their reasonable determination that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date

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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 that portion of outstanding Advances under a Revolving Credit Facility of the other Appropriate Lenders or take such other actions as the Agent may determine to be necessary to cause the applicable Revolving Credit Advances and funded and unfunded participations in Letters of Credit [and Swingline Lenders](#) to be held on a pro rata basis by the Appropriate Lenders in accordance with their Ratable Share (without giving effect to [Section 2.19\(a\)](#)), 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 such Lender's having been a Defaulting Lender.

(e) Notwithstanding anything to the contrary contained in this Agreement, any payment of principal, interest, fees, Letter of Credit commissions or other amounts received by the Agent for the account of any Defaulting Lender under this Agreement (whether voluntary or mandatory, at maturity, pursuant to [Article VI](#) or otherwise) shall be applied at such time or times as may be determined by the Agent as follows:

first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder;

second, in the case of a Defaulting Lender that is a Revolving Credit Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank [or any Swingline Lender](#) hereunder;

third, in the case of a Defaulting Lender that is a Revolving Credit Lender, if so determined by the Agent or requested by any Issuing Bank, to be held as cash collateral for future funding obligations of such Defaulting Lender in respect of any participation in any Letter of Credit;

fourth, as the Borrower may request (so long as no Default exists), to the funding of any Advance in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent;

fifth, in the case of a Defaulting Lender that is a Revolving Credit Lender, if so determined by the Agent and the Borrower, to be held in the L/C Cash Deposit Account and released in order to satisfy obligations of such Defaulting Lender to fund Revolving Credit Advances under this Agreement;

sixth, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

seventh, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the

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Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if (x) such payment is a payment of the principal amount of any Advance in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Advances were made or the related Letters of Credit were issued at a time when the applicable conditions set forth in the applicable section of **Article III** were satisfied or waived, such payment shall be applied solely to pay the Advances of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Advances of such Defaulting Lender and **provided, further**, that any amounts held as cash collateral for funding obligations of a Defaulting Lender shall be returned to such Defaulting Lender upon the termination of this Agreement and the satisfaction of such Defaulting Lender's obligations hereunder. 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 2.19** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

SECTION 2.20. Extensions of Termination Date.

(a) **Requests for Extension.** The Company may, by written notice to the Agent (who shall promptly notify the applicable Revolving Credit Lenders), no more than twice during the tenor of the Revolving Credit Facility (each date of such granted extension which shall be not earlier than 90 days and not later than 30 days prior to the applicable anniversary of the Closing Date, an "**Anniversary Date**"), request that each Revolving Credit Lender extend such Lender's Termination Date for an additional one year from the Termination Date then in effect with respect to such Lender. Any such extension request may be requested by the Company no more than once per year and in any event the tenor of the Revolving Credit Facility shall not exceed five years from the date of any such request.

(b) **Lender Elections to Extend.** Each Appropriate Lender, acting in its sole and individual discretion, shall, by notice to the Agent given no later than the date (the "**Notice Date**") that is 15 days prior to such Anniversary Date, advise the Agent whether or not such Lender agrees to such extension (and each Appropriate Lender that determines not to so extend its Termination Date (a "**Non-Extending Lender**") shall notify the Agent of such fact promptly after such determination (but in any event no later than the Notice Date) and any Appropriate Lender that does not so advise the Agent on or before the Notice Date shall be deemed to be a Non-Extending Lender). The election of any Appropriate Lender to agree to such extension shall not obligate any other Appropriate Lender to so agree.

(c) **Notification by Agent.** The Agent shall notify the Company of each Appropriate Lender's determination under this Section no later than the date 10 days prior to the applicable Anniversary Date (or, if such date is not a Business Day, on the next preceding Business Day).

(d) **Additional Commitment Lenders.** The Company shall have the right on or before the applicable Anniversary Date to replace each Non-Extending Lender with, and add as

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"Revolving Credit Lenders" under this Agreement in place thereof, one or more Eligible Assignees (as an Assuming Lender), each of which Assuming Lenders shall have entered into an Assumption Agreement pursuant to which such Assuming Lender shall, effective as of the applicable Anniversary Date, undertake a Revolving Credit Commitment (and, if any such Assuming Lender is already a Lender, its applicable Revolving Credit Commitment shall be in addition to such Lender's Revolving Credit Commitment(s) hereunder on such date).

(e) **Minimum Extension Requirement.** If (and only if) the total of the Revolving Credit Commitments of the Appropriate Lenders that have agreed so to extend their Termination Date and the additional Revolving Credit Commitments of the Assuming Lenders shall be more than 50% of the aggregate amount of the Revolving Credit Commitments in respect of the applicable Facility in effect immediately prior to the applicable Anniversary Date, then, effective as of such Anniversary Date, the Termination Date of each extending Appropriate Lender and of each Assuming Lender shall be extended to the date falling one year after the Termination Date in effect for such Appropriate Lenders (except that, if such date is not a Business Day, such Termination Date as so extended shall be the next preceding Business Day) and each Assuming Lender shall thereupon become a "Revolving Credit Lender" for all purposes of this Agreement.

(f) **Letters of Credit and Swingline Commitments.** In connection with any extension under this **Section 2.20**, the Termination Date in respect of any Issuing Bank **or Swingline Lender** may be extended only with the consent of such Issuing Bank **or Swingline Lender** (it being understood that, to the extent an Issuing Bank **or Swingline Lender** does not so extend, the Termination Date in respect of such Issuing Bank **or Swingline Lender** shall be the Termination Date in effect immediately prior to the applicable Anniversary Date for all purposes of this Agreement).

SECTION 2.21 LIBOR Successor Rate Benchmark Replacement Setting.

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any Note, ~~if upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred for a currency prior to the Reference Time in respect of any setting of a~~, the Agent and the Borrower may amend this Agreement to replace the then-current Benchmark ~~for such currency, then (x) if with a Benchmark Replacement is determined in accordance with clause (a)(1) or (a)(2) 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 Note in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any Note and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) or (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 Note in respect of any such Benchmark setting at or after~~, Any such amendment agreed to by the Agent and the Borrower with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the ~~date notice of such Benchmark Replacement is provided to the Lenders without any Agent has posted such proposed amendment to, or further action or consent of any other party to, this Agreement or any Note~~ all affected Lenders and the Borrower so long as the Agent has not received, by such

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time, written notice of objection to such **Benchmark Replacement amendment** from Lenders comprising the Required Lenders.

(b) **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any Note, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any Note.

(c) **Notices; Standards for Decisions and Determinations.** The Agent will promptly notify the **Company Borrower** and the Lenders of (i) any Benchmark Replacement Date and the related Benchmark Replacement, and (ii) the effectiveness of any Benchmark Replacement Conforming Changes, (iii) the removal or reinstatement of any tenor of a Benchmark pursuant to **clause (d)** below and (iv) the

commencement of any Benchmark Unavailability Period. For the avoidance of doubt, any notice required to be delivered by Agent as set forth in this **Section titled "LIBOR Successor Rate," 2.21** may be provided, at the option of the Agent (in its sole discretion), in one or more notices and may be delivered together with, or as part of any amendment which implements any Benchmark Replacement or Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this **Section titled "LIBOR Successor Rate," 2.21**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any Note, except, in each case, as expressly required pursuant to this **Section titled "LIBOR Successor Rate," 2.21**.

(d) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any Note, 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 or LIBOR Reference Rate, EURIBOR or CDOR**) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will **be** no longer **be** representative, then the Agent may modify the definition of "Interest Period" 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 or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "Interest Period" 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 with respect to a **given** Benchmark **for USD**, (i) the Borrower may revoke any request for a **Eurocurrency Rate Advance of,**

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conversion **Borrowing of, Conversion** to or continuation of **SOFR Advances or** Eurocurrency Rate Advances, **in each case**, to be made, **converted** **Converted** or continued during any Benchmark Unavailability Period **denominated in the applicable currency** and, failing that, **(A) in the case of any request for any affected SOFR Advance where the Benchmark Unavailability Period applies to both Daily Simple SOFR and the Term SOFR Reference Rate**, the Borrower will be deemed to have **converted** **Converted** any such request into a request for an Advance of or **conversion** **Conversion** to Base Rate Advances. **During any Benchmark Unavailability Period or in the amount specified therein**, **(B) in the case of any request for any affected SOFR Advance where the Benchmark Unavailability Period applies to Daily Simple SOFR but not the Term SOFR Reference Rate**, the Borrower will be deemed to have **Converted** any such request into a request for an Advance of or Conversion to Term SOFR Advances with an Interest Period of one-month in the amount specified therein **(or, if the Term SOFR Reference Rate shall be no longer available at such time, into Base Rate Advances in the amount specified therein)**, **(C) in the case of any request for any affected SOFR Advance where the Benchmark Unavailability Period applies to the Term SOFR Reference Rate but not Daily Simple SOFR**, the Borrower will be deemed to have **Converted** any such request into a request for an Advance of or Conversion to Daily Simple SOFR Advances in the amount specified therein **(or, if Daily Simple SOFR shall be no longer available at such time, into Base Rate Advances in the amount specified therein)**, and **(D) in the case of any request for any affected Eurocurrency Rate Advance**, then such request shall be ineffective and **(ii) (A) any outstanding affected Term SOFR Advances, if applicable, will be deemed to have been Converted into Daily Simple SOFR Advances at the end of the applicable Interest Period (or, if Daily Simple SOFR shall be no longer available at such time, into Base Rate Advances), (B) any outstanding affected Daily Simple SOFR Advances, if applicable, will be deemed to have been Converted into Term SOFR Advances with an Interest Period of one-month immediately (or, if the Term SOFR Reference Rate shall be no longer available at such time, into Base Rate Advances) and (C) any outstanding affected Eurocurrency Rate Advances, at the Borrower's election, shall (I) be Converted into Base Rate Advances denominated in Dollars (in an amount equal to the Dollar Equivalent of such Committed Currency), at the end of the applicable Interest Period, (II) be Converted into Daily Simple SOFR Advances denominated in Dollars (in an amount equal to the Dollar Equivalent of such Committed Currency), at the end of the applicable Interest Period, (III) be Converted into Term SOFR Advances denominated in Dollars (in an amount equal to the Dollar Equivalent of such Committed Currency) with an Interest Period of one-**

month, at the end of the applicable Interest Period or (IV) be prepaid in full immediately or at the end of the applicable Interest Period; provided, further that, with respect to any Eurocurrency Rate Advance, if no election is made by the Borrower by the earlier of (x) the date that is three Business Days after receipt by the Borrower of such notice and (y) the last day of the current Interest Period for the applicable Eurocurrency Rate Advance, the Borrower shall be deemed to have elected clause (I) above. 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 8.04(c). During a Benchmark Unavailability Period with respect to any Benchmark or at any time that a tenor for the then-current Benchmark is not an Available Tenor, to the extent a component of Base Rate is based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, such Benchmark or tenor will not be used in any determination of Base Rate. **Upon the commencement and during the**

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~~continuation of a Benchmark Unavailability Period with respect to a Benchmark for any currency other than USD, the obligation of the Lenders to make Advances referencing such Benchmark in the affected currency shall be suspended (to the extent of the affected Advances or Interest Periods) and any then-outstanding Advances so affected shall automatically be converted into a Base Rate Advance denominated in USD, calculated using the Dollar Equivalent as of the commencement of such Benchmark Unavailability Period;~~

(f) **Disclaimer.** The Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, ~~(i) the continuation of,~~ administration ~~of,~~ submission ~~of,~~ calculation ~~of~~ or any other matter related to the ~~London interbank offered rate or other~~ Base Rate, Daily Simple SOFR, Term SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR, the Eurocurrency Rate, or any other Benchmark, or any component definition thereof or rates referred to in the definition of "Eurocurrency Rate" or with respect to ~~thereof, or~~ any alternative ~~or,~~ successor rate ~~thereto,~~ or replacement rate ~~thereof~~ ~~thereto~~ (including, ~~without limitation~~ any Benchmark Replacement ~~implemented hereunder~~), ~~(ii), including whether~~ the composition or characteristics of any such ~~alternative, successor or replacement rate (including any Benchmark Replacement), including whether it is~~ will be similar to, or ~~produces~~ produce the same value or economic equivalence ~~to LIBOR or any other then-current Benchmark of,~~ or have the same volume or liquidity as ~~did LIBOR or any other then-current Benchmark, (iii) any actions or use of its discretion or other decisions or determinations made with respect to any matters covered by this Section titled "LIBOR Successor Rate" including, without limitation, whether or not a Benchmark Transition Event has occurred, the removal or lack thereof of unavailable or non-representative tenors, the,~~ the Base Rate, Daily Simple SOFR, Term SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR, the Eurocurrency Rate, such Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or ~~lack thereof~~ composition of any Benchmark Replacement Conforming Changes, ~~the delivery or non-delivery of any notices required by clause (c) above or otherwise in accordance herewith, and (iv) the effect of any of the foregoing provisions of this Section titled "LIBOR Successor Rate."~~ The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate or a 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 Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, any Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(g) As used in this **Section 2.21:**

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark for any specified currency, as applicable, if such Benchmark is a term

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rate any tenor for such Benchmark ~~or payment period for interest calculated with reference to such Benchmark, as applicable,~~ that is or may be used for determining the length of an Interest Period pursuant to this Agreement 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 ~~clause Section 2.21(d) of this Section titled "LIBOR Successor Rate."~~

"Benchmark" means, initially ~~(i)~~, with respect to any ~~(a) obligations, interest, fees, commissions or other~~ amounts denominated in USD, USD LIBOR, ~~(ii) or calculated~~ with respect to ~~amounts denominated in CHF, CHF LIBOR, (iii) with respect to any amounts denominated in EURO, EURIBOR and (iv) with respect to any borrowings denominated in Canadian Dollar, CDOR, Dollars, (i) Daily Simple SOFR or (ii) the Term SOFR Reference Rate, as applicable;~~ ~~provided~~ that if a Benchmark Transition Event ~~or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have~~ ~~has~~ occurred with respect to ~~the either Daily Simple SOFR, the Term SOFR Reference Rate or~~ then-current Benchmark ~~for Dollars~~, then "Benchmark" means, ~~with respect to such obligations, interest, fees, commissions or other amounts,~~ the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to ~~clause (a) of this Section titled "LIBOR Successor Rate."~~ ~~Section 2.21(a), (b) obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Euros, EURIBOR; provided that if a Benchmark Transition Event has occurred with respect to EURIBOR, or the then-current Benchmark for Euros, then "Benchmark" means, with respect to such obligations, interest, fees, commissions or other amounts, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.21(a), and (c) obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Canadian Dollars, CDOR; provided that if a Benchmark Transition Event has occurred with respect to CDOR, or the then-current Benchmark for Canadian Dollars, then "Benchmark" means, with respect to such obligations, interest, fees, commissions or other amounts, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.21(a).~~

"Benchmark Replacement" means, ~~for any Available Tenor, the first alternative set forth below and (where applicable) in the order set forth below for the currency that can be determined by the Agent for the applicable~~ ~~with respect to any Benchmark Transition Event for any then-current~~ Benchmark Replacement Date:

~~(a) for USD:~~

~~(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;~~

~~(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;~~

~~(3a) for Dollars:~~ the sum of: ~~(a)~~ the alternate benchmark rate that has been selected by the Agent and the Borrower as the replacement for the then-current Benchmark ~~for the applicable Corresponding Tenor~~ giving due consideration to ~~(iA)~~ any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate

by the Relevant Governmental Body or ~~(iB)~~ any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark, ~~in each case for USD Dollar~~ denominated syndicated credit facilities at such time ~~in the U.S. syndicated loan market~~ and ~~(bii)~~ the related Benchmark Replacement Adjustment; ~~provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion.~~

~~(b) For all Non-Hardwired for the Committed~~ Currencies; the sum of: ~~(a)~~ the alternate benchmark rate that has been selected by the Agent and the Borrower as the replacement for the then-current Benchmark ~~for the applicable Corresponding Tenor~~ giving due

consideration to (iA) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (iiB) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities that are either denominated in-such currency, or are multi-currency syndicated credit facilities with options for borrowings that are denominated in, the applicable Committed Currency at such time in the U.S. syndicated loan market and (bii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clauses clause (a)(1), (a)(2), (a)(3) or (b) above would be less than the Floor for the applicable Benchmark zero, the Benchmark Replacement will be deemed to be the Floor applicable to such Benchmark zero for the purposes of this Agreement and the Notes.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (a)(1) and (a)(2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Agent: (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor or (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (a)(3) or (b) of the definition of "Benchmark Replacement," "Adjustment" means, with respect to any replacement of any 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 Agent and the Borrower for the applicable

Corresponding Tenor and currency giving due consideration to (iA) 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 on the applicable Benchmark Replacement Date or (iiB) 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 syndicated credit facilities in the U.S. syndicated loan market; provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Agent in its reasonable discretion; having a Benchmark denominated in the applicable currency at such time.

"Benchmark Replacement Conforming Changes" means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," (if applicable), the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, the formula for calculating any successor rates identified pursuant to the definition of "Benchmark Replacement", the formula, methodology or convention for applying the successor Floor to the successor Benchmark Replacement and other technical, administrative or operational matters) that the Agent, in consultation with the Borrower, decides may be appropriate to reflect the adoption and implementation of any such Benchmark Replacement and rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement any

such rate exists, in such other manner of administration as the Agent, in consultation with the Borrower, decides is reasonably necessary in connection with the administration of this Agreement and the Notes).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the applicable currency of the then-current Benchmark:

(4a) in the case of clause (1a) or (2b) of the definition of “Benchmark Transition Event”, the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2b) in the case of clause (3c) of the definition of “Benchmark Transition Event”, the first date of the public on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication ~~of information~~ referenced therein; ~~or in such~~

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clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

~~(3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.~~

For the avoidance of doubt, (i) ~~if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and~~ (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1a) or (2b) 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, with respect to ~~any~~ the then-current Benchmark specified for a currency, the occurrence of one or more of the following events with respect to ~~the then-current~~ such Benchmark:

(4a) 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);

(2b) 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), ~~for USD LIBOR the Board of Governors of the Federal Reserve System or Board, the Federal Reserve Bank of New York,~~ the central bank for the currency applicable to such Benchmark, 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

(3c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof)

are ~~no longer~~ not, or as of a specified future date will not be, representative.

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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).

“**Benchmark Unavailability Period**” means, with respect to ~~any~~ the then-current Benchmark for a specified currency, the period (if any) ~~(x)a~~ beginning at the time that a Benchmark Replacement Date ~~pursuant to clauses (1) or (2) of that definition~~ with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced ~~the then-current~~ such Benchmark for all purposes hereunder and under any Note in accordance with ~~this Section titled “LIBOR Successor Rate”~~ 2.21 and ~~(y)b~~ ending at the time that a Benchmark Replacement has replaced ~~the then-current~~ such Benchmark for all purposes hereunder and under any Note in accordance with ~~this Section titled “LIBOR Successor Rate.”~~ 2.21.

~~“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.~~

~~“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the 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 Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.~~

~~“Early Opt-in Election” means if the then-current Benchmark is a LIBOR, the occurrence of the following:~~

~~(1)(a) with respect to USD, a notification by the Agent to (or the request by the Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding USD-denominated syndicated credit facilities in the U.S. syndicated loan market at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review); or (b) with respect to a Non-Hardwired Currency utilizing a LIBOR, a notification by the Agent to (or the request by the Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding syndicated credit facilities which include such Non-Hardwired Currency at such time in the U.S. syndicated loan market contain or are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the then-current Benchmark with respect to such Non-Hardwired Currency as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and~~

~~(2) in each case, the joint election by the Agent and the Borrower to trigger a fallback from the applicable then-current Benchmark and the provision by the Agent of written notice of such election to the Lenders.~~

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~~“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to any applicable Benchmark.~~

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

"LIBOR" means, collectively, USD LIBOR and CHF LIBOR;

"Non-Hardwired Currencies" means all Committed Currencies other than USD;

"Reference Time" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Agent in its reasonable discretion;

"Relevant Governmental Body" means (i) with respect to a Benchmark or Benchmark Replacement in respect of any Benchmark applicable to USD, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, and (ii) with respect to a Benchmark Replacement for any Benchmark applicable to a currency other than USD, (a) the central bank for the applicable currency or any central bank or other supervisor which is responsible for supervising (1) such Benchmark or Benchmark Replacement for such currency or (2) the administrator of such Benchmark or Benchmark Replacement for such currency or (b) any working group or committee officially endorsed or convened by: (1) the central bank for such currency, (2) any central bank or other supervisor that is responsible for supervising either (x) such Benchmark or Benchmark Replacement for such currency or (y) the administrator of such Benchmark or Benchmark Replacement for such currency, or (3) the Financial Stability Board, or a committee officially endorsed or convened by the Financial Stability Board, or any successor thereto;

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day;

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate);

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, 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;

"Term SOFR" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body;

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment;

"USD" means the lawful money of the United States;

"USD LIBOR" means the London interbank offered rate for USD;

ARTICLE III.

CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. Conditions Precedent to Effectiveness of Section 2.01

Section 2.01 of this Agreement shall become effective on and as of the first date (the **"Effective Date"**) on which the Agent shall have received executed counterparts to this Agreement from the Borrower and each of the Initial Lenders party hereto.

SECTION 3.02. Conditions Precedent to the Closing Date.

The obligations of the Lenders to make Advances and of each Issuing Bank to issue Letters of Credit hereunder shall be subject to the following conditions having been satisfied or waived (the first such date on which each of the following conditions have been satisfied or waived, the **"Closing Date"**):

(a) Since March 22, 2021, there has not been any effect, change, event, circumstance, condition, occurrence or development that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect (as defined in the Merger Agreement) on the Company (as defined in the Merger Agreement).

(b) The Company shall have paid on the Closing Date all fees required to be paid pursuant to or in connection with this Agreement, to the extent invoiced at least three business days prior to the Closing Date (except as otherwise reasonably agreed by the Company) (which amounts may be offset against the proceeds of the Facilities).

(c) On the Closing Date, the Agent shall have received for the account of each Lender a certificate signed by a duly authorized officer of the Company, dated the Closing Date, certifying to the occurrence or satisfaction **clauses (a) and (h)** of this **Section 3.02** substantially concurrently with the occurrence of the Closing Date.

(d) The Agent shall have received on or before the Closing Date copies of the following, each dated the Closing Date, in form and substance reasonably satisfactory to the Agent:

(i) The Notes to the Lenders to the extent requested by any Lender pursuant to **Section 2.16** prior to the Closing Date.

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(ii) Certified copies of the resolutions of the Board of Directors of the Company approving this Agreement and the Notes, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement and the Notes.

(iii) A certificate of the Secretary or an Assistant Secretary of the Company certifying the names and true signatures of the officers of the Company authorized to sign this Agreement and the Notes and the other documents to be delivered hereunder, and attaching (x) the charter and by-laws of the Company certified, to the extent applicable, as of a recent date by the applicable state governmental authority and (y) a good standing certificate (to the extent such concept exists) from the applicable state governmental authority of the Company's jurisdiction of incorporation.

(iv) A customary opinion of Pillsbury Winthrop Shaw Pittman LLP, counsel to the Company.

(v) The Agent shall have received a certificate, substantially in the form of **Exhibit E** hereto, from the chief financial officer of the Borrower certifying that the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions are solvent.

(vi) (x) at least three days prior to the Closing Date all documentation and other information regarding the Company requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, to the extent reasonably requested in writing of the Company at least ten Business Days prior to the Closing Date and

(y) to the extent the Company qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, any Lender that has requested, in a written notice to the Company at least ten Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Company shall have received such Beneficial Ownership Certification.

(e) The Agent shall have received on or substantially simultaneously with the Closing Date evidence that the Company shall have repaid or prepaid all of the outstanding and accrued obligations under the Existing Credit Agreements and shall have repaid or prepaid all of the outstanding and accrued obligations under, and terminated in full the commitments of the lenders under, the Existing Credit Agreements (the **"Closing Date Refinancing"**).

(f) The Acquisition shall have been consummated or will be consummated concurrently or substantially concurrently with the closing and funding under the Facilities in all material respects in accordance with the terms of the Merger Agreement; **provided**, that no amendment, modification, consent or waiver of any term thereof or any condition to the Company's obligation to consummate the Acquisition thereunder (other than any such amendment, modification, consent or waiver that is not materially adverse to any interest of the Lenders) shall be made or granted, as the case may be, without the prior written consent of the Agent (which consent shall not be unreasonably withheld, delayed or conditioned). For purposes of the foregoing condition, it is understood and agreed that (i) any reduction in the purchase price

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of less than 12.5% in connection with the Acquisition shall not in and of itself be deemed to be material and adverse to the interests of the Lenders or the Arrangers so long as such reduction shall be allocated to a reduction of the commitments under the Facilities in proportion to the actual percentage that the amount of the Facilities bears to the pro forma total capitalization of the Company and its subsidiaries after giving effect to the Transactions and (ii) any increase in the purchase price in connection with the Acquisition shall not in and of itself be deemed to be material and adverse to the interests of the Lenders or the Arrangers so long as any such increase in the purchase price is not funded with additional indebtedness or preferred equity accounted for as indebtedness that does not, or would not reasonably be expected to, result in a ratings downgrade (excluding, for the avoidance of doubt, funding with the proceeds of the Facilities, any bridge facilities or senior notes).

(g) The Agent shall have received:

(i) audited consolidated balance sheets of the Company and its consolidated subsidiaries as of the end of, and related statements of operations and cash flows of the Company and its consolidated subsidiaries for, the three most recently completed fiscal years ended at least 90 days prior to the Closing Date,

(ii) audited consolidated balance sheets, statements of income, statements of shareholders' equity and statement of cash flows and associated footnotes of the Acquired Company and its consolidated subsidiaries as of and for the fiscal year ended January 31, 2020 and as of and for any fiscal year of the Acquired Company ending after January 31, 2020 and on or prior to the date that is at least 90 days prior to the Closing Date,

(iii) an unaudited consolidated balance sheet of the Company and its consolidated subsidiaries as at the end of, and related statements of operations and cash flows of the Company and its consolidated subsidiaries for, each subsequent fiscal quarter (other than the fourth fiscal quarter of a fiscal year) of the Company and its consolidated subsidiaries, subsequent to the last fiscal year for which financial statements were prepared pursuant to the preceding **clause (i)** and ended at least 45 days before the Closing Date (in the case of this **clause (iii)**, without footnotes) together with the consolidated balance sheet and related statements of operations and cash flows for the corresponding portion of the previous year,

(iv) an unaudited consolidated balance sheet, statement of income, statement of shareholders' equity and statement of cash flows of the Acquired Company and its consolidated subsidiaries for, any fiscal quarter (other than the fourth fiscal quarter of any fiscal year of the Acquired Company) ending after the ~~date hereof~~**Closing Date** and on or prior to the date that is at least 45 days prior to the Closing Date, with a comparison to the corresponding fiscal quarter of the prior fiscal year, and

(v) a pro forma consolidated balance sheet of the Company and its consolidated subsidiaries as of the end, and related statement of operations of the Company and its consolidated subsidiaries for, the four-quarter period ending as of the end of the most recent period referred to in **clause (i)** or **clause (iii)** above, prepared after giving effect to the Transactions herein as if such Transactions had occurred as of the

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date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of operations).

The Agent hereby acknowledges (x) receipt of the audited financial statements referred to in **clause (i)** above for the November 30, 2018, 2019 and 2020 fiscal years of the Company, receipt of the audited financial statements referred to in **clause (ii)** above for the fiscal year ended January 31, 2020 of the Acquired Company and (y) that the filing with the Securities and Exchange Commission of such Exchange Act reports or filings containing such financial statements by the Company with respect to the relevant period shall satisfy the foregoing requirements referred to in **clauses (i) and (iii)**, as applicable.

(h) The Specified Merger Agreement Representations and the Specified Representations shall be true and correct in all material respects (or if qualified by materiality, in all respects). No Event of Default pursuant to **Section 6.01(e)** has occurred and is continuing.

(i) Delivery of a customary Notice of Borrowing.

SECTION 3.03. Conditions Precedent to Each Borrowing, Issuance, Commitment Increase and Commitment Extension after the Closing Date.

After the Closing Date, the obligation of each Lender to make an Advance (other than an Advance made by any Issuing Bank or any Lender pursuant to **Section 2.03(c)** or a Conversion) on the occasion of each Borrowing, the obligation of each Issuing Bank to issue a Letter of Credit, each Commitment Increase and each extension of Revolving Credit Commitments shall be subject to (x) the conditions precedent that the Effective Date and the Closing Date shall have occurred and (y) on the date of such Borrowing, such Issuance, the applicable Increase Date or the applicable Anniversary Date (as the case may be) the following statements shall be true (and each of the giving of the applicable Notice of Borrowing, Notice of Issuance, request for Commitment Increase, request for Commitment extension and the acceptance by the Borrower of the proceeds of such Borrowing, such Issuance, such Increase Date or such Anniversary Date shall constitute a representation and warranty by the Borrower that on such date such statements are true):

(i) the representations and warranties contained in **Section 4.01** (other than the representations set forth in the last sentence of **subsection (e)** thereof) are correct in all material respects (or if qualified by materiality, in all respects) on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be correct in all material respects (or if qualified by materiality, in all respects) as of such earlier date), before and after giving effect to such Borrowing, such Issuance, such Commitment Increase or such extension of Revolving Credit Commitments and to the application of the proceeds therefrom, as though made on and as of such date,

(ii) no event has occurred and is continuing, or would result from such Borrowing, such Issuance, such Commitment Increase or such extension of Revolving Credit Commitments or from the application of the proceeds therefrom, that constitutes a Default; and

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(iii) in the case of each Borrowing, delivery of a customary Notice of Borrowing.

SECTION 3.04. Determinations Under Article III.

For purposes of determining compliance with the conditions specified in **Article III**, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the proposed Effective Date, the proposed Closing Date or the proposed date of each Borrowing, the obligation of each Issuing Bank to issue a Letter of Credit, each Commitment Increase and each extension of Revolving Credit Commitments, as applicable. The Agent shall promptly notify the Lenders of the occurrence of the Effective Date and the Closing Date.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Company.

The Company represents and warrants as follows on and as of the Closing Date (and, on each date specified in **Section 3.03**, to the extent required thereby):

(a) **Existence.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) **Qualification and Power; Compliance with Law.** The execution, delivery and performance by the Company of this Agreement and the Notes to be delivered by it, and the consummation of the transactions contemplated hereby, are within the Company's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene (i) the Company's charter or by-laws or (ii) any material law or any material contractual restriction binding on or affecting the Company.

(c) **Authorization; No Contravention, etc.** No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery and performance by the Company of this Agreement or the Notes to be delivered by it.

(d) **Binding Effect.** This Agreement has been, and each of the Notes to be delivered by it when delivered hereunder will have been, duly executed and delivered by the Company. This Agreement is, and each of the Notes when delivered hereunder will be, the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or law).

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(e) **Financial Statements; No Material Adverse Effect.** The Consolidated balance sheet of the Company and its Subsidiaries as at November 30, 2020, and the related Consolidated statements of income and cash flows of the Company and its Subsidiaries for the fiscal year then ended, accompanied by an opinion of KPMG LLP, independent public accountants, copies of which have been furnished to each Lender, fairly present the Consolidated financial condition of the Company and its Subsidiaries as at such date and the Consolidated results of the operations of the Company and its Subsidiaries for the period ended on such date, all in accordance with GAAP consistently applied. As of the Closing Date, since November 30, 2020 there has been no Material Adverse Change.

(f) **Litigation.** As of the Closing Date, there is no pending or, to the Company's knowledge, overtly threatened action, suit, investigation, litigation or administrative or judicial proceeding, including, without limitation, any Environmental Action, affecting the Company or any of its Subsidiaries before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect hereto or (ii) purports to adversely affect the legality, validity or enforceability of this Agreement or any Note or the consummation of the transactions contemplated hereby.

(g) **Margin Regulation.** The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock in violation of Regulation U. Following application of the proceeds of each Advance, not more than 25 percent of the value of the assets (either of the Company only or of the Company and its Subsidiaries on a Consolidated basis) subject to the provisions of **Section 5.02(a)** or subject to any restriction on sale, pledge, or other disposition contained in any agreement or instrument between the Company and any Lender or any Affiliate of any Lender relating to Debt and within the scope of **Section 6.01(d)** will be margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

(h) **Investment Company Act.** The Borrower is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

(i) **Disclosures.** Neither the written information regarding the Company and its Subsidiaries in the Information Memorandum (other than the financial projections, other forward-looking statements and information of a general economic or industry specific nature) nor any other written information, exhibit or report furnished by or on behalf of the Company or any other Borrower to the Agent or any Lender prior to the Closing Date in connection with the negotiation and syndication of this Agreement or pursuant to the terms of this Agreement, taken as a whole, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, when taken as a whole, not materially misleading solely at the time furnished.

(j) **Compliance with OFAC, etc.**

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(i) Neither the Borrower, nor any of its officers, directors or employees, is named as a **"Specially Designated National and Blocked Person"** as designated by the United States Department of the Treasury's Office of Foreign Assets Control, or as a person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism;

(ii) the Borrower is not owned or controlled, directly or indirectly, by the government of any country that is subject to a United States Embargo; and

(iii) the Borrower is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a "Specially Designated National and Blocked Person," or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and

(iv) the Borrower is not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation described in **clauses (i), (ii), or (iii).**

(k) **FCPA, etc.** The Company has implemented and maintains in effect policies and procedures reasonably designed to promote compliance by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Company, its Subsidiaries and their respective officers and employees and, to the knowledge of the Company, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Company, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Company, any agent of the Company or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, or direct or knowingly indirect, use of proceeds or other transaction contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions.

(l) **No Borrower is an Affected Financial Institution.**

(m) As of the Closing Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification, if any, provided by the Borrower to any Lender in connection with this Agreement is true and correct in all respects.

(n) **Taxes.** The Borrower and its Subsidiaries have filed all United States federal and state income Tax returns and all other Tax returns and reports required to be filed, and have paid all United States federal and state income Taxes and other 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 by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(o) **Insurance.** The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such

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amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

(p) **Ownership of Property, Liens.** Each of the Borrower and its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not reasonably be expected to have a Material Adverse Effect. The property of each of the Subsidiaries is not subject to any Liens other than Liens permitted pursuant to **Section 5.02(a)**.

(q) **ERISA.** Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state laws. Each Benefit Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter or may rely on a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code, or an application for such a letter is currently being processed by the IRS. To the knowledge of the officers of the Borrower, nothing has occurred that would reasonably be expected to prevent or cause the loss of such tax-qualified status. There are no pending or, to the knowledge of the responsible officers of the Borrower, threatened claims, actions or lawsuits, or action by any governmental authority or regulatory body, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction in violation of Section 406 or 407 of ERISA or Section 4975 of the Internal Revenue Code or violation of the fiduciary responsibility rules set forth in Section 404 and 405 of ERISA with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan;

(ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, in all material respects, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained;

(iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Internal Revenue Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date;

(iv) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid;

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(v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could reasonably be likely to be subject to Section 4069 or Section 4212(c) of ERISA; and

(vi) no Pension Plan has been terminated by the plan administrator thereof or by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

As of the Closing Date the Borrower is not (1) an employee benefit plan subject to Title I of the ERISA, (2) a plan or account subject to Section 4975 of the Internal Revenue Code; (3) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Internal Revenue Code; or (4) a “governmental plan” within the meaning of ERISA.

(r) **Subsidiaries.** As of the Closing Date, set forth on **Schedule 4.01(r)** to the Disclosure Letter is a complete and accurate list as of the Closing Date of each Subsidiary, together with

(i) jurisdiction of organization,

(ii) percentage of outstanding shares of each class owned (directly or indirectly) by the Borrower or any Subsidiary, and

(iii) a notation as to which Subsidiaries are Immaterial Subsidiaries, with respect to each Subsidiary located in the U.S. which is not an Immaterial Subsidiary, the U.S. tax payer identification number and organizational identification number of each such Subsidiary.

(s) **Registered Intellectual Property**

(i) Set forth on **Schedule 4.01(s)** to the Disclosure Letter is a list of all the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights registered or pending registration with the

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United States Copyright Office or the United States Patent and Trademark Office that as of the Closing Date the Borrower and its Subsidiaries owns.

(t) **Solvency.** On the Closing Date, after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are solvent (in a manner defined or construed in the solvency certificate substantially in the form attached hereto as **Exhibit E**).

(u) **PATRIOT Act.** On the Closing Date, the Borrower and all of its Subsidiaries are in compliance in all material respects with the applicable provisions of the PATRIOT Act.

ARTICLE V.

COVENANTS OF THE COMPANY

SECTION 5.01. Affirmative Covenants.

So long as any Advance shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, the Company will, on and after the Closing Date:

(a) **Compliance with Laws, Etc.**

(i) Comply, and cause each of its Subsidiaries to comply, with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA and Environmental Laws, except to the extent such failure to comply could not reasonably be expected to have a Material Adverse Effect; and maintain in effect and enforce policies and procedures reasonably designed to promote compliance by the Company, its Subsidiaries and their respective, directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(ii) Conduct its business in compliance in all material respects with the Anti-Corruption Laws, Sanctions and the PATRIOT Act and maintain policies and procedures designed to promote and achieve compliance with such laws.

(b) **Payment of Taxes.** Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, all material Taxes imposed upon it or upon its property; **provided, however**, that neither the Company nor any of its Subsidiaries shall be required to pay or discharge any such Tax that is being contested in good faith and by proper proceedings and as to which

appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors.

(c) **Maintenance of Insurance.** Maintain, and cause each of its Subsidiaries (other than Immaterial Subsidiaries) to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Subsidiary operates; **provided, however,** that the Company and its Subsidiaries may self-insure to the extent consistent with prudent business practice for companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Subsidiary operates.

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(d) **Preservation of Corporate Existence, Etc.** Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises; **provided, however,** that the Company and its Subsidiaries may

(i) consummate any merger or consolidation or other transaction permitted under **Section 5.02(b)**,

(ii) sell, transfer, or otherwise dispose of, any Subsidiary of the Company in any transaction not prohibited by this Agreement,

(iii) dissolve or terminate the existence of any Subsidiary of the Company possessing immaterial assets or liabilities or no continuing business purpose (including, for the avoidance of doubt, any Immaterial Subsidiary), or

(iv) dissolve or terminate the existence of any Subsidiary if in the Company's determination

(w) the preservation thereof is no longer desirable in the conduct of the business of the Company and

(x) the loss thereof is not materially disadvantageous to the Company or the Lenders,

and **provided, further,** that neither the Company nor any of its Subsidiaries shall be required to preserve any right or franchise if in the Company's determination (y) the preservation thereof is no longer desirable in the conduct of the business of the Company or such Subsidiary, taken as a whole, and (z) the loss thereof is not materially disadvantageous to the Company, such Subsidiary or the Lenders.

(e) **Visitation Rights.**

(i) At any reasonable time during normal business hours and from time to time upon reasonable notice, permit the Agent or any of the Lenders (if and when accompanying the Agent) or any agents or representatives thereof at their own expense (unless an Event of Default has occurred and is continuing), to examine and make copies of and abstracts from the corporate, financial and operating records and books of account of, and visit the properties of, the Company and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Company and any of its Subsidiaries with any of their officers and with their independent certified public accountants, subject to applicable regulations of the Federal government relating to classified information and reasonable security and safety regulations of the Company; **provided** that (i) unless an Event of Default has occurred and is continuing, no more than one visit or inspection may be conducted per year by the Agent or any agents or representatives thereof and (ii) any such visits, inspections or discussions shall be coordinated through the Agent and shall not unreasonably interfere with the operations of the Company and its Consolidated Subsidiaries.

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(ii) Notwithstanding anything to the contrary herein and for the avoidance of doubt, none of the Company nor any Subsidiary will be required to disclose or permit the inspection or discussion of, any document, information or other matter

(A) that constitutes non-financial trade secrets or non-financial proprietary information,

(B) in respect of which disclosure to the Agent or any Lender (or their respective representatives or contractors) is prohibited by law or any binding agreement or

(C) that is subject to attorney client or similar privilege or constitutes attorney work product

provided, the Company shall use commercially reasonable efforts to the extent feasible and not prohibited by applicable law, rule or regulation, promptly notify us that information is being withheld pursuant to **clause (ii)(B)**.

(f) **Keeping of Books.** Keep, and cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Company and each such Subsidiary materially in accordance with, and to the extent required by, GAAP.

(g) **Maintenance of Properties, Etc.** Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties that are material to the conduct of its business in good working order and condition, ordinary wear and tear, condemnation and casualty excepted, in accordance with customary and prudent business practices for similar businesses; **provided, however**, that the Company and its Subsidiaries may sell, transfer, or otherwise dispose of, any properties in any transaction not prohibited by this Agreement.

(h) **Reporting Requirements.** Furnish to the Agent, who shall furnish to the Lenders:

(i) commencing with the first fiscal quarter ending after the Closing Date, within 45 days after the end of each of the first three quarters of each fiscal year of the Company, the Consolidated balance sheet of the Company and its Subsidiaries as of the end of such quarter and Consolidated statements of income or operations and cash flows of the Company and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified (subject to normal year-end audit adjustments and the absence of footnotes) by the chief financial officer or other authorized financial officer of the Company as having been prepared in accordance with GAAP and certificates of the chief financial officer or other authorized financial officer of the Company as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculations necessary to demonstrate compliance with **Section 5.03**, **provided** that in the event of any change in GAAP used in the preparation of such financial statements, the Company shall also provide, if necessary for the determination of compliance with **Section 5.03**, a statement of reconciliation conforming such financial statements to Initial GAAP;

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(ii) commencing with the first fiscal year ending after the Closing Date, within 90 days after the end of each fiscal year of the Company, a copy of the annual audit report for such year for the Company and its Subsidiaries, containing the Consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal year and Consolidated statements of income or operations and cash flows of the Company and its Subsidiaries for such fiscal year, in each case accompanied by an opinion acceptable in scope to the Required Lenders by KPMG LLP or other independent public accountants acceptable to the Agent or the Required Lenders and certificates of the chief financial officer or other authorized financial officer of the Company as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculations necessary to demonstrate compliance with **Section 5.03**, **provided** that in the event of any change in GAAP used in the preparation of such financial statements, the Company shall also provide, if necessary for the determination of compliance with **Section 5.03**, a statement of reconciliation conforming such financial statements to Initial GAAP;

(iii) as soon as possible and in any event within five Business Days after the occurrence of each Default continuing on the date of such statement, a statement of the chief financial officer or other authorized financial officer of the Company setting forth details of such Default and the action that the Company has taken and proposes to take with respect thereto (it being understood that any

Default then existing as a result of any failure to deliver such notice shall automatically be cured and will no longer be continuing upon either (x) delivery of such notice or (y) the cessation of the existence of the underlying Default to which such notice relates (unless the Company had knowledge of such underlying Default prior to its cessation));

(iv) promptly after the sending or filing thereof, copies of all material reports that the Company sends to any of its securityholders, and copies of all material reports and registration statements that the Company or any Subsidiary files with the Securities and Exchange Commission or any national securities exchange;

(v) promptly after the commencement thereof, notice of all material actions and proceedings before any court, governmental agency or arbitrator affecting the Company or any of its Subsidiaries of the type described in **Section 4.01(f)**; and

(vi) such other corporate, financial and operating information respecting the Company or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request in good faith including, without limitation, information and documentation reasonably requested for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation, but excluding any financial information that the Company and its Subsidiaries do not produce in the ordinary course of business.

Financial reports required to be delivered pursuant to **clauses (i), (ii) and (iv)** above shall be deemed to have been delivered on the date on which such report is posted on the Company's website, or to the extent any such reports are included in materials otherwise filed or furnished with the Securities and Exchange Commission and such posting or filing or furnishment shall be deemed to satisfy the financial reporting requirements of **clauses (i), (ii) and (iv)** above, it being

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understood that the Company shall provide all other reports and certificates required to be delivered under this **Section 5.01(h)** in the manner set forth in **Section 8.02**.

(i) Use of Proceeds.

(i) (x) Use the proceeds of the loans made on the Closing Date to finance the Transactions and, with respect to any excess thereof, other general corporate purposes and (y) after the Closing Date for general corporate purposes (including financing acquisitions) or any other purpose not prohibited hereunder.

(ii) Not request any Borrowing or Letter of Credit, or use, or permit its Subsidiaries or its or their respective directors, officers, employees or, to its or their respective knowledge, its or their agents, to directly or knowingly indirectly use the proceeds of any Borrowing or Letter of Credit,

(A) 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,

(B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or

(C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.02 Negative Covenants.

So long as any Advance shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, the Company will not, on and after the Closing Date:

(a) **Liens, Etc.** Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, other than:

(i) Permitted Liens,

(ii) Liens on fixed or capital assets acquired, constructed or improved by the Company or any Subsidiary, including with respect to Capital Lease Obligations, purchase money Liens upon or in any real property or equipment acquired or held by the Company or any Subsidiary in the ordinary course of business to secure the purchase price of such property or equipment or to secure Debt incurred solely for the purpose of financing the acquisition of such property or equipment, or Liens existing on such property or equipment at the time of its acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the acquisition of such property), **provided, however**, that no such Lien shall extend to or cover any

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properties of any character other than the real property or equipment being acquired (and any accessions or additions thereto, and proceeds thereof), and no replacement, extension, modification, refinancing or renewal of such Lien shall extend to or cover any properties not theretofore subject to the Lien being extended, renewed or replaced,

(iii) the Liens existing on the Closing Date and described on **Schedule 5.02(a)** to the Disclosure Letter (other than in connection with Securitization Programs as of the Closing Date),

(iv) Liens on property of a Person existing at the time such Person is acquired by, merged into or consolidated with the Company or any Subsidiary of the Company or becomes a Subsidiary of the Company; **provided** that such Liens were not created in contemplation of such merger, consolidation or acquisition and do not extend to any assets other than those of the Person so merged into or consolidated with the Company or such Subsidiary or acquired by the Company or such Subsidiary,

(v) assignments of the right to receive income or Liens that arise in connection with Securitization Programs (when combined with Securitization Programs existing on the Closing Date), in an aggregate principal amount not to exceed the Dollar Equivalent of \$1,500,000,000 at any time outstanding (for purposes of this **clause (v)**, the "principal amount" of a Securitization Program shall mean the Invested Amount),

(vi) Liens securing obligations in respect of acceptances, trade letters of credit, undrawn standby letters of credit, bank guarantees, surety bonds or similar extensions of credit,

(vii) Liens that are within the general parameters customary in the industry and incurred in the ordinary course of business securing obligations under Hedge Agreements designed to protect the Company or any of its Subsidiaries from fluctuations in interest rates, currencies or the price of commodities,

(viii) Liens arising in connection with cash management services for the Company and any of its Subsidiaries, including cash pooling arrangements and overdraft facilities, **provided** that such Liens shall not extend beyond the amounts on deposit in the deposit accounts,

(ix) assignments of the right to receive income and/or accounts receivable in connection with the sales of accounts receivable and related assets, including pursuant to factoring programs, whether or not the Company or any of its Subsidiaries remain as servicer,

(x) Liens on cash as contemplated by **Section 2.19** or **6.02**,

(xi) Liens, if any, in respect of Synthetic Leases,

(xii) Liens securing Debt of Foreign Subsidiaries (including obligations secured by the Equity Interests of a Foreign Subsidiary) (and any Refinancing Liens in respect thereof) in an aggregate principal amount not to exceed the Dollar Equivalent of the

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greater of \$250,000,000 and 5% of Consolidated Tangible Assets of the Borrower and its Subsidiaries,

(xiii) Liens in favor of the Agent, the Issuing Bank, or any of the Lenders under or in connection with this Agreement,

(xiv) other Liens securing Debt (and any Refinancing Liens in respect thereof) that, in aggregate, together with (but without duplication of) all Debt incurred in accordance with **Section 5.02(c)(xii)** at any time outstanding, does not exceed the Dollar Equivalent of the greater of \$500,000,000 and 10% of Consolidated Tangible Assets of the Borrower and its Subsidiaries,

(xv) Liens on inventory (and the proceeds thereof) in favor of financiers of inventory (including vendor financiers) to secure trade payables incurred in the ordinary course of business in connection with the acquisition of inventory and customary for such financings with regard to the industry in which the Borrower operates,

(xvi) Liens created or deemed to exist on any Receivables or Related Assets entered into with supply chain finance programs; **provided** that such Liens are (i) entered into in the ordinary course of business and (ii) customary for such financings with regard to the industry in which the Borrower operates (and, for the avoidance of doubt, excluding Securitization Programs),

(xvii) Liens in favor of the beneficiary of any unqualified deferred compensation arrangement not prohibited by this Agreement, and

(xviii) the replacement, extension, modification, refinancing or renewal of any Lien permitted by **clauses (ii), (iii), (iv), (xii), (xiv)** or this **clause (xviii)** or in the property theretofore subject thereto or the replacement, extension, modification, refinancing or renewal (without increase in an amount greater than the sum of (x) the outstanding original principal amount or, if greater, committed amount of any Debt secured or otherwise encumbered by the Lien described under such clause, and (y) an amount necessary to pay accrued but unpaid interest on such Debt and any dividend, premium, defeasance costs, underwriting discounts and any fees, costs and expenses (including upfront fees, original issue discount (in lieu of upfront fees) or similar fees) incurred in connection with such replacement, extension, modification, refinancing, refunding or renewal) of the Debt secured or otherwise encumbered thereby (any such liens that in any event cannot be secured by property that did not secure any such Debt being refinanced (other than accessions, additions and improvements on such property and after acquired property that by the terms of such Debt require or include a pledge of after acquired property), the **"Refinancing Liens"**).

(b) Mergers, Etc.

Merge or consolidate with or into any Person or permit any of its Subsidiaries to do so, except

(i) that any Subsidiary of the Company may merge, consolidate, amalgamate, or combine with or into any other Subsidiary of the Company,

(ii) any Subsidiary of the Company may merge, consolidate, amalgamate, or combine with or into the Company (it being understood that, for the avoidance of doubt, the surviving entity will be the Company),

(iii) any Subsidiary of the Company and the Company may merge, consolidate, amalgamate, or combine with or into any other Person if, in the case of any Subsidiary other than an Immaterial Subsidiary, as a result of one or a series of transactions, the surviving or resulting entity is or becomes a Subsidiary or, if the Company is a party to such transaction, the surviving entity is the Company and

(iv) any Subsidiary may merge, consolidate, amalgamate, or combine with or into any Person other than the Company or another Subsidiary if at such time the assets of the Subsidiary would be permitted to be sold to such Person pursuant to a transaction not prohibited by this Agreement,

provided, in each case, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

The Company will not, and will not permit its Subsidiaries to, sell, transfer, lease or otherwise dispose of, and whether in one transaction or in a series of transactions, assets (including Equity Interests in Subsidiaries) representing all or substantially all of the assets of the Company and its Subsidiaries (whether now owned or hereafter acquired), taken as a whole.

(c) **Subsidiary Debt.** Permit any of its Subsidiaries to create or suffer to exist, any Debt other than:

(i) Debt owed to the Company or to a wholly owned Subsidiary of the Company or under this Agreement or the Notes,

(ii) Debt incurred to finance the Acquisition or existing on, or available under lines of credit existing on, the Closing Date and described on **Schedule 5.02(c)** to the Disclosure Letter (the “**Existing Debt**”), and any Debt extending the maturity of, or refunding, refinancing or modifying, in whole or in part, the Existing Debt, **provided** that the principal amount of, or amount available under lines of credit constituting, such Existing Debt shall not be increased above the principal amount thereof outstanding and any unused commitments in respect thereof or amount available immediately prior to such extension, refunding or refinancing plus customary fees, expenses and premiums incurred in connection with such extension, refunding, refinancing or modification,

(iii) Debt secured by Liens permitted by **Section 5.02(a)(ii)** (and any Refinancing Debt in respect thereof),

(iv) Debt, if any, arising in connection with Securitization Programs, in an aggregate principal amount not to exceed, when taken together with Securitization Programs existing on the Closing Date, the Dollar Equivalent of the greater of

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\$1,500,000,000 at any time outstanding (for purposes of this **clause (iv)**, the “principal amount” of a Securitization Program shall mean the Invested Amount) and, to the extent secured, secured by Liens permitted pursuant to **Section 5.02(a)(v)**,

(v) obligations of any Subsidiary of the Company under any Hedge Agreements entered into in the ordinary course of business to protect the Company and its Subsidiaries against fluctuations in interest rates, currencies or price commodities,

(vi) obligations in respect of acceptances, trade letters of credit, undrawn standby letters of credit, bank guarantees, surety bonds or similar extensions of credit,

(vii) obligations arising in connection with the administration and operation of cash management services for the Company and any of its Subsidiaries, including cash pooling arrangements and overdraft facilities,

(viii) Debt of a Person at the time such Person is merged into or consolidated with any Subsidiary of the Company or becomes a Subsidiary of the Company; **provided** that such Debt was not created in contemplation of such merger, consolidation or acquisition, and any Debt extending the maturity of, or refunding or refinancing, in whole or in part, such Debt, **provided further**, that the principal amount of such Debt shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing plus customary fees, expenses and premiums incurred in connection with such extension, refunding or refinancing,

(ix) Debt not for borrowed money, if any, arising in connection with the sales of accounts receivable and related assets, including pursuant to factoring programs, whether or not the Company or any of its Subsidiaries remain as servicer, and whether or not on a recourse, limited-recourse or non-recourse basis,

(x) Synthetic Lease Obligations to finance the acquisition, construction, development or improvement by such Person of real property, fixtures, inventory or equipment or other tangible assets, **provided**, that, in each case (1) such Debt is incurred by such Person at the time of, or not later than 120 days after, the acquisition, construction, development or improvement by such Person of the property so financed and (2) such Debt does not exceed the purchase price of the property (or the cost of constructing, developing or improving the same) so financed; **provided**, that the net present value of the aggregate rental obligations under of leases, contracts and Synthetic Leases entered into after the ~~date hereof~~ **Closing Date** (discounted at the implied interest rate of such lease, contract or Synthetic Lease) does not exceed an amount equal to 10% of the Consolidated Tangible Assets of the Borrower and its Subsidiaries,

(xi) endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business,

(xii) other Debt (and any Refinancing Debt in respect thereof) that, in aggregate with (but without duplication of) all Debt secured by Liens permitted by **Section 5.02(a)(xiv)**, at any time outstanding does not exceed the Dollar Equivalent of

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the greater of \$625,000,000 and 12.5% of Consolidated Tangible Assets of the Borrower and its Subsidiaries,

(xiii) any Debt of any Subsidiary so long as such Subsidiary (A) (x) is a U.S. Person or (y) such Subsidiary is organized in a jurisdiction in which a Subsidiary Guarantee reasonably satisfactory to the Agent can be provided and (B) shall have executed and delivered to the Agent a Subsidiary Guarantee (and such Subsidiary Guarantee shall be in full force and effect, or such Subsidiary shall have joined this Agreement as a guarantor and its obligations in such capacity shall be in full force and effect),

(xiv) Debt of Foreign Subsidiaries (and any Refinancing Debt in respect thereof) in an aggregate principal amount not to exceed the Dollar Equivalent the greater of \$312,500,000 and 6.25% of Consolidated Tangible Assets of the Borrower and its Subsidiaries at any time outstanding,

(xv) contingent Guarantee obligations to repurchase inventory repossessed by flooring companies that was previously sold to customers in the ordinary course of business, and

(xvi) the refinancing, replacement, extension, modification, refunding or renewal of any Debt permitted by **clauses (iii), (xii), and (xiv)** above and this **clause (xvi)** ("**Refinancing Debt**"); **provided**, that, the principal amount of any such Refinancing Debt does not exceed an amount greater than the sum of (x) the outstanding original principal amount or, if greater, committed amount of the Debt described under such clause, and (y) an amount necessary to pay accrued but unpaid interest on such Debt and any dividend, premium, defeasance costs, underwriting discounts and any fees, costs and expenses (including upfront fees, original issue discount (in lieu of upfront fees) or similar fees) incurred in connection with such replacement, extension, modification, refinancing, refunding or renewal.

(d) **Transactions with Affiliates.** Enter into or permit to exist any transaction or series of transactions in excess of \$5,000,000 with any Affiliate of such Person other than

- (i) advances of working capital to the Borrower or any Subsidiary,
- (ii) transfers of cash and assets to the Borrower or any Subsidiary,
- (iii) intercompany transactions not prohibited by the terms hereof between or among the Borrower and its Subsidiaries,
- (iv) transactions between or among Subsidiaries not prohibited by this Agreement
- (v) compensation arrangements approved by the board of directors (or appropriate committee thereof) of the Borrower and other normal and reasonable compensation and reimbursement of expenses of officers and directors, including indemnification agreements,

(vi) employee benefit plans, arrangements and severance payments,

(vii) dividends to holders of Equity Interests,

(viii) the Transactions and the payment of fees, costs and expenses related to the Transactions,

(ix) except as otherwise specifically limited in this Agreement, other transactions which are on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an Affiliate (as determined by the Borrower in good faith),

(x) transactions pursuant to permitted agreements in existence or contemplated on the Closing Date and set forth on **Schedule 5.02(d)** to the Disclosure Letter or any amendment thereto (so long as the totality of all such amendments, modifications, waivers, consents or replacements is not materially more disadvantageous in the judgment of the board of directors or senior management of the Borrower to the Lenders when taken as a whole as compared to the totality of such agreements or arrangements as in effect on the Closing Date),

(xi) transactions related to or in connection with any Securitization Program; **provided, however**, that if any such transaction is entered into with an Affiliate that is not controlled by the Borrower or its Subsidiaries, then such transaction shall be on terms and conditions that are fair and reasonable to the Borrower taking into consideration comparable standard market Securitization Programs, and

(xii) intercompany transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Borrower and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement.

(e) **Change in Nature of Business.** Make, or permit any of its Subsidiaries to make, any material change in the nature of its business from the business as carried on by the Company and its Subsidiaries, taken as a whole, at the date hereof or any business substantially related or incidental thereto or any business substantially related or incidental to manufacturing, contract assembly, operational, logistics, distribution, integrated services, supply chain management services and related sales and services.

SECTION 5.03. Financial Covenants.

So long as any Advance shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, the Company will, on and after the Closing Date:

(a) **Debt to EBITDA Ratio.** Maintain, as of the end of each fiscal quarter, commencing with the first full fiscal quarter after the Closing Date, a ratio of (i) Consolidated Funded Debt, excluding undrawn Letters of Credit and bank guarantees, as of such date to (ii) Consolidated EBITDA of the Company and its Consolidated Subsidiaries for the period of four fiscal quarters most recently ended, of not greater than 4.25 to 1.00 for the first four full fiscal quarters ending after the Closing Date and 4.00 to 1.00 for each fiscal quarter thereafter.

(b) **Interest Coverage Ratio.** Maintain, as of the end of each fiscal quarter, commencing with the first full fiscal quarter after the Closing Date, a ratio of (i) Consolidated EBITDA of the Company and its Consolidated Subsidiaries for the period of four fiscal quarters then

ended to (ii) Consolidated Interest Charges during such period by the Company and its Consolidated Subsidiaries, of not less than 3.50 to 1.00.

ARTICLE VI.

EVENTS OF DEFAULT

SECTION 6.01. Events of Default.

If, on and after the Closing Date, any of the following events ("**Events of Default**") shall occur and be continuing:

- (a) (i) the Company shall fail to pay any principal of any Advance when the same becomes due and payable; or
- (ii) the Company shall fail to pay any interest on any Advance or make any other payment of fees within three Business Days after the same becomes due and payable, or
- (iii) the Company shall fail to pay other amounts payable under this Agreement or any Note within five Business Days after the same becomes due and payable (other than principal, interest or fees); or
- (b) any representation or warranty made by the Borrower herein or by the Borrower (or any of its officers) in connection with this Agreement shall prove to have been incorrect in any material respect when made (or, if otherwise qualified by materiality, in all respects) and such incorrect representation or warranty (if curable, including by a restatement of any relevant financial statements) shall remain incorrect for a period of 30 days after notice thereof from the Agent to the Borrower; or
- (c) (i) the Company shall fail to perform or observe any term, covenant or agreement contained in **Section 5.01(d)** (with respect to the Company), **(e)** or **(h)(i)-(iv)**, or **5.02** or **5.03**, or
- (ii) the Company shall fail to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Company by the Agent or any Lender; or
- (d) the Company or any of its Subsidiaries shall fail to pay any principal of or premium or interest on any Debt that is outstanding in a principal or, in the case of Hedge Agreements, net amount of at least the Dollar Equivalent of \$175,000,000 in the aggregate (but excluding Debt outstanding hereunder) of the Company or such Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or

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instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), required to be purchased or defeased (other than cash collateralization of letter of credit obligations), or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case in an aggregate net amount of at least the Dollar Equivalent of \$175,000,000, in each case prior to the stated maturity thereof (other than by (i) secured Debt that becomes due solely as a result of the sale, transfer or other disposition of the property or assets securing such Debt and (ii) termination events or any other similar event under the documents governing swap contracts for so long as such event of default, termination event or other similar event does not result in the occurrence of an early termination date or any acceleration or prepayment of any amounts or other Debt payable thereunder); or

(e) the Company or any of its Subsidiaries (other than an Immaterial Subsidiary) shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Company or any of its Subsidiaries (other than an Immaterial Subsidiary) seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or

composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 consecutive days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Company or any of its Subsidiaries (other than an Immaterial Subsidiary) shall take any corporate action to authorize any of the actions set forth above in this **subsection (e)**; or

(f) judgments or orders for the payment of money in excess of the Dollar Equivalent of \$175,000,000 in the aggregate (net of (i) amounts covered by valid third-party indemnification obligations from a third party that is solvent and has been notified of the claim under such indemnification obligation and has not disputed that it is liable for such claim and (ii) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and one or more reputable insurers (as determined by the Company) covering payment thereof) shall be rendered against the Company or any of its Subsidiaries and either

(i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or

(ii) there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

provided, however, that any such judgment or order shall not be an Event of Default under this **Section 6.01(f)** if and for so long as such judgment or order shall have been paid;

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(g) an event or series of events by which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "**option right**")), directly or indirectly, of voting Equity Interests of the Borrower representing fifty percent (50%) or more of the combined voting power of all voting Equity Interests of the Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(h) the Company or any of its ERISA Affiliates shall incur, or shall be reasonably likely to incur liability in an aggregate amount that would reasonably be expected to result in a Material Adverse Effect as a result of one or more of the following: (i) the occurrence of any ERISA Event; (ii) the partial or complete withdrawal of the Company or any of its ERISA Affiliates from a Multiemployer Plan; or (iii) the reorganization or termination of a Multiemployer Plan; or

(i) any material provision of this Agreement shall for any reason other than as expressly permitted hereunder or the satisfaction in full of all obligations of the Borrower hereunder (other than contingent obligations that survive termination of this Agreement) cease to be in full force and effect, or the Borrower shall assert that any material provision of this Agreement is not a legal, valid and binding obligation of the Borrower other than as expressly permitted hereunder;

then, and in any such event, the Agent

(i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the obligation of each Lender to make Advances (other than Advances by an Issuing Bank or a Lender pursuant to **Section 2.03(c)**) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and

(ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such

interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower;

provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Company under the any Bankruptcy Law,

(A) the obligation of each Lender to make Advances (other than Advances by an Issuing Bank or a Lender pursuant to **Section 2.03(c)**) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and

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(B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

SECTION 6.02. Actions in Respect of the Letters of Credit upon Default.

If, on and after the Closing Date, any Event of Default shall have occurred and be continuing, the Agent may with the consent, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in **Section 6.01** or otherwise, make demand upon the Borrower to, and forthwith upon such demand the Borrower will,

(a) pay to the Agent on behalf of the Lenders in same day funds at the Agent's office designated in such demand, for deposit in the L/C Cash Deposit Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding or

(b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Required Lenders and not more disadvantageous to the Borrower than **clause (a)**;

provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under any Bankruptcy Law, an aggregate amount equal to 103% (or if not denominated in Dollars, 110%) of the Available Amount of all outstanding Letters of Credit shall be immediately due and payable to the Agent for the account of the Lenders without notice to or demand upon the Borrower, which are expressly waived by the Borrower, to be held in the L/C Cash Deposit Account. If at any time an Event of Default is continuing the Agent determines that any funds held in the L/C Cash Deposit Account are subject to any right or claim of any Person other than the Agent and the Lenders or that the total amount of such funds is less than an aggregate amount equal to 103% (or if not denominated in Dollars, 110%) of the Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Deposit Account, an amount equal to the excess of (a) an aggregate amount equal to 103% (or if not denominated in Dollars, 110%) of such Available Amounts over (b) the total amount of funds, if any, then held in the L/C Cash Deposit Account that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Deposit Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law. After all such Letters of Credit shall have expired or been fully drawn upon and all other obligations of the Borrower hereunder and under the Notes shall have been paid in full, the balance, if any, in such L/C Cash Deposit Account shall be returned to the Borrower.

ARTICLE VII THE AGENT

SECTION 7.01. Authorization and Authority.

Each Lender hereby irrevocably appoints Citibank, N.A. to act on its behalf as the Agent hereunder and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and

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powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary (other than with respect to **Section 8.06**) of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any Note (or any other similar term) with reference to the 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.

SECTION 7.02. Rights as a Lender.

The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 7.03. Duties of Agent; Exculpatory Provisions.

(a) The Agent’s duties hereunder are solely ministerial and administrative in nature and the Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the 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); **provided** that the Agent shall not be required to take any action that, in its reasonable opinion or the reasonable opinion of its counsel, may expose the Agent to liability or that is contrary to this Agreement 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, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Agent or any of its Affiliates in any capacity.

(b) The 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 Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 8.01 or 6.01**) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct. The Agent shall be deemed not to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until the Company or any Lender shall have given notice to the Agent describing such Default and such event or events.

(c) The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other information made or supplied in or in connection with this Agreement or the Information Memorandum, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created hereby or (v) the satisfaction of any condition set forth in **Article III** or elsewhere herein, other than (but subject to the foregoing **clause (ii)**) to confirm receipt of items expressly required to be delivered to the Agent.

(d) Nothing in this Agreement shall require the Agent or any of its Related Parties to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any of its Related Parties.

(e) The Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Competitors. Without limiting the generality of the foregoing, the Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Competitor or (ii) have any liability with respect to or arising out of any assignment or participation of Advances, or disclosure of confidential information, to any Competitor.

SECTION 7.04. Reliance by Agent.

The 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 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 an Advance, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless an officer of the Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender prior to the making of such Advance or the issuance of such Letter of Credit, and in the case of a Borrowing, such Lender shall not have

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made available to the Agent such Lender’s ratable portion of such Borrowing. The 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 7.05. Delegation of Duties.

The Agent may perform any and all of its duties and exercise its rights and powers hereunder by or through any one or more sub-agents appointed by the Agent. The 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. Each such sub-agent and the Related Parties of the Agent and each such sub-agent shall be entitled to the benefits of all provisions of this **Article VII** and **Section 8.04** (as though such sub-agents were the “Agent” hereunder) as if set forth in full herein with respect thereto.

SECTION 7.06. Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Company (so long as no Event of Default has occurred and is continuing, and such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank having a combined capital and surplus of at least \$500,000,000 and with an office in the United States, or an Affiliate of any such bank with an office in the United

States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring 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 Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; **provided** that in no event shall any such successor Agent be a Defaulting Lender or a Competitor. 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 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 Company and such Person remove such Person as Agent and, with the consent of the Company (so long as no Event of Default has occurred and is continuing, and such consent not to be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 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) (1) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the Notes (except that in the case of any collateral security held by the Agent on behalf of the Lenders or the Issuing Banks under the Agreement, the retiring or removed Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) except for any indemnity payments owed to the retiring or removed

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Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor’s appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity payments owed to the retiring or removed Agent), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the Notes. The fees payable by the Company to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring or removed Agent’s resignation or removal hereunder, the provisions of this Article and **Section 8.04** shall continue in effect for the benefit of such retiring or removed 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 Agent was acting as Agent.

(d) Any resignation by or removal of a Person acting as Agent pursuant to this Section shall, unless such Person shall notify the Borrower and the Lenders otherwise, also act to relieve such Person and its Affiliates of any obligation to advance or issue new, or extend existing, Letters of Credit where such advance, issuance or extension is to occur on or after the effective date of such resignation. Upon the acceptance of a successor’s appointment as Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the retiring Issuing Bank shall be discharged from all of their respective duties and obligations hereunder and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 7.07. Non-Reliance on Agent and Other Lenders.

Each Lender acknowledges that it has, independently and without reliance upon the Agent 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 and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent 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 decisions in taking or not taking action under or based upon this Agreement, any Note or any related agreement or any document furnished hereunder or thereunder.

SECTION 7.08. Indemnification.

(a) Each Lender severally agrees, to the extent not reimbursed by the Borrower within 5 Business Days after written demand thereof, to indemnify the Agent from and against such Lender's pro rata share (determined as provided below) of any and all liabilities, obligations, losses, damages, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent (in its capacity as such) in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent (in its capacity as such) under this Agreement (collectively, the "**Indemnified Costs**"); **provided**, that no Lender shall be liable for the payment of any portion of

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such liabilities, obligations, losses, damages, actions, judgments, suits, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its pro rata share of any out-of-pocket expenses (including reasonable counsel fees) incurred by the Agent (in its capacity as such) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this **Section 7.08(a)** applies whether any such investigation, litigation or proceeding is brought by the Agent, any Lender or a third party. For purposes of this **Section 7.08(a)**, the Lenders' respective pro rata shares of any amount shall be determined, at any time, according to the sum of (i) the aggregate principal amount of the Advances outstanding at such time and owing to the respective Lenders, (ii) their respective Ratable Shares of the aggregate Available Amount of all Letters of Credit outstanding at such time, (iii) the aggregate unused portions of their Term Commitments at such time and (iv) their respective Unused Revolving Credit Commitments at such time.

(b) Each Revolving Credit Lender severally agrees to indemnify the Issuing Banks from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any such Issuing Bank (in its capacity as such) in any way relating to or arising out of this Agreement or any action taken or omitted by such Issuing Bank (in its capacity as such) hereunder or in connection herewith; **provided, however**, that no Revolving Credit Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Issuing Bank's gross negligence or willful misconduct. Without limitation of the foregoing, each Revolving Credit Lender agrees to reimburse any such Issuing Bank promptly upon demand for its Ratable Share of any costs and expenses (including, without limitation, reasonable, documented and invoiced fees and expenses of counsel) payable by the Company under **Section 8.04**.

(c) The failure of any Lender to reimburse the Agent or any Issuing Bank promptly upon demand for its applicable share of any amount required to be paid by the Lenders to the Agent as provided herein shall not relieve any other Appropriate Lender of its obligation hereunder to reimburse the Agent or any Issuing Bank for its applicable share of such amount, but no Lender shall be responsible for the failure of any other Appropriate Lender to reimburse the Agent or any Issuing Bank for such other Lender's applicable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this **Section 7.08** shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes. Each of the Agent and each Issuing Bank agrees to return to the Appropriate Lenders their respective applicable shares of any amounts paid under this **Section 7.08** that are subsequently reimbursed by the Company.

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SECTION 7.09. Other Agents.

Each Lender hereby acknowledges that neither the documentation agent nor any other Lender designated as any “Agent” or “Arranger” on the signature pages hereof has any liability hereunder other than in its capacity as a Lender.

SECTION 7.10. Lender ERISA Representation.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and each Arranger and each of their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments or this Agreement,

(ii) the prohibited 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 so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

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(b) In addition, unless either (1) **subclause (i)** in the immediately preceding **clause (a)** is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with **subclause (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, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement or any documents related hereto or thereto).

SECTION 7.11. Erroneous Payment.

(a) If the Agent notifies a Lender, Issuing Bank or any Person who has received funds on behalf of a Lender or Issuing Bank (any such Lender, Issuing Bank or other recipient, a “**Payment Recipient**”) that the Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding **clause (b)**) that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether

or not known to such Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an **"Erroneous Payment"**) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Lender or Issuing Bank 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 Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice from the Agent to any Payment Recipient under this **clause (a)** shall be conclusive, absent manifest error.

(b) Without limiting the immediately preceding **clause (a)**, each Lender, Issuing Bank and any Person who has received funds on behalf of a Lender or Issuing Bank, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender or Issuing Bank, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part):

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(i) (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 Agent to the contrary) and (B) in the case of immediately preceding **clause (z)**, it is acknowledged that an error shall have been made, in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or other recipient shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this **Section 7.11(b)**.

(c) Each Lender and Issuing Bank hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under this Agreement, or otherwise payable or distributable by the Agent to such Lender or Issuing Bank from any source, against any amount due to the Agent under immediately preceding **clause (a)** or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with immediately preceding **clause (a)**, from any Lender or Issuing Bank 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 Agent's notice to such Lender or Issuing Bank at any time,

(i) such Lender or Issuing Bank shall be deemed to have assigned its Advances (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 Agent may specify) (such assignment of the Advances (but not Commitments) of the Erroneous Payment Impacted Class, the **"Erroneous Payment Deficiency Assignment"**) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an approved electronic platform as to which the Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuing Bank shall deliver any Notes evidencing such Advances to the Borrower or the Agent,

(ii) the Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment,

(iii) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Bank shall cease to be a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance

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of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning Issuing Bank and

(iv) the Agent may reflect in the Register its ownership interest in the Advances subject to the Erroneous Payment Deficiency Assignment.

The Agent may, in its discretion, sell any Advances 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 or Issuing Bank shall be reduced by the net proceeds of the sale of such Advance (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender or Issuing Bank (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Bank and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Agent has sold an Advance (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Agent may be equitably subrogated, the Agent shall be contractually subrogated to all the rights and interests of the applicable Lender or Issuing Bank under this Agreement with respect to each Erroneous Payment Return Deficiency (the **"Erroneous Payment Subrogation Rights"**).

(e) Unless otherwise subsequently agreed in writing by the parties hereto, the parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any obligations owed by the Borrower or any Subsidiary, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds of the Borrower or any of its Subsidiaries for purposes of making such Erroneous Payment (including, for the avoidance of doubt, the proceeds of any financing or contribution incurred or obtained by the Borrower or its Subsidiaries). To the extent that Erroneous Payments are made with funds of the Borrower or any of its Subsidiaries, the Borrower and its Subsidiaries maintain all rights and remedies against the maker and recipients of such Erroneous Payment for return of such funds.

(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 Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this **Section 7.11** shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all the Advances and Letters of Credit (or any portion thereof) under this Agreement.

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ARTICLE VIII.
MISCELLANEOUS

SECTION 8.01. Amendments, Etc.

No amendment or waiver of any provision of this Agreement or the Notes, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; **provided, however,** that

(a) no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following:

(i) waive any of the conditions specified in **Section 3.01** or **Section 3.02**, or

(ii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Advances, or the number of Lenders (including the definition of “**Required Lenders**”), that shall be required for the Lenders or any of them to take any action hereunder and

(b) no amendment, waiver or consent shall, unless in writing and signed by each Lender directly and adversely affected thereby (and without the consent of the Required Lenders), do any of the following:

(i) increase or extend the Commitments of any Lender (it being understood that a waiver of any condition precedent set forth in **Section 3.01** or **3.02** or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an increase or extension of any Commitment of any Lender),

(ii) reduce the principal of, or rate of interest on, the Advances or any fees or other amounts payable hereunder (it being understood that (x) a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute a reduction or forgiveness in principal and (y) any change to the definition of “Public Debt Rating” or in the component definitions thereof shall not constitute a reduction of interest or fees); **provided** that only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay default interest pursuant to **Section 2.07(b)**,

(iii) postpone any date fixed for any payment of principal of, or interest on, the Advances or any fees or other amounts payable hereunder (it being understood that a waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension of any maturity or payment date),

(iv) amend this **Section 8.01**.

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(v) extend the expiration date of any Letter of Credit to a date later than the latest Termination Date, or

(vi) change **Sections 2.06(a)**, **2.06(c)**, or **2.15** or the definition of “Ratable Share” in each case in a manner which would alter the pro rata sharing of payments required thereby and in a materially adverse manner to such Lender;

(c) no amendment, waiver or consent shall, unless in writing and signed by applicable Revolving Credit Lenders owed at least a majority in interest of the then aggregate unpaid principal amount (based on the Equivalent in Dollars at such time) of the Revolving Credit Advances under the applicable Facility, or, if no such principal amount is then outstanding, Appropriate Lenders having at least a majority in interest of the applicable Revolving Credit Commitments (and without the consent of the Required Lender) waive any of the conditions specified in **Section 3.03** after the Closing Date with respect to such Facility, and

provided, further, that

(w) the Borrower and the Agent may amend the Credit Agreement to add administrative and other mechanical changes (including the addition or replacement of a benchmark rate for Revolving Credit Advances or Letters of Credit issued in pound sterling)

to the Credit Agreement to facilitate the borrowing of Revolving Credit Advances or Issuances of Letters of Credit in any Committed Currency or currency otherwise permitted pursuant to **Section 1.07** without the consent of any other party;

(x) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or any Note;

(y) no amendment, waiver or consent shall, unless in writing and signed by each Issuing Bank in addition to the Lenders required above to take such action, adversely affect the rights or obligations of the Issuing Banks in their capacities as such under this Agreement; and

(z) prior to the Closing Date, the Borrower with the consent of the Agent may amend the Schedules (other than **Schedule I**) and Exhibits hereto without the consent of any other party (it being understood that the Agent has consented to (i) Debt and Liens existing as of the Effective Date (and any refinancing thereof) (other than such Debt subject to the Closing Date Refinancing); (ii) Debt not for borrowed money and, to the extent secured, Liens securing the same; (iii) Debt and Liens in respect of a local-line facility for certain Subsidiaries of the Borrower organized in China in an aggregate principal amount not to exceed \$50,000,000 (or the Dollar Equivalent thereof); (iv) other Debt for borrowed money in an aggregate principal amount of less than \$10,000,000 on a per facility or other debt instrument basis and, to the extent secured, Liens securing the same and (v) increases of existing Debt facilities to the extent any such increase is not in excess of \$10,000,000 and, to the extent secured, Liens securing the same underlying Debt).

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Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender 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, nor amounts owing to such Lender reduced or the final maturity thereof extended, without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms disproportionately affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary the Agent and the Borrower may amend, modify or supplement this Agreement to cure or correct administrative errors or omissions, any ambiguity, omission, defect or inconsistency or to effect administrative changes, and such amendment shall become effective without any further consent of any other party to this Agreement so long as (1) such amendment, modification or supplement does not adversely affect the rights of any Lender or other holder of Commitments or outstanding Advances in any material respect and (2) the Lenders shall have received at least five Business Days' prior written notice thereof and the Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment.

Notwithstanding anything in this Agreement to the contrary, the Borrower and the Agent may enter into any Amendment in accordance with **Section 2.20** and extensions of the Termination Date made pursuant thereto shall be effective to amend the terms of this Agreement, without any further action or consent of any other party to this Agreement other than as set forth in **Section 2.20**.

SECTION 8.02. Notices, Etc.

(a) 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 as follows:

(i) if to the Company or any other Borrower, to the Company's address at 44201 Nobel Drive, Fremont, California 94538, Attention: Marshall Witt (Telephone No. [***]), with a copy to the same address, Attention: Simon Leung (Telephone No. [***]);

(ii) if to the Agent, to Citibank, N.A. at One Penns Way, OPS 2/2, New Castle, Delaware 19720, Attention of Agency Operations; (Facsimile No. [***]; Telephone No. [***]; Email: [***]);

(iii) if to Citibank, N.A. in its capacity as an Issuing Bank, to it at One Penns Way, OPS 2/2, New Castle, Delaware 19720, Attention of Agency Operations; (Telephone No. [***]); and if to any other Issuing Bank, to it at the address provided in

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writing to the Agent and the Company at the time of its appointment as an Issuing Bank hereunder;

(iv) if to Citibank, N.A. in its capacity as a Swingline Lender, to it at One Penns Way, OPS 2/2, New Castle, Delaware 19720, Attention of Agency Operations; (Telephone No. [***]; Email: [***]); and if to any other Swingline Lender, to it at the address provided in writing to the Agent and the Company at the time of its appointment as a Swingline Lender hereunder;

(v) ~~(iv)~~ if to ~~any other~~ Lender, to it at its address (or facsimile number) set forth 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 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 to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, **provided** that the foregoing shall not apply to notices to any Lender or Issuing Bank pursuant to **Article II** if such Lender or Issuing Bank, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; **provided** that approval of such procedures may be limited to particular notices or communications.

Unless the 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 from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to 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, email 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.

(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 Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Banks and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "**Platform**").

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(ii) 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, without limitation, 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 Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s or the Agent’s transmission of communications through the Platform, except to the extent resulting from the gross negligence or willful misconduct of an Agent Party. “**Communications**” means, collectively, any notice, demand, communication, information, document or other material that the Borrower provides to the Agent pursuant to this Agreement or the transactions contemplated therein which is distributed to the Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through the Platform.

SECTION 8.03. No Waiver; Remedies.

No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8.04. Costs and Expenses.

(a) The Company agrees to promptly pay all reasonable and documented or invoiced out-of-pocket costs and expenses of the Agent in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, (A) all computer, duplication, appraisal, consultant, and audit expenses and (B) the reasonable, documented and invoiced fees and expenses of counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement. The Company further agrees to pay on demand all reasonable and documented or invoiced out-of-pocket costs and expenses of the Agent and the Lenders, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, reasonable, documented and invoiced fees and expenses of counsel for the Agent and each Lender in connection with the enforcement of rights under this **Section 8.04(a)**.

(b) The Company agrees to indemnify and hold harmless the Agent, the Arranger and each Lender and each of their Affiliates and their officers, directors, employees, agents and advisors (each, an “**Indemnified Party**”) from and against any and all claims, damages, losses, liabilities, expenses and penalties (including, without limitation, reasonable, documented and

invoiced fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case, arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith)

(i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances or Letters of Credit or

(ii) the actual or alleged presence of Hazardous Materials on any property of the Company or any of its Subsidiaries or any Environmental Action relating in any way to the Company or any of its Subsidiaries,

except, with respect to any Indemnified Party, to the extent such claim, damage, loss, liability or expense is determined in a final and non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence, bad faith or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this **Section 8.04(b)** applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by or against the Company, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Company also agrees not to assert any claim for special,

indirect, consequential or punitive damages against the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances. Without limiting the provisions of **Section 2.14(c)**, this Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) If any payment of principal of, or Conversion of, any **Term SOFR Advance or Eurocurrency Rate Advance** is made by the Borrower to or for the account of a Lender

(i) other than on the last day of the Interest Period for such Advance, as a result of a payment or Conversion pursuant to **Section 2.08, 2.09, 2.10 or 2.12**, acceleration of the maturity of the Notes pursuant to **Section 6.01** or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Advance upon an assignment of rights and obligations under this Agreement pursuant to **Section 8.07** as a result of a demand by the Company pursuant to **Section 8.16** or

(ii) as a result of a payment or Conversion pursuant to **Section 2.08, 2.10 or 2.12**,

the Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance. If the amount

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of the Committed Currency purchased by any Lender in the case of a Conversion or exchange of Advances in the case of **Section 2.08, 2.09 or 2.12** exceeds the sum required to satisfy such Lender's liability in respect of such Advances, such Lender agrees to remit to the Borrower such excess.

(d) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in **Sections 2.11, 2.14 and 8.04(a) and (b)** shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes; **provided** that, in the case of (x) **Section 2.11**, such survival shall be for up to the later of (i) 180 days after the Termination Date applicable to each Lender and (ii) the period of time for requesting reimbursement under such section and (y) **Section 2.14**, the earlier of (i) 180 days after the date on which the party requesting the reimbursement or indemnity receives written demand for the payment of such claim and (ii) the date on which such obligations are satisfied in full or can no longer arise or be asserted under applicable statute of limitations or similar law.

SECTION 8.05. Right of Set-off.

Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by **Section 6.01** to authorize the Agent to declare the Advances due and payable pursuant to the provisions of **Section 6.01**, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Affiliate to or for the credit or the account of the Company or the Borrower against any and all of the obligations of the Company or the Borrower now or hereafter existing under this Agreement and the Note held by such Lender, whether or not such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured. Each Lender agrees promptly to notify the Agent and the Company or the Borrower after any such set-off and application, **provided** that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender and its Affiliates may have. Notwithstanding the foregoing, prior to the Closing Date no Lender may exercise any right of set-off or counterclaim in respect of its Advances or Commitments hereunder to the extent doing so would prevent, limit or delay the making of such Advances on the Closing Date and the use of the proceeds thereof to consummate the Transactions.

SECTION 8.06. Binding Effect.

This Agreement and the Commitments set forth on **Schedule I** shall become effective when it shall have been executed by the Company and the Agent and when the Agent shall have been notified by each Initial Lender that such Initial Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Company, the Agent and each Lender and their respective successors and permitted assigns, except that the Borrower shall not have the right to assign or otherwise transfer its rights or obligations hereunder or any interest herein without the prior written consent of the Agent and all of the Lenders.

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SECTION 8.07. Assignments and Participations.

(a) **Successors and Assigns Generally.** No Lender or Issuing Bank may assign or otherwise transfer any of its rights or obligations hereunder except

- (i) to an assignee in accordance with the provisions of **Section 8.07(b)**,
- (ii) by way of participation in accordance with the provisions of **Section 8.07(d)**, or
- (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 8.07(f)** (and any other attempted assignment or transfer by any party hereto shall be null and void).

Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 8.07(d)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the Lenders and the Issuing Banks) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders and Issuing Banks.** Any Lender or Issuing Bank may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment (except that an Issuing Bank may only assign all or a portion of its Unissued Letter of Credit Commitment and not its issued Letters of Credit) and the Advances at the time owing to it); **provided** that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

- (i) **Minimum Amounts.**
 - (A) in the case of an assignment of the entire remaining amount of the assigning Lender's or Issuing Bank's Commitment and/or the Advances at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in **Section 8.07(b)(i)(B)** 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 **Section 8.07(b)(i)(A)**, the aggregate amount of the Commitment (which for this purpose includes Advances outstanding and participations in Letters of Credit thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advances of the assigning Lender or Issuing Bank subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the 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 respect of the Revolving Credit Facility (or \$10,000,000 in respect of the Term Facility) or an integral multiple of \$1,000,000 in excess thereof, unless each of the Agent and, so long as no Event of Default pursuant to

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Section 6.01(a) or **(e)** has occurred and is continuing, the Company otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed).

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's or Issuing Bank's rights and obligations under this Agreement with respect to the Advance or the Commitment assigned, except that this **clause (ii)** shall not **(A)** prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis **and (B) apply to any Swingline Lender's rights and obligations in respect of Swingline Advances**.

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by **Section 8.07(b)(i)** **(B)** and, in addition:

(A) the consent of the Company (such consent at any time prior to the Closing Date, in the Company's sole discretion, and after the Closing Date, such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) such assignment is to a financial institution and an Event of Default pursuant to **Section 6.01(a)** or **(e)** has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; **provided** that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within ten Business Days after having received notice thereof;

(B) the consent of the Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund; and

(C) the consent of each Issuing Bank **and each Swingline Lender** (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment under the Revolving Credit Facility.

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to the Agent (with a copy to Company, if the Company's consent thereto is not otherwise required) an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which may be waived or reduced by the Agent in its sole discretion); **provided** that the Agent may, in its sole discretion, elect to waive or reduce such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) the Company or any of the Company's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this **clause (B)** or (C) any Person that was a Competitor as of the Trade Date (in which case the provisions of **Section 8.07(h)** shall apply).

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(vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person (or 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 Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Agent, the applicable pro rata share of Advances 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 Agent, each Issuing Bank and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Advances and participations in Letters of Credit in accordance with its Ratable Share. Notwithstanding the foregoing, in the event

that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this **clause (vii)**, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to **Section 8.07(c)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender or Issuing Bank, as the case may be, under this Agreement, and the assigning Lender or Issuing Bank thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's or Issuing Bank's rights and obligations under this Agreement, such Lender or Issuing Bank shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 2.11** and **8.04** with respect to facts and circumstances occurring prior to the effective date of such assignment; **provided**, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 8.07(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 8.07(d)** (except in the event that such assignment or transfer was to a person that was a Competitor as of the Trade Date (in which case the provisions of **Section 8.07(h)** shall apply)).

(c) **Register.** The 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 Lenders and the Issuing Banks, and the Commitments of, and principal amounts (and stated interest) of the Advances owing to, each Lender and Issuing Bank pursuant to the terms hereof

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from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender or an Issuing Bank, as the case may be, hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, any Lender (solely with respect to its own interest in any Borrowing or Commitment) and any Issuing Bank, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.**

(i) Any Lender may at any time, without the consent of, or notice to, the Company or the Agent, sell participations to any Person (other than the Company, any of the Company's Affiliates, any natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or, unless the Company's prior consent is obtained and in accordance with the provisions of **Section 8.07(h)**, a Competitor) (each buyer of a participation, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it); **provided** that

(A) such Lender's obligations under this Agreement shall remain unchanged,

(B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and

(C) the Borrower, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 8.08** with respect to any payments made by such Lender to its Participant(s).

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, waiver or consent of any provision of this Agreement;

provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in **clauses (a) and (b)** of the first proviso of **Section 8.01** that directly affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of **Section 2.11** and **2.14** (it being understood that the documentation required under **Section 2.14** shall be delivered by the Participant solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 8.07(b)**; **provided** that such Participant agrees to be subject to the provisions of **Section 8.16** as if it were an assignee under **Section 8.07(b)**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 8.05** as though it were a Lender; **provided** that such Participant agrees to be subject to **Section 2.15** 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

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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 Note or other obligations under this Agreement or the Notes or any other documents to be delivered hereunder (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 this Agreement or the Notes or any other documents to be delivered hereunder) 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 and Proposed Treasury Regulations Section 1.163-5(b) (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under **Sections 2.11** and **2.14** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Company's prior written consent. A Participant that is organized under the laws of a jurisdiction outside of the United States shall not be entitled to the benefits of **Section 2.14** unless the Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with **Section 2.14(e)** as though it were a Lender.

(f) **Certain Pledges.** Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender (including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank having jurisdiction over such Lender) and this Section shall not apply to any such pledge or assignment of a security interest; **provided** that, no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender party hereto interest.

(g) **Resignation as Issuing Bank and Swingline Lender after Assignment.**

(i) ~~(g) Resignation as Issuing Bank after Assignment.~~ Notwithstanding anything to the contrary contained herein, if at any time any Issuing Bank assigns all of its Revolving Credit Commitments and Advances pursuant to **Section 8.07(a)**, such Person may, upon 30 days' notice to the Company and the Lenders, resign as Issuing Bank. In the event of any such resignation as Issuing Bank, the Company shall be entitled to appoint from among the Revolving Credit Lenders a successor Issuing Bank hereunder; **provided, however**, that no failure by the Company to appoint any such successor shall affect the resignation of such Person as Issuing Bank and any Lender so appointed agrees to serve as an Issuing Bank. If such Person resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as

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Issuing Bank and all unreimbursed Letter of Credit drawings with respect thereto. Upon the appointment of a successor Issuing Bank, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to such Person to effectively assume the obligations of such Person with respect to such Letters of Credit.

(ii) Notwithstanding anything to the contrary contained herein, if at any time any Swingline Lender assigns all of its Swingline Commitments and Advances pursuant to Section 8.07(a), such Person may, upon 30 days' notice to the Company, the Agent and the Lenders, resign as a Swingline Lender. In the event of any such resignation as a Swingline Lender, the Company shall be entitled to appoint from among the Revolving Credit Lenders a successor Swingline Lender hereunder; provided, however, that no failure by the Company to appoint any such successor shall affect the resignation of such Person as a Swingline Lender and any Lender so appointed agrees to serve as a Swingline Lender after accepting any such appointment. If such Person resigns as a Swingline Lender, it shall retain all the rights, powers, privileges and duties of a Swingline Lender hereunder with respect to all Swingline Advances outstanding as of the effective date of its resignation as a Swingline Lender. Upon the appointment of a successor Swingline Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swingline Lender and (b) the successor Swingline Lender shall make any arrangements satisfactory to such Person to effectively assume the obligations of such Person with respect to any outstanding Swingline Advances.

(h) **No Assignment or Participations to Competitors.**

(i) No assignment or participation shall be made or sold, as applicable, to any Person that was a Competitor as of the date (the "**Determination Date**") on which the assigning or selling Lender entered into a binding agreement to sell all or a portion of its rights and obligations under this Agreement to such Person or assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Company 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 Competitor for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee or participant that becomes a Competitor after the applicable Determination Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "**Competitor**"),

(x) such assignee or participant shall not retroactively be disqualified from becoming a Lender or participant and

(y) the execution by the Company of an Assignment and Assumption with respect to an assignee will not by itself result in such assignee no longer being considered a Competitor.

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(ii) Any assignment or participation in violation of this **Section 8.07(h)** shall not be void, but the other provisions of this **Section 8.07(h)** shall apply. If any assignment is made or any participation is sold to any Competitor without the Company's prior written consent, or if any Person becomes a Competitor after the applicable Determination Date, the Company may, at its sole expense and effort, upon notice to the applicable Competitor and the Agent,

(A) terminate any Commitment of such Competitor and/or repay all obligations of the Borrower owing to such Competitor in connection with such Commitment and/or

(B) require such Competitor to assign, without recourse (in accordance with and subject to the restrictions contained in this **Section 8.07**), all of its interest, rights and obligations under this Agreement (including as a participant) to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Competitor 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 Agreement, Competitors

(A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Agent or the Lenders and

(B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement, each Competitor will be deemed to have consented in the same proportion as the Lenders that are not Competitors consented to such matter, and

(y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any debtor relief laws (a "**Plan**"), each Competitor party hereto hereby agrees

(1) not to vote on such Plan,

(2) if such Competitor does vote on such Plan notwithstanding the restriction in **clause (1)** above, 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

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has accepted or rejected such 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 U.S. Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating **clause (2)** above.

(iv) The Agent shall have the right, and the Company hereby expressly authorizes the Agent, to

(A) post the list of Competitors provided by the Company and any updates thereto from time to time (collectively, the "**Competitor List**") on the Platform, including that portion of the Platform that is designated for "public side" Lenders and/or

(B) provide the Competitor List to each Lender requesting the same.

(v) The Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant is a Competitor or (y) have any liability with respect to any assignment or sale of a participation to a Competitor.

SECTION 8.08. Confidentiality.

Neither the Agent nor any Lender may disclose to any Person any Company Information (as defined below), except that each of the Agent and each of the Lenders may disclose Company Information

(a) to its Affiliates and to its and its Affiliates' respective managers, administrators, trustees, partners, employees, officers, directors, agents and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential

nature of such Company Information and such person shall have agreed to keep such Company Information confidential on substantially the same terms as provided herein),

(b) 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),

(c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process or requested by any self-regulatory authority, **provided** that, to the extent practicable and legally permissible, the Company is given prompt written notice of such requirement or request prior to such disclosure and assistance (to the extent practicable and at the Company's expense) in obtaining an order protecting such information from public disclosure,

(d) to any other party to this Agreement,

(e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder,

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(f) subject to an agreement containing provisions no less restrictive than those of this **Section 8.08**, to

(i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement,

(ii) any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap, derivative or other transaction under which payments are to be made by reference to the Company and its obligations, this Agreement or payments hereunder or to any credit insurance provider relating to the Company and its obligations hereunder,

(iii) any rating agency, or

(iv) the CUSIP Service Bureau or any similar organization,

(g) to the extent such Company Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this **Section 8.08** by the Agent or such Lender, or (B) is or becomes available to the Agent or such Lender on a nonconfidential basis from a source other than the Company and not, to the knowledge of the Agent or such Lender, in breach of such third party's obligations of confidentiality, and

(h) with the consent of the Company.

For purposes of this Section, "**Company Information**" means all confidential, proprietary or non-public information received from the Company or any of its Subsidiaries relating to the Company or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Company or any of its Subsidiaries. Any Person required to maintain the confidentiality of Company Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Company Information as such Person would accord to its own confidential information, but in no event less than a reasonable degree of care be required in respect of such confidentially obligations.

SECTION 8.09. Governing Law.

This Agreement and the Notes and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any Note and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 8.10. Execution in Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as

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delivery of a manually executed counterpart of this Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic (in "pdf" or "tif" format) transmission shall be as effective as delivery of a manually executed counterpart hereof. For purposes hereof, the words "execution," "execute," "executed," "signed," "signature" and words of like import shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formulations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transaction Act.

SECTION 8.11. Judgment.

(a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be the spot rate of exchange that appears at 11:00 A.M. (London time), on the display page applicable to the relevant currency on the Oanda website on the Business Day preceding that on which final judgment is given.

(b) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in a Committed Currency into Dollars, the parties agree to the fullest extent that they may effectively do so, that the rate of exchange used shall be the spot rate of exchange that appears at 11:00 A.M. (London time), on the display page applicable to such Committed Currency on the Oanda website on the Business Day preceding that on which final judgment is given.

(c) The obligation of the Borrower in respect of any sum due from it in any currency (the "**Primary Currency**") to any Lender or the Agent hereunder shall, notwithstanding any judgment in any other currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be), of any sum adjudged to be so due in such other currency, such Lender or the Agent (as the case may be) may in accordance with normal banking procedures purchase the applicable Primary Currency with such other currency; if the amount of the applicable Primary Currency so purchased is less than such sum due to such Lender or the Agent (as the case may be) in the applicable Primary Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent (as the case may be) against such loss, and if the amount of the applicable Primary Currency so purchased exceeds such sum due to any Lender or the Agent (as the case may be) in the applicable Primary Currency, such Lender or the Agent (as the case may be) agrees to remit to the Borrower such excess.

SECTION 8.12. Jurisdiction, Etc.

(a) Each of the parties hereto hereby irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto or any Related Party of the foregoing in any way relating to this Agreement or any Note or the

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transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, Borough of Manhattan, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the Notes in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 8.13. Substitution of Currency.

If a change in any Committed Currency occurs pursuant to any applicable law, rule or regulation of any governmental, monetary or multi-national authority, this Agreement (including, without limitation, the definition of Eurocurrency Rate) will be deemed amended to the extent determined by the Agent (acting reasonably and in consultation with the Borrower) to be necessary to reflect the change in currency and to put the Lenders and the Borrower in the same position, so far as possible, that they would have been in if no change in such Committed Currency had occurred.

SECTION 8.14. No Liability of the Issuing Banks.

The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither an Issuing Bank nor any of its officers or directors shall be liable or responsible for:

- (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith;
- (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; or
- (c) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit,

except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. In furtherance and not in limitation of

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the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary; **provided** that nothing herein shall be deemed to excuse such Issuing Bank if it acts with gross negligence or willful misconduct in accepting such documents.

SECTION 8.15. Patriot Act Notice.

Each Lender and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agent, as applicable, to identify the Borrower in

accordance with the Patriot Act. The Borrower shall provide such information and take such actions as are reasonably requested by the Agent or any Lenders in order to assist the Agent and the Lenders in maintaining compliance with the Patriot Act.

SECTION 8.16. Replacement of Lenders

If

- (a) any Lender requests compensation under [Section 2.11](#) or [2.14](#),
- (b) the Borrower is required to pay any additional amount to any Lender or any governmental authority for the account of any Lender pursuant to [Section 2.14](#),
- (c) any Lender asserts illegality pursuant to [Section 2.12](#),
- (d) any Lender is a Defaulting Lender, or
- (e) (i) any Lender has not agreed to any amendment, waiver or consent for which (x) the consent of all of the Lenders or all directly and adversely affected Lenders is required and (y) Lenders owed or holding at least 50% of the sum of all outstanding Revolving Credit Advances, [Swingline Advances](#) and Term Advances plus the aggregate Unused Revolving Credit Commitments have agreed to such amendment, waiver or consent or (ii) any Revolving Credit Lender has not agreed to any amendment, waiver or consent for which (x) the consent of all of the Revolving Credit Lenders or all directly and adversely affected Revolving Credit Lenders is required and (y) Revolving Credit Lenders owed or holding at least 50% of the sum of all outstanding Revolving Credit Advances plus the aggregate Unused Revolving Credit Commitments have agreed to such amendment, waiver or consent,

then the Borrower may, at its sole expense and effort, upon notice to such Lender and the 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 8.07](#)), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment), **provided that**

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(i) each such assignment shall be arranged by the Company after consultation with the Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement,

(ii) no Lender shall be obligated to make any such assignment unless and until such Lender shall have received one or more payments from either the Borrower or one or more Eligible Assignees in an aggregate amount equal to the aggregate outstanding principal amount of the Advances owing to such Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Lender under this Agreement and

(iii) no Event of Default shall have occurred and be continuing.

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 8.17. No Fiduciary Duties.

The Borrower agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, the Borrower and its Affiliates, on the one hand, and the Agent, the Issuing Banks, the Lenders 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 Agent, the Issuing Banks, the Lenders and or respective Affiliates and no such duty will be deemed to have arisen in connection with any such transactions or communications. The Borrower acknowledges that the Agent, the Issuing Banks, the Lenders and their

respective Affiliates may have economic interests that conflict with those of the Borrower, its Subsidiaries and any of its or their respective Affiliates.

SECTION 8.18. Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in this Agreement or the Notes, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under this Agreement or the Notes, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;

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(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or the Notes; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 8.19. Waiver of Jury Trial.

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any Note or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other Person has represented, expressly or otherwise, that such other Person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and any notes by, among other things, the mutual waivers and certifications in this section.

SECTION 8.20. Acknowledgment Regarding Any Supported QFCs.

To the extent that this Agreement or the Notes provide support, through a guarantee or otherwise, for Hedge 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 this Agreement, the Notes and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes

subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement or the Notes 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 this Agreement or any applicable Note were governed by the laws of the United States

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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.

As used in this **Section 8.20**, 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).

[Remainder of the page intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

SYNNEX CORPORATION, as Borrower

By:
Name:
Title:

CITIBANK, N.A., as Agent

By:
Name:
Title:

[Signature Page to Credi Agreement]

[\[US-DOCS\138619954.21\].](#)

Initial Lenders:

CITIBANK, N.A.

By:
Name:
Title:

[Other Initial Lenders]

By:
Name:
Title:

[Signature Page to Credi Agreement]

[\[US-DOCS\138619954.21\].](#)

Schedules

Schedule I – Commitments

Exhibits

Exhibit A-1 - Form of Revolving Credit Note

Exhibit A-2 - Form of Term Note

Exhibit A-3-Form of Swingline Note

Exhibit B - Form of Notice of Borrowing

Exhibit C - Form of Assignment and Assumption

Exhibit D - Tax Certification Forms

Exhibit E - Form of Solvency Certificate

Annex II

Updated Exhibit B to Amended Credit Agreement

(see attached)

EXHIBIT B

FORM OF NOTICE OF BORROWING

Citibank, N.A., as Agent
for the Lenders parties to the Credit Agreement
referred to below
One Penns Way, OPS 2/2,
New Castle, Delaware 19720

[Citibank, N.A., as a Swingline Lender
One Penns Way, OPS 2/2,
New Castle, Delaware 19720,
Attention of: Agency Operations
Telephone No.: [***]
Email: [***]]

[Bank of America, N.A., as a Swingline Lender
100 North Tryon Street,
Charlotte, North Carolina 28255
Attention of: Kennedy Diggs
Telephone No.: [***]
Email: [***]]¹

[Date]

Attention: Bank Loan Syndications Department

Ladies and Gentlemen:

The undersigned, TD SYNEX Corporation, refers to the Credit Agreement, dated as of April 16, 2021 (as amended, restated, amended and restated, supplemented or modified from time to time, the "Credit Agreement", the terms defined therein being used herein as therein defined), among the undersigned, certain Lenders parties thereto and Citibank, N.A., as Agent for said Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the "Proposed Borrowing") as required by Section 2.02(a) of the Credit Agreement:

(i) The Business Day of the Proposed Borrowing is _____, 20__.

(ii) [The Facility under which the Proposed Borrowing is requested is the [Revolving Credit] [Term] Facility.] [The Proposed Borrowing will consist of Swingline

1 Include for requests for Swingline Advances.

B-1

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Advances to be made by [Citibank, N.A.][Bank of America, N.A.], as the Swingline Lender[s]].

(iii) The Type of Advances comprising the Proposed Borrowing is [Base Rate Advances] [Eurocurrency Rate Advances] [Term SOFR Advances] [Daily Simple SOFR Advances].2

(iv) The aggregate amount of the Proposed Borrowing is \$ _____ [for a Revolving Credit Borrowing in a Committed Currency, list currency and amount of Revolving Credit Borrowing].

(v) The initial Interest Period for each [Eurocurrency Rate Advance] [Term SOFR Advance] made as part of the Proposed Borrowing is ____ month[s].

[The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the representations and warranties contained in Section 4.01 of the Credit Agreement (except the representations set forth in the last sentence of subsection (e) and all of subsection (f) thereof) are correct in all material respects (or if qualified by materiality, in all respects), before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of the date hereof and on and as of the date of the Proposed Borrowing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties are true and correct in all material respects as of such date); and

(B) no event has occurred and is continuing, or would result from the Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default.]

2 For Swingline Advances, select Base Rate Advances or Daily Simple SOFR Advances.

B-2

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Very truly yours,

TD SYNnex CORPORATION

By

Name:

Title:

B-3

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Annex III

Exhibit A-3 to Amended Credit Agreement

(see attached)

EXHIBIT A-3

FORM OF SWINGLINE NOTE

U.S.\$ _____ Dated: _____, 20__

FOR VALUE RECEIVED, the undersigned, TD SYNnex Corporation, a Delaware corporation (the “Borrower”), HEREBY PROMISES TO PAY to _____ or its registered assigns (the “Swingline Lender”) at the place and times provided in the Credit Agreement referred to below the principal sum of U.S.\$[amount of the Lender’s Swingline Commitment in figures] or, if less, the aggregate principal amount of the Swingline Advances made by the Lender to the Borrower then due and payable pursuant to the Credit Agreement dated as of April 16, 2021 among the Borrower, the Swingline Lender and certain other lenders party thereto and Citibank, N.A. as Agent for the Swingline Lender and such other lenders (as amended, restated, amended and restated, supplemented or modified from time to time, the “Credit Agreement”; the terms defined therein being used herein as therein defined).

The Borrower promises to pay interest on the unpaid principal amount of each Swingline Advance from the date of such Swingline Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Credit Agreement.

Both principal and interest in respect of each Swingline Advance in Dollars are payable in lawful money of the United States of America to the Agent at its account maintained at 388 Greenwich Street, New York, New York 10013, in same day funds. Each Swingline Advance owing to the Swingline Lender by the Borrower pursuant to the Credit Agreement, and all payments made on account of principal

thereof, shall be recorded by the Swingline Lender and, prior to any cancellation hereof, endorsed on the grid attached hereto which is part of this Promissory Note. The assigning Swingline Lender shall, upon the effectiveness of an Assignment and Assumption or as promptly thereafter as practicable, surrender this Promissory Note to the Borrower for cancellation.

This Promissory Note is one of the Swingline Notes referred to in, and is entitled to the benefits of, the Credit Agreement. The Credit Agreement, among other things, (i) provides for the making of Swingline Advances by the Swingline Lender to the Borrower from time to time in an aggregate amount not to exceed at any time outstanding the Dollar amount first above mentioned, the indebtedness of the Borrower resulting from each such Swingline Advance being evidenced by this Promissory Note, and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

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TD SYNnex CORPORATION

By:
Name:
Title:

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ADVANCES AND PAYMENTS OF PRINCIPAL

**SECOND AMENDMENT TO FIFTH AMENDED AND RESTATED
RECEIVABLES FUNDING AND ADMINISTRATION AGREEMENT**

This SECOND AMENDMENT to FIFTH AMENDED AND RESTATED RECEIVABLES FUNDING AND ADMINISTRATION AGREEMENT (this “Amendment”), dated as of May 30, 2023, is entered into by and among SIT FUNDING CORPORATION (the “Borrower”), TD SYNEX CORPORATION (“TD Synnex”), individually and in its capacity as servicer (in such capacity, the “Servicer”), the MANAGING AGENTS, COMMITTED LENDERS and DISCRETIONARY LENDERS listed on the signature pages hereto, and THE TORONTO-DOMINION BANK, as administrative agent (the “Administrative Agent”).

RECITALS

A. WHEREAS, the Borrower, the Servicer, the Administrative Agent and each of the Managing Agents, Committed Lenders and Discretionary Lenders party thereto are parties to that certain Fifth Amended and Restated Receivables Funding and Administration Agreement, dated as of December 22, 2021 (together with all exhibits and schedules thereto, and as heretofore amended, restated or supplemented, the “RFA”); and

B. WHEREAS, the Borrower, the Administrative Agent, the Servicer and each of the Managing Agents and Lenders desire to amend and modify certain terms of the RFA as hereinafter set forth.

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

1. Certain Defined Terms. Capitalized terms that are used herein without definition shall have the same meanings herein as in Annex X to the RFA.

2. Amendments to the RFA. Effective as of the date hereof, the parties hereto hereby agree that the RFA is hereby amended as follows:

(a) Section 8.01(t)(iv) of the RFA is hereby amended by replacing the phrase “52.5 days” where it appears therein with the phrase “55 days”.

(b) The form of Monthly Report attached to Annex 5.02(a) to the RFA is hereby deleted in its entirety and replaced with the form of Monthly Report attached hereto as Exhibit B.

3. Representations and Warranties. Each of the Borrower and the Servicer represents and warrants, for itself, as of the date hereof, as follows:

(a) It has taken all necessary action to authorize the execution, delivery and performance of this Amendment.

(b) This Amendment has been duly executed and delivered by such Person and constitutes such Person’s legal, valid and binding obligation, enforceable in accordance with its terms, except as such enforceability may be subject to (i) bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors’ rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(c) No consent, approval, authorization or order of, or filing (except for any filing required by federal securities laws), registration or qualification with, any court or governmental authority or third party is required in connection with the execution, delivery or performance by such Person of this Amendment that has not already been obtained.

(d) The execution and delivery of this Amendment does not (i) violate, contravene or conflict with any provision of its organization documents or (ii) violate, contravene or conflict in any material respect with any laws applicable to such Person.

(e) Immediately after giving effect to this Amendment, (i) the representations and warranties of the Borrower and the Servicer set forth in the RFA shall be true and correct (other than any such representations or warranties that, by their terms, are specifically made as of a date other than the date hereof, in which case, such representations and warranties shall be true and correct as of such other date),

(ii) no Termination Event, Incipient Termination Event, Servicer Termination Event or Incipient Servicer Termination Event shall have occurred and be continuing, (iii) no Funding Excess exists and (iv) the Facility Termination Date has not occurred.

4. **Effect of Amendment.** Except as expressly amended and modified by this Amendment, all provisions of the RFA shall remain in full force and effect. After this Amendment becomes effective, all references in the RFA to “this Agreement”, “hereof”, “herein” or words of similar effect referring to the RFA shall be deemed to be references to the RFA as amended by this Amendment. This Amendment shall not be deemed to expressly or impliedly waive, amend or supplement any provision of the RFA other than as set forth herein.

5. **Effectiveness.** This Amendment shall become effective as of the date hereof upon receipt by the Administrative Agent of counterparts of this Amendment (whether by facsimile or otherwise) executed by each of the other parties hereto.

6. **Counterparts.** This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered (including by facsimile or electronic mail), will be deemed an original and all of which shall together constitute one and the same instrument.

7. **Governing Law.** **THIS AMENDMENT (EXCEPT TO THE EXTENT THAT ANY RELATED DOCUMENT EXPRESSLY PROVIDES TO THE CONTRARY) AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING**

SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT OTHERWISE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES), EXCEPT TO THE EXTENT THAT THE PERFECTION, EFFECT OF PERFECTION OR PRIORITY OF THE INTERESTS OF THE ADMINISTRATIVE AGENT IN THE BORROWER COLLATERAL OR REMEDIES HEREUNDER OR THEREUNDER, IN RESPECT THEREOF, ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

8. **Severability.** Each provision of this Amendment shall be severable from every other provision of this Amendment for the purpose of determining the legal enforceability of any provision hereof, and the unenforceability of one or more provisions of this Amendment in one jurisdiction shall not have the effect of rendering such provision or provisions unenforceable in any other jurisdiction.

9. **Section Headings.** The various headings of this Amendment are inserted for convenience only and shall not affect the meaning or interpretation of this Amendment or the RFA or any provision hereof or thereof.

10. **Related Document.** This Amendment is a Related Document and all references to a “Related Document” in the RFA and the other Related Documents (including, without limitation, all such references in the representations and warranties in the RFA and the other Related Documents) shall be deemed to include this Amendment.

11. **Reaffirmation of Originator Support Agreement.** After giving effect to this Amendment and each of the other transactions contemplated hereby, all of the provisions of the Originator Support Agreement shall remain in full force and effect and Parent hereby ratifies and affirms the Originator Support Agreement and acknowledges that the Originator Support Agreement has continued and shall continue in full force and effect in accordance with its terms.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

SIT FUNDING CORPORATION,
as the Borrower

By: /s/ Scott Walker
Name: Scott Walker
Title: Treasurer

TD SYNnex CORPORATION, individually and
as Servicer and as Parent

By: /s/ Scott Walker
Name: Scott Walker
Title: Treasurer

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*Second Amendment to Fifth Amended and Restated
Receivables Funding and Administration Agreement*

MUFG LENDER GROUP:

MUFG BANK, LTD., as Administrator for Victory Receivables Corporation, as Managing Agent for the MUFG Lender Group and as the MUFG Committed Lender

By: /s/ Eric Williams
Name: Eric Williams
Title: Managing Director

VICTORY RECEIVABLES CORPORATION, as the MUFG Discretionary Lender

By: /s/ Kevin J. Corrigan
Name: Kevin J. Corrigan
Title: Vice President

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*Second Amendment to Fifth Amended and Restated
Receivables Funding and Administration Agreement*

BNS LENDER GROUP:

THE BANK OF NOVA SCOTIA,
as Administrator for Liberty Street Funding LLC, as Managing Agent for the BNS Lender Group and as the BNS Committed Lender

By: /s/ Nick Mantas
Name: Nick Mantas
Title: Director

LIBERTY STREET FUNDING LLC,
as the BNS Discretionary Lender

By: /s/ Kevin J. Corrigan

Name: Kevin J. Corrigan
Title: Vice President

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Second Amendment to Fifth Amended and Restated
Receivables Funding and Administration Agreement

SMBC LENDER GROUP:

SMBC NIKKO SECURITIES AMERICA, INC., as Administrator for Manhattan Asset Funding Company LLC
and as Managing Agent for the SMBC Lender Group

By: /s/ Yukimi Konno
Name: Yukimi Konno
Title: Managing Director

MANHATTAN ASSET FUNDING COMPANY LLC, as the SMBC Discretionary Lender

By: MAF Receivables Corp., its Sole Member

By: /s/ Irina Khaimova
Name: Irina Khaimova
Title: Vice President

SUMITOMO MITSUI BANKING CORPORATION, as the SMBC Committed Lender

By: /s/ Irlen Mak
Name: Irlen Mak
Title: Director

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Second Amendment to Fifth Amended and Restated
Receivables Funding and Administration Agreement

BANA LENDER GROUP:

BANK OF AMERICA, N.A., as Managing Agent for the BANA Lender Group and as the BANA Committed
Lender

By: /s/ Chris Haynes
Name: Chris Haynes
Title: Senior Vice President

WELLS LENDER GROUP:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Managing Agent for the Wells Lender Group and as the Wells Committed Lender

By: /s/ Ryan C. Tozier
Name: Ryan C. Tozier
Title: Managing Director

TD LENDER GROUP:

THE TORONTO-DOMINION BANK, as Administrator for Reliant Trust, as Managing Agent for the TD Lender Group and as the TD Committed Lender

By: /s/ Luna Mills
Name: Luna Mills
Title: Managing Director

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **RELIANT TRUST**, by its U.S. Financial Services Agent, **THE TORONTO-DOMINION BANK**, as the TD Discretionary Lender

By: /s/ Luna Mills
Name: Luna Mills
Title: Managing Director

ADMINISTRATIVE AGENT:

THE TORONTO-DOMINION BANK, as Administrative Agent

By: /s/ Luna Mills
Name: Luna Mills
Title: Managing Director

CRÉDIT AGRICOLE LENDER GROUP:

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,

as Administrator for Atlantic Asset Securitization LLC, as Managing Agent for the Crédit Agricole Lender Group and as the Crédit Agricole Committed Lender

By: /s/ David R. Nuñez

Name: David R. Nuñez

Title: Director

By: /s/ Richard McBride

Name: Richard McBride

Title: Director

ATLANTIC ASSET SECURITIZATION LLC,

as the Crédit Agricole Discretionary Lender

By: Crédit Agricole Corporate and Investment Bank, as Attorney-in-fact

By: /s/ David R. Nuñez

Name: David R. Nuñez

Title: Director

By: /s/ Richard McBride

Name: Richard McBride

Title: Director

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*Second Amendment to Fifth Amended and Restated
Receivables Funding and Administration Agreement*

PNC LENDER GROUP:

PNC BANK, NATIONAL ASSOCIATION, as Managing Agent for the PNC Lender Group and as the PNC Committed Lender

By: /s/ Christopher Blaney

Name: Christopher Blaney

Title: Senior Vice President

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Second Amendment to Fifth Amended and Restated

MIZUHO LENDER GROUP:

MIZUHO BANK, LTD., as Managing Agent for the Mizuho Lender Group and as the Mizuho Committed Lender

By: /s/ Richard A. Burke
Name: Richard A. Burke
Title: Managing Director

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Second Amendment to Fifth Amended and Restated
Receivables Funding and Administration Agreement

Exhibit B

Form of Monthly Report

Attached

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CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER

I, Richard Hume, certify that:

1. I have reviewed this Form 10-Q of TD SYNnex Corporation;
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: July 6, 2023 October 3, 2023

/s/ Richard T. Hume

Richard T. Hume
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER

I, Marshall Witt, certify that:

1. I have reviewed this Form 10-Q of TD SYNnex Corporation;
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: July 6, 2023 October 3, 2023

/s/ Marshall W. Witt
 Marshall W. Witt
 Chief Financial Officer
 (Principal Financial Officer)

EXHIBIT 32.1

STATEMENT OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER UNDER 18 U.S.C. § 1350

We, Richard Hume, the president and chief executive officer of TD SYNEX Corporation (the "Company"), and Marshall Witt, the chief financial officer of the Company, certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of our knowledge,

- (i) the Quarterly Report of the Company on Form 10-Q for the period ended May 31, 2023 August 31, 2023 (the "Report"), fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934, and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: July 6, 2023 October 3, 2023

/s/ Richard T. Hume
 Richard T. Hume
 (Principal Executive Officer)

/s/ Marshall W. Witt
 Marshall W. Witt
 (Principal Financial Officer)

DISCLAIMER

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