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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 13, 2021 (December 7, 2021)

BigBear.ai Holdings, Inc.
(Exact Name of Registrant as Specified in Charter)

Delaware	001-40031	85-4164597
(State or Other Jurisdiction of Incorporation or Organization)	(Commission File Number)	(IRS Employer Identification No.)

6811 Benjamin Franklin Drive, Suite 200
Columbia, MD 21046
(Address of principal executive offices, including Zip Code)

(410) 312-0085
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e 4(c))

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

Title of each class	Trading Symbols	Name of each exchange on which registered
Common stock, $0.0001 par value	**BBAI**	**New York Stock Exchange**
Redeemable warrants, each full warrant exercisable for one share of common stock at an exercise price of $11.50 per share	**BBAI.WS**	**New York Stock Exchange**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

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

Introductory Note

On December 7, 2021, BigBear.ai Holdings, Inc. (f/k/a GigCapital4, Inc. ("***GigCapital4***")) (the "***Company***" or "***New Big Bear***") closed its business combination (the "***Business Combination***") with BigBear.ai Holdings, LLC, a Delaware limited liability company ("***BigBear***") pursuant to that certain Agreement and Plan of Merger (the "***Merger Agreement***"), dated as of June 4, 2021, with GigCapital4 Merger Sub Corporation, a Delaware corporation and wholly owned subsidiary of GigCapital4 ("***Merger Sub***"), BigBear, and BBAI Ultimate Holdings, LLC, a Delaware limited liability company. The Merger Agreement was subsequently amended by the parties on August 6, 2021 and on November 29, 2021. In connection with the consummation of the Merger, the Company changed its name from GigCapital4, Inc. to BigBear.ai Holdings, Inc. Certain terms used in this Current Report on Form 8-K have the same meaning as set forth in the definitive proxy statement (the "***Definitive Proxy Statement***") filed with the Securities and Exchange Commission (the "***SEC***") on November 5, 2021 by GigCapital4.

Item 1.01 Entry into a Material Definitive Agreement.

Unsecured Convertible Notes and Indenture

In connection with the closing of the Business Combination, the Company entered into an indenture (the "***Indenture***") with Wilmington Trust, National Association, a national banking association, (the "***Indenture Trustee***") in its capacity as trustee thereunder, together with certain guarantors as parties thereto including, among others, the subsidiaries of the Company, in respect of the $200,000,000 of unsecured convertible notes due in 2026 ("***Convertible Notes***") that were issued to certain investors (collectively, the "***Convertible Note Investors***"). The terms of the Convertible Notes are set forth in the convertible note subscription agreements, as amended on November 29, 2021, entered into between the Company and each of the Convertible Note Investors (the "***Amended and Restated Convertible Note Subscription Agreements***"), the Indenture and the form of Global Note attached as Exhibit A to the Indenture (the "***Global Note***"). The Convertible Notes mature on December 15, 2026 and, not including any interest payments that are settled with the issuance of shares, are convertible into 17,391,304 shares of the Company's common stock, par value $0.0001 per share ("***Company Common Stock***"), plus certain interest payments described below, at a conversion price of $11.50 per share. However, if the average of the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day up to and including the final closing print (the "***Daily VWAP***") during the 30 consecutive trading days immediately preceding the date that is 180 days after the closing of the Business Combination (the "***Reset Date***") is less than $10.00, the conversion rate for the Convertible Notes shall be replaced, with effect from the Reset Date, by the lower of (a) $1,000 divided by 115% of the average of the Daily VWAP during the 30 consecutive trading days immediately preceding the Reset Date and (b) 102.2495. As a result, the conversion price of the Convertible Notes could be reset to as low as $9.78.

The Company may, at its election, force conversion of the Convertible Notes after December 15, 2022, subject to a holder's prior right to convert, if the trading price of the Company's common stock exceeds 130% of the conversion price 20 out of the preceding 30 trading days and 30-day average daily trading volume ending on, and including, the

last trading day of the applicable exercise period is greater than or equal to $3,000,000 for the first two (2) years after the initial issuance of the Convertible Notes and $2,000,000 thereafter. Upon such conversion, the Company will be obligated to pay all regularly scheduled interest payments, if any, due on the converted Convertible Notes on each interest payment date occurring after the conversion date for such conversion to, but excluding, the maturity date (such interest payments, an "***Interest Make-Whole Payments***"). In the event that a holder of the Convertible Notes elects to convert the Convertible Notes (a) prior to December 15, 2024, the Company will be obligated to pay an amount equal to twelve months of interest or (b) on or after December 15, 2024 but prior to December 15, 2025, any accrued and unpaid interest plus any remaining amounts that would be owed up to, but excluding, December 15, 2025. The Interest Make-Whole Payments will be payable in cash or shares of the Common Stock as set forth in the Indenture.

Following certain corporate events that occur prior to the maturity date or if the Company exercises its mandatory conversion right in connection with such corporate events, the Company will in certain circumstances increase the conversion rate for a holder who elects to convert its Convertible Notes in connection with such corporate events or has been forced to convert its Convertible Notes in connection with such corporate events, as the case may be.

The Company is subject to a number of covenants pursuant to the terms of the Indenture, including the following:

- The Company will not pay dividends or other distributions to holders of the Company's equity unless (1) Consolidated Adjusted EBITDA (as such term is defined in the Indenture) for the trailing four quarter period is equal to or greater than $50 million and (2) net leverage ratio is less than 4.5x on a pro forma basis after giving effect to the dividend/distribution any related transactions.
- The Company and its subsidiaries are restricted from incurring indebtedness, subject to various carve outs plus certain other customary exclusions, including the following:
    - $50 million basket revolving facility to be provided by a regular bank, which can be secured by an all asset lien;
    - $75 million general debt basket (and a corresponding permitted lien);
    - acquisition indebtedness, provided that after giving pro forma effect to such acquisition, the Consolidated Total Indebtedness Ratio (as such term is defined in the Indenture) for the Company immediately subsequent to the date on which such additional indebtedness is incurred is less than or equal to immediately prior to such acquisition; and
    - unlimited unsecured subordinated indebtedness.
- The Company and its subsidiaries are restricted from incurring liens on their assets, subject to the carve outs noted above and other customary exclusions.
- The Company and its subsidiaries will not dispose of material intellectual property except to the Company or a guarantor subsidiary.
- The Company and its subsidiaries will not engage in affiliate transactions involving aggregate payments or consideration in excess of $5,000,000, subject to customary exceptions.

If a Fundamental Change (as defined in the Indenture) occurs prior to the maturity date, holders of the Convertible Notes will have the right to require the Company to repurchase all or any portion of their Convertible Notes in principal amounts of $1,000 or an integral multiple thereof, at a repurchase price equal to the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the repurchase date.

The foregoing description of the Amended and Restated Convertible Note Subscription Agreements, the Indenture and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to the text of the Amended and Restated Convertible Note Subscription Agreements, the form of which is included as Exhibit 10.1 to this Current Report on Form 8-K, and to the text of the Indenture, including the form of Global Note attached as Exhibit A thereto, which is included as Exhibit 10.2 to this Current Report on Form 8-K.

Bank of America Credit Agreement

On December 7, 2021 (the "***Closing Date***"), the Company, as lead borrower, and certain subsidiaries of the Company designated as borrowers entered into a new senior credit agreement (the "***Credit Agreement***") with Bank of America, N.A., as administrative agent, and the lenders named therein, for a $50.0 million senior secured revolving credit facility (the "***Senior Revolver***"). The proceeds may be used to finance working capital needs and other general corporate purposes of the Company and its subsidiaries.

The Senior Revolver has a four-year maturity.

Pursuant to (1) the Loan Guaranty, dated as of the Closing Date (the "***Guaranty***"), among the Company, the Subsidiary Guarantors and Bank of America, N.A., as administrative agent and collateral agent, all of the Company's obligations (and all the obligations of the other Borrowers party to the Credit Agreement) under the Senior Revolver are guaranteed by the Company and subsidiary guarantors named therein (the "***Subsidiary Guarantors***"), as applicable, and (2) the Pledge and Security Agreement, dated as of the Closing Date (the "***Security Agreement***"), among the Company, the Subsidiary Guarantors and Bank of America, N.A., as administrative agent and collateral agent, subject to certain exceptions, the obligations under the Senior Revolver are secured by a pledge of 100% of the capital stock of certain domestic subsidiaries wholly-owned by the Company and a security interest in substantially all of the Company's tangible and intangible assets and the tangible and intangible assets of each Subsidiary Guarantor.

The Senior Revolver includes borrowing capacity available for letters of credit and for borrowings onsame-day notice, referred to as the "swing loans." Any issuance of letters of credit or making of a swing loan will reduce the amount available under the revolving credit facility.

At the Company's option, the Company may increase the commitments under the Senior Revolver in an aggregate amount of up to the greater of $18.8 million or (y) 100% of consolidated adjusted EBITDA plus any additional amounts so long as certain conditions, including compliance with the applicable financial covenants for such period, in each case on a pro forma basis, are satisfied.

Borrowings under the Senior Revolver bear interest, at the Company's option, at: (i) a base rate equal to the greater of (a) the prime rate of Bank of America, N.A., (b) the federal funds rate plus 0.5%, and (c) the BSBY rate plus 1.00%, plus the applicable Base Rate Margin (as set forth below) (provided that the base rate shall not be less than 0.00%); or (ii) the BSBY rate (provided that the BSBY shall not be less than 0.00%), plus the applicable BSBY Rate Margin (as set forth below). The Company is also required to pay an unused commitment fee to the lenders under the Senior Revolver at the Undrawn Commitment Fee (as set forth below) of the average daily unutilized commitments. The Company must also pay customary Letter of Credit Fees (as set forth below), including a fronting fee as well as administration fees.

As set forth herein, the applicable Base Rate Margin, BSBY Rate Margin, Letter of Credit Fee and Undrawn Commitment Fee are as follows:

(a) initially and until the first business day following the date a compliance certificate is delivered pursuant to the Credit Agreement:

BSBY Rate Margin	Base Rate Margin
2.00%	1.00%

provided that (i) in the case of letter of credit fees, the applicable margin then in effect with respect to the Senior Revolver that BSBY rate loans, (ii) in the case of swingline loans, the applicable margin then in effect with respect to the Senior Revolver that base rate loans, and (iii) the Undrawn Commitment Fee for the Senior Revolver is 0.25%.

(b) thereafter, the following pricing grid shall:

		Applicable Rate		
Pricing Level	Secured Net Leverage Ratio	BSBY Rate Loans & Letter of Credit Fee	Base Rate Loans	Commitment Fee
1	< 1.75:1.0	1.75%	0.75%	0.25%
2	³ 1.75:1.0, *but* < 2.00:1.0	2.00%	1.00%	0.25%
3	³ 2.00:1.0, *but* < 2.50:1.0	2.50%	1.50%	0.25%
4	³ 2.50:1.0	3.00%	2.00%	0.25%

The Credit Agreement requires the Company to make mandatory prepayments in the event that the revolving credit exposure (as defined in the Credit Agreement) of any class exceeds the revolving credit commitment of such class.

The Credit Agreement contains two financial covenants. (1) The Company is required to maintain at the end of each fiscal quarter, commencing with the quarter ending March 31, 2022, a consolidated secured net leverage ratio of not more than 3.00 to 1.00. (2) The Company is required to maintain at the end of each such fiscal quarter, commencing with the quarter ending March 31, 2022, a consolidated fixed charge coverage ratio of not less than 1.10 to 1.00; provided, that commencing with the quarter ending September 30, 2023, the Company will be required to maintain at the end of such fiscal quarter a consolidated fixed charge coverage ratio of not less than 1.25 to 1.00 in the event that the outstanding amount of revolving loans as of the end of such fiscal quarter exceeds 30% of the total revolving credit commitments.

The Credit Agreement also contains a number of covenants that, among other things, restrict, subject to certain exceptions, the Company's ability and the ability of its subsidiaries to: (i) incur additional indebtedness; (ii) create liens on assets; (iii) engage in mergers or consolidations; (iv) dispose and sell assets; (v) pay dividends and distributions or repurchase capital stock; (vi) make investments, loans or advances; (vii) repay certain junior indebtedness; (viii) engage in certain transactions with affiliates; (ix) enter into sale and leaseback transactions; (x) amend material agreements governing certain junior indebtedness; (xi) change the lines of business and(xii) make certain acquisitions. The Credit Agreement contains customary affirmative covenants and events of default.

The foregoing summary of the Credit Agreement is qualified in its entirety by reference to the Credit Agreement, which is filed herewith as Exhibit 10.17 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 2.01. Completion of Acquisition of Disposition of Assets.

As previously reported in the Current Report on Form8-K filed with the SEC on December 3, 2021, GigCapital4 held a special meeting of its stockholders (the "***Special Meeting***"). At the Special Meeting, the GigCapital4 stockholders considered and adopted, among other matters, the Merger Agreement. As previously reported in the Current Report on Form 8-K filed with the SEC on December 7, 2021, on December 7, 2021, the parties to the Merger Agreement consummated the Business Combination (such consummation, the "***Closing***").

Prior to the Special Meeting, the holders of 24,878,693 shares of GigCapital4's common stock sold in its initial public offering (***Public Shares***") exercised their right to redeem those shares for cash at a price of $10.00073 per

share, for an aggregate of approximately $248.8 million, which redemption occurred concurrent with the consummation of the Business Combination. Immediately after giving effect to the Business Combination (including as a result of the redemptions described above and the automatic separation of GigCapital4 units into New BigBear common stock and warrants) and the issuance of shares pursuant to the Backstop Subscription Agreement, as amended, as described in the Current Reports on Form 8-K filed with the SEC on November 30 and December 7, 2021 and the Payment Agreements described in the Current Report on Form 8-K filed with the SEC on December 7, 2021, there were (i) 135,566,227 shares of New BigBear issued and outstanding common stock, (ii) 18,571,240 shares of New BigBear common stock reserved for issuance pursuant to the 2021 Long Term Incentive Plan and 1,857,124 shares of New BigBear common stock reserved for issuance pursuant to the 2021 Employee Stock Purchase Plan (iii) 23,058,594 shares of common stock reserved for issuance upon the conversion of the Convertible Notes, (iv) 366,533 shares of common stock issuable on the exercise of Private Placement Warrants, and (v) 11,959,980 shares of common stock issuable on the exercise of Public Warrants. Upon the Closing, GigCapital4's units ceased trading, and New BigBear common stock and warrants began trading on the New York Stock Exchange ("***NYSE***") under the symbol "BBAI" and "BBAI.WS" respectively. As of the date of Closing, our directors and executive officers and affiliated entities beneficially owned approximately 90.6% of New BigBear outstanding shares of common stock, and the former stockholders of GigCapital4 beneficially owned approximately 16% of New BigBear's outstanding shares.

As noted above, the per share redemption price of $10.00073 for holders of Public Shares electing redemption was paid out of GigCapital4's trust account, which after reductions for the redemptions, had a balance immediately prior to the Closing of approximately $110.02 million. In addition, approximately $300,000 remained in GigCapital4's operating account immediately prior to the Closing.

FORM 10 INFORMATION

Item 2.01(f) of Form 8-K states that if the predecessor registrant was a shell company, as GigCapital4 was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, the Company is providing the information below that would be included in a Form 10 if the Company were to file a Form 10. Please note that the information provided below relates to the Company following the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements. Forward-looking statements provide the Company's current expectations or forecasts of future events. Forward-looking statements include statements about the Company's expectations, beliefs, plans, objectives, intentions, assumptions and other statements that are not historical facts. The words "anticipates," "believe," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predicts," "project," "should," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Examples of forward-looking statements in this Current Report on Form 8-K include, but are not limited to, statements regarding the Company's disclosure concerning the Company's operations, cash flows, financial position and dividend policy. The risks and uncertainties include, but are not limited to:

- our limited operating history as a combined company makes it difficult to evaluate our current business and future prospects;
- the impact of health epidemics, including the COVID-19 pandemic, on our business, financial condition, growth and the actions we may take in response thereto;
- the high degree of uncertainty of the level of demand for and market utilization of our solutions and products;
- substantial regulation and the potential for unfavorable changes to, or failure by us to comply with, these regulations, which could substantially harm our business and operating results;
- our dependency upon third-party service providers for certain technologies;
- increases in costs, disruption of supply or shortage of materials, which could harm our business;
- developments and projections relating to our competitors and industry;
- the unavailability, reduction or elimination of government and economic incentives, which could have a material adverse effect on our business, prospects, financial condition and operating results;
- our management team's limited experience managing a public company;
- the possibility of our need to defend ourselves against fines, penalties and injunctions if we are determined to be promoting products for unapproved uses;
- concentration of ownership among our existing executive officers, directors and their respective affiliates, which may prevent new investors from influencing significant corporate decisions;
- if the benefits of the Business Combination do not meet the expectations of investors or securities analysts, the potential for the market price of our securities to decline;
- the risk that the Business Combination disrupts current plans and operations of our business as a result of consummation of the transactions described herein; and
- the risk that our significant increased expenses and administrative burdens as a public company could have an adverse effect on our business, financial condition and results of operations.

Forward-looking statements are subject to known and unknown risks and uncertainties and are based on potentially inaccurate assumptions that could cause actual results to differ materially from those expected or implied by the forward-looking statements. Actual results could differ materially from those anticipated in forward-looking statements for many reasons, including the factors described in "*Risk Factors*" in this Current Report on Form 8-K. Accordingly, you should not rely on these forward-looking statements, which speak only as of the date of this Current Report on Form 8-K. The Company undertakes no obligation to publicly revise any forward-looking statement to reflect circumstances or events after the date of this Current Report on Form 8-K or to reflect the occurrence of unanticipated events. You should, however, review the factors and risks that the Company describes in the reports it will file from time to time with the SEC after the date of this Current Report on Form 8-K.

In addition, statements that "the Company believes" and similar statements reflect the Company's beliefs and opinions on the relevant subject. These statements are based on information available to the Company as of the date of this Current Report on Form 8-K. And while the Company believes that information provides a reasonable basis for these statements, that information may be limited or incomplete. The Company's statements should not be read to indicate that it has conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and you are cautioned not to unduly rely on these statements.

Although the Company believes the expectations reflected in the forward-looking statements were reasonable at the time made, it cannot guarantee future results, level of activity, performance or achievements. Moreover, neither the Company nor any other person assumes responsibility for the accuracy or completeness of any of these forward-looking statements. You should carefully consider the cautionary statements contained or referred to in this section in connection with the forward-looking statements contained in this Current Report on Form 8-K and any subsequent written or oral forward-looking statements that may be issued by the Company or persons acting on the Company's behalf.

Business

The business of the Company is described in the Definitive Proxy Statement in the section titled "*Information About New BigBear*" and that information is incorporated herein by reference.

Risk Factors

The risks associated with the Company's business are described in the Definitive Proxy Statement in the section titled "*Risk Factors*" and are incorporated herein by reference.

Financial Information

Subject to the disclosure set forth in the subsequent paragraphs, the financial information of the Company and related discussion and analysis by the management of the Company is contained in the Definitive Proxy Statement in the section titled "*Summary Historical Financial Information of BigBear.ai Holdings, LLC*" and "*BigBear's Management's Discussion and Analysis of Financial Condition and Results of Operations*" and is incorporated herein by reference.

The unaudited consolidated financial statements as of and for the three months ended September 30, 2021 of BigBear set forth in Exhibit 99.2 hereto have been prepared in accordance with U.S. generally accepted accounting principles and pursuant to the regulations of the SEC. The unaudited financial information reflects, in the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of BigBear's financial position, results of operations and cash flows for the periods indicated. The results reported for the interim period presented are not necessarily indicative of results that may be expected for the full year.

These unaudited consolidated financial statements should be read in conjunction with the historical audited consolidated financial statements of BigBear as of and for the year ended December 31, 2020 and the related notes included in the Definitive Proxy Statement, the section entitled "*BigBear's Management's Discussion and Analysis of Financial Condition and Results of Operations*" and the section entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" included herein.

Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis provides information that BigBear management believes is relevant to an assessment and understanding of BigBear's interim condensed consolidated results of operations and financial condition. The following discussion and analysis should be read in conjunction with BigBear's interim condensed consolidated financial statements and notes to those statements included elsewhere in this Current Report on Form 8-K. This discussion and analysis should also be read together with the section of the Definitive Proxy Statement entitled "Information About New BigBear." Certain information contained in this discussion and analysis includes forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors. Please see "Cautionary Note Regarding Forward-Looking Statements," "Risk Factors" in the Definitive Proxy Statements. Please see "Unaudited Pro Forma Condensed Combined Financial Information" included elsewhere in this current report on Form 8-K. Unless the context otherwise requires, all references in this section to the "Company," "BigBear," "we," "us" or "our" refer to BigBear prior to the consummation of the Business Combination.

The following discussion and analysis of financial condition and results of operations of BigBear is provided to supplement the interim condensed consolidated financial statements and the accompanying notes of BigBear included elsewhere in this Current Report on Form 8-K. We intend for this discussion to provide the reader with information to assist in understanding BigBear's interim condensed consolidated financial statements and the accompanying notes, the changes in those financial statements and the accompanying notes from period to period, and the primary factors that accounted for those changes. The discussion and analysis of financial condition and results of operations of BigBear is organized as follows:

- *Business Overview*: This section provides a general description of BigBear's business, our priorities and the trends affecting our industry in order to provide context for management's discussion and analysis of our financial condition and results of operations.
- *Recent Developments*: This section provides recent developments that we believe are necessary to understand our financial condition and results of operations.

- *Results of Operations:* This section provides a discussion of the historical results of operations for the following periods:
    - the three and nine-month periods ended September 30, 2021 (the "***Successor 2021 Q3 Period***" and "***Successor 2021 Period,***" respectively);
    - the three months ended September 30, 2020 (the "***Successor 2020 Q3 Period***");
    - the period from May 22, 2020 through September 30, 2020 (the "***Successor 2020 Period***");
    - the three and nine-month periods ended September 30, 2020 (the "***Predecessor 2020 Q3 Period***" and "***Predecessor 2020 Period,"*** respectively); and
    - the three and nine-month periods ended September 30, 2020 that gives effect to each acquisition as if each had been completed as of January 1, 2020 (the "***Successor 2020 Q3 Pro Forma Period***" and "***Successor 2020 Pro Forma Period***"). Our historical results of operations for the Successor 2020 Period and Successor 2020 Q3 Period only include the results of operations of NuWave Solutions, LLC ("***NuWave***") from the effective date of its acquisition, and BigBear.ai, LLC (*"**BigBear.ai**")* from its formation.
- *Liquidity and Capital Resources:* This section provides an analysis of our ability to generate cash and to meet existing or reasonably likely future cash requirements.
- *Critical Accounting Policies and Estimates*: This section discusses the accounting policies and estimates that we consider important to our financial condition and results of operations and that require significant judgment and estimates on the part of management in their application. In addition, our significant accounting policies, including critical accounting policies, are summarized in Note B in our audited financial statements for the year ended December 31, 2020 included in the Definitive Proxy Statement.

Information for the Successor 2021 Q3 Period, Successor 2021 Period, Successor 2020 Q3 Period, Successor 2020 Period, Predecessor 2020 Q3 Period, and Predecessor 2020 Period has been derived from our interim condensed consolidated financial statements. Information for the Successor 2020 Q3 Pro Forma Period and the Successor 2020 Pro Forma Period has been derived from our interim condensed consolidated financial statements, as well as pre-acquisition accounting records of the acquired entities. All amounts are presented in thousands of U.S. dollars unless otherwise stated.

Business Overview

Our mission is to enable real-time decision-making dominance and provide competitive advantage for our customers through the application of our novel artificial intelligence ("***AI***"), machine learning ("***ML***"), and technical consulting solutions and services that make sense of sensitive, proprietary, and commercial data in complex, rapidly changing environments.

Our customized solutions (Observe, Orient, and Dominate) allow customers to catalog, curate, manage, automate, and visualize data feeds that can be leveraged to inform decision-making and create decision advantages in the most complex operational environments. Our combination of the latest AI/ML technologies, along with hands-on support from our team members is critical, especially for government customers, for several reasons:

- It provides us with opportunities to interact directly with our customers and build intimate customer relationships;
- It allows us to work alongside our customers and understand their needs so that we can better tailor agile solutions to meet those needs as mission objectives evolve;
- It grants access to real operational environments where we can test current and future technology-enabled solutions;
- It offers insights into the future technology needs of our customers, which helps inform our investment in research and development and the design of new offerings; and
- It presents unique and complex challenges that require us to operationalize the latest breakthroughs in AI/ML technologies and push the envelope in terms of flexibility and scale.

These factors along with our success in the development and deployment of our solutions for government customers strengthens the value proposition of our commercial enterprise offerings.

We provide our customers with an unrivaled competitive advantage in a world driven by data that is growing exponentially in terms of volume, variety, and velocity. Our defense and intelligence customers operate in some of the most complex and data intensive environments, and we believe that the design and agility of our solutions make them equally valuable to commercial enterprises. Our data, analytics, and decision-making solutions already focus on issues such as transportation and logistics, geographical infrastructure, movement patterns, customer demand signals, economic/market analysis, and demand forecasting. We believe that our solutions can more readily provide commercial customers with superior results in shorter timeframes than our competitors. While our push into commercial markets is still in its nascent stages, our efforts have already yielded several new relationships and a considerable pipeline of opportunities which we plan to capitalize on in the next year.

Recent Developments

Acquisition Activity

Affiliates of AE Industrial Partners Fund II, LP ("***AE***"), a private equity firm specializing in aerospace, defense, space and government services, power generation, and specialty industrial markets, formed a series of acquisition vehicles on May 22, 2020, which included Lake Parent, LLC ("***Lake Parent***"), BigBear, BigBear.ai Intermediate Holdings, LLC ("***BigBear Intermediate***") and BigBear.ai, with Lake Parent being the top holding company. BigBear.ai and BigBear Intermediate are wholly owned direct or indirect subsidiaries of BigBear.

On June 19, 2020, BigBear.ai acquired 100% of the equity of NuWave. NuWave is a leading provider of data management, advanced analytics, artificial intelligence, machine learning, and cloud solutions that deliver anticipatory intelligence and advanced decision support solutions and technologies to the Federal Government. NuWave provides innovative, customized solutions through development, selection, and integration of leading technologies. NuWave has expertise in advanced technologies across the analytics and data management lifecycle and applies its expertise and teamwork to give customers the ability to solve complex problems, communicate, and manage information.

Separately, AE also formed a series of acquisition vehicles on October 8, 2020, which included BBAI Ultimate Holdings, LLC (formerly known as PCISM Ultimate Holdings, LLC) ("***BBAI Ultimate Holdings***"), PCISM Holdings, LLC ("***PCISM Holdings***"), PCISM Intermediate Holdings, LLC and PCISM Intermediate II Holdings, LLC. On October 23, 2020 PCISM Holdings acquired PCI Strategic Management, LLC ("***PCI***"). PCI is a technology-focused company that provides cybersecurity and computer network operations, cloud engineering and IT infrastructure, data analytics, and system engineering solutions and related services. PCI is a trusted advisor to the U.S. intelligence community, Department of Defense (the "***DoD***"), and Federal Government, developing leading-edge mission solutions using emerging technologies and proven practices to solve the most complex cybersecurity, cloud, and enterprise IT challenges of its customers.

On December 2, 2020, NuWave entered into an agreement with Open Solutions Group, LLC ("***Open Solutions***") to acquire 100% of its equity. Open Solutions specializes in big data computing and analytics, cloud computing, artificial intelligence, machine learning, geospatial information systems, data mining and systems engineering to customers in the U.S. defense and intelligence communities. Open Solutions combines comprehensive technology solutions with its BigBear Platform to create entirely private, secure, and unique cloud environments that have helped organizations enable big data computing, machine learning and improved decision-making while better managing risk. Open Solutions specializes in helping customers make sense of their data by delivering the most advanced customized data analytics solutions.

On December 21, 2020, BigBear.ai acquired the Government Services division of ProModel Government Solutions Inc. ("***ProModel***"). ProModel is an agile provider of mission critical predictive and prescriptive analytics software solutions for decision support to the DoD and U.S. Government. For more than 25 years, ProModel has built innovative and adaptable custom model-based software solutions to visualize complex and disparate data, synchronize operational needs, mitigate risk and optimize resources to support strategic and tactical decisions for the DoD and other federal government agencies.

On December 21, 2020, BigBear.ai acquired 100% of the equity of PCI in a series of transactions which resulted in BigBear being a wholly owned subsidiary of BBAI Ultimate Holdings. This transaction left Lake Parent with no assets or operations, and it was dissolved.

Merger Agreement and Public Company Costs

On June 4, 2021, GigCapital4 entered into a Merger Agreement with Merger Sub, BigBear, and BBAI Ultimate Holdings

Pursuant to the Merger Agreement, (i) Merger Sub will merge with and into BigBear, with BigBear being the surviving entity in the merger (the "***First Merger***"), and (ii) immediately following the First Merger, BigBear will merge with and into GigCapital4, with GigCapital4 being the surviving entity in the merger (the "***Second Merger***" and together with the First Merger, the "***Merger***" and together with the other transactions contemplated by the Merger Agreement, the Business Combination).

On December 7, 2021, the Merger was consummated and upon closing of the Merger, GigCapital4, Inc. was renamed to BigBear.ai Holdings, Inc. ("***New BigBear***"). The Merger is accounted for as a reverse recapitalization in which GigCapital4 is treated as the acquired company. A reverse recapitalization does not result in a new basis of accounting, and the consolidated financial statements of the combined entity represent the continuation of the consolidated financial statements of the Company in many respects. The Company was deemed the accounting predecessor and the combined entity will be the successor SEC registrant, New BigBear.

As a result of the Merger, New BigBear issued 105,000,000 shares of common stock and paid $75,000 to BBAI Ultimate Holdings in exchange for units of the Company. New BigBear received aggregate gross proceeds of $110,021 from the trust account, $200,000 of convertible note financing, and $80,000 of PIPE financing from AE BBAI Aggregator, LP, an affiliate of AE, in exchange for the issuance of 8,000,000 New BigBear shares. New BigBear also issued 1,495,320 shares of common stock to certain advisors in lieu of cash for fees payable for services in connection with the Merger or GigCapital4's IPO. Proceeds from the Merger were partially used to fund the $114,393 repayment of the Antares Loan and transaction costs of $19,750.

The convertible note financing bears interest at a rate of 6.0% per annum, payable semi-annually, and convertible into shares of common stock at an initial Conversion Price of $11.50. The Conversion Price is subject to adjustments, including but not limited to, a Conversion Rate Reset 180 days after December 7, 2021 should certain daily volume-weighted average price thresholds be met. The convertible note financing matures five years after issuance.

As a result of Forward Share Purchase Agreements executed with certain shareholders prior to the shareholder vote, $101,021 of the proceeds from the trust account will be restricted for up to a period of three months following the Merger, at which point each shareholder will have the right to sell its shares to New BigBear for $10.15. Until the end of the three-month period, shareholders can sell shares on the open market provided the share price is at least $10.00 per share. If shareholders sell any shares in the open market within the first month of the three-month period and at a price greater than $10.05, New BigBear will pay the shareholders $0.05 per share sold.

COVID-19 Operational Posture and Current Impact

Authorities around the world have implemented numerous measures to try to reduce the spread of the virus and such measures have impacted and continue to impact us and our and consumers. While some of these measures have been lifted or eased in certain jurisdictions, other jurisdictions have seen a resurgence of COVID-19 cases resulting in reinstitution or expansion of such measures. We are subject to Executive Order 14042, which mandates vaccinations for employees of businesses servicing federal contracts, except for employees who qualify for medical or religious exemptions. We have announced a Company policy which complies with Executive Order 14042. In response to the exposure of COVID-19 on our business and workforce, we have activated a pandemic crisis response plan to protect the health and safety of our team members, families, customers and communities, while continuing to meet our commitments to customers. Our mitigation strategies cover employee preparation, travel, security, the ability to work virtually offsite and communications.

While not currently known, the full impact of COVID-19 could have a material impact on our financial condition and results of operations. The Company continues to closely monitor the current macro environment related to monetary and fiscal policies, as well as pandemics or epidemics, such as the COVID-19 outbreak.

Significant Contract Awards

During the Successor 2021 Q3 Period, we were awarded more than $150 million of new contract awards, bringing total backlog to $485 million as of September 30, 2021. Key developments include the following:

- Entered into a one-year contract with the Defense Intelligence Agency to develop a force element tracking and identity platform utilizing Machine Assisted Rapid Repository Services solution.
- Awarded the five-year, single award TACTICALCRUISER contract by the United States Cyber Command.
- Entered into a memorandum of understanding with Redwire Corporation for the development of advanced cyber resiliency capabilities for future space missions.
- Awarded one of two Global Force Information Management Phase 1 Prototype contracts by the United States Army.
- Entered into a three-year commercial partnership with Terran Orbital to support manufacturing and supply chain optimization, constellation tasking optimization, space situational awareness analytics, and sensor exploitation to identify relevant insights.

Palantir Commercial Partnership

On November 15, 2021, we announced a commercial partnership with Palantir Technologies Inc. ("***Palantir***"), a software company that builds enterprise data platforms for use by organizations with complex and sensitive data environments, under which our and Palantir's products will be integrated to extend the operating system for the modern enterprise with data and AI that provide advice and other actionable insights for complex business decisions. As part of the integrated product offering, Palantir's Foundry platform will be integrated with our Observe, Orient and Dominate products, creating powerful machine learning extensions for the Palantir ecosystem that will provide global data collection, generate actionable insights, and deliver anticipatory intelligence at enterprise scale to address high-growth federal and commercial verticals including space, retail, logistics and energy. We will have an opportunity to extend Palantir's products with its forecasting, course of action optimization, conflation, computer vision, natural language processing, and other predictive analytics via low-code interfaces.

Components of Results of Operations

Revenues

We generate revenue by providing our customers with highly customizable solutions and services for data ingestion, data enrichment, data processing, artificial intelligence, machine learning, predictive analytics and predictive visualization. We have a diverse base of customers, including government defense, government intelligence, as well as various commercial enterprises.

Cost of Revenues

Cost of revenues primarily includes salaries, stock-based compensation expense, and benefits for personnel involved in performing the services described above as well as allocated overhead and other direct costs.

We expect that cost of revenues will increase in absolute dollars as our revenues grow and will vary from period-to-period as a percentage of revenues.

Selling, General and Administrative

Selling, general and administrative expenses include salaries, stock-based compensation expense, and benefits for personnel involved in our executive, finance, accounting, legal, human resources, and administrative functions, as well as third-party professional services and fees, and allocated overhead.

We expect that selling, general and administrative expenses will increase in absolute dollars as we hire additional personnel and enhance our systems, processes, and controls to support the growth in our business as well as our increased compliance and reporting requirements as a public company.

Research and Development

Research and development expenses primarily consist of salaries, stock-based compensation expense, and benefits for personnel involved in research and development activities as well as allocated overhead. Research and development expenses are expensed in the period incurred.

We expect research and development expenses to increase in future periods as we continue to invest in research and development activities to achieve our operational and commercial goals.

Transaction Expenses

Transaction expenses consist of acquisition costs and other related expenses incurred in acquiring NuWave, PCI, Open Solutions, and ProModel as well as costs associated with evaluating other acquisition opportunities.

We expect to incur acquisition costs and other related expenses periodically in the future as we continue to seek acquisition opportunities to expand our technological capabilities.

Interest Expense

Interest expense consists primarily of interest expense, commitment fees, and debt issuance cost amortization under our credit facilities.

Income Tax Expense

Income tax expense consists of income taxes related to federal and state jurisdictions in which we conduct business.

Segments

We have two operating segments, Cyber & Engineering and Analytics, which were determined based on the manner in which the chief operating decision maker ("***CODM***"), who is our Chief Executive Officer, manages our operations for purposes of allocating resources and evaluating performance. Various factors, including our organizational and management reporting structure, customer type, economic characteristics, financial metrics and other factors were considered in determining these operating segments.

Our operating segments are described below:

- Cyber & Engineering: The Cyber & Engineering segment provides high-end technology and management consulting services to its customers. This segment focuses in the areas of cloud engineering and enterprise IT, cybersecurity, computer network operations and wireless, systems engineering, as well as strategy and program planning. The segment's primary solutions relate to the development and deployment of customized solutions in the areas of cloud engineering and IT infrastructure, cybersecurity and computer network operations, data analytics and visualization, and system engineering and program planning. The results of PCI are included in the Cyber & Engineering segment results.

- Analytics: The Analytics segment provides high-end technology and consulting services to its customers. This segment focuses on the areas of big data computing and analytical solutions, including predictive and prescriptive analytics solutions. The segment's primary solutions assist customers in aggregating, interpreting, and synthesizing data to enable real-time decision-making capabilities. The results of NuWave, Open Solutions, and ProModel are included in the Analytics segment results.

Results of Operations

The results of operations for the Successor 2021 Q3 and Successor 2021 Periods include the results of PCI, NuWave, Open Solutions, ProModel and BigBear.ai from the beginning of the period.

The results of operations for the Successor 2020 Q3 Period include the results of NuWave and BigBear.ai from the beginning of the period. The results of operations for the Successor 2020 Period include the results of NuWave from the effective date of its acquisition and BigBear.ai from the beginning of the period.

The results of operations for the Predecessor 2020 Q3 and Predecessor 2020 Periods include the results of PCI from the beginning of the period.

As described above and as illustrated in the table below, these periods presented are not directly comparable.

<table>
<tr><th></th><th colspan="4">Successor</th><th colspan="2">Predecessor</th></tr>
<tr><th></th><th>2021 Q3</th><th>2020 Q3</th><th>2021</th><th>2020</th><th>2020 Q3</th><th>2020</th></tr>
<tr><td>PCI</td><td rowspan="5">July 1, 2021 – September 30, 2021</td><td rowspan="2">Not Applicable</td><td rowspan="5">January 1, 2021 – September 30, 2021</td><td rowspan="2">Not Applicable</td><td>July 1, 2020 – September 30, 2020</td><td>January 1, 2020 – September 30, 2020</td></tr>
<tr><td>Open Solutions</td><td rowspan="4">Not Applicable</td></tr>
<tr><td>ProModel</td><td rowspan="3">July 1, 2020 – September 30, 2020</td><td rowspan="2">June 19, 2020 – September 30, 2020</td></tr>
<tr><td>NuWave</td></tr>
<tr><td>BigBear.ai</td><td>May 22, 2020 – September 30, 2020</td></tr>
</table>

The Successor 2020 Q3 Pro Forma and Successor 2020 Pro Forma Periods include the results of operations for the Successor 2020 Period and reflects the impact of the acquisitions of NuWave, PCI, Open Solutions and ProModel as if each occurred on January 1, 2020.

The following table summarizes our Successor 2020 Q3 Pro Forma Period statements of operations:

	Successor 2020 Q3 (Historical)	PCI Three months ended September 30, 2020 (Historical)	Open Solutions Three months ended September 30, 2020 (Historical)	ProModel Three months ended September 30, 2020 (Historical)	Acquisition Accounting Adjustments	Successor 2020 Q3 Pro Forma
Revenues	$ 7,802	$ 17,899	$ 6,214	$ 4,090	$ (417)(a)	$ 35,588
Cost of revenues	5,584	13,972	3,610	2,460	(417)(a)	25,209
Gross margin	**2,218**	**3,927**	**2,604**	**1,630**	**—**	**10,379**
Operating expenses:						
Selling, general and administrative	1,910	2,426	1,148	403	1,359(b)	7,246
Research and development	184	41	—	—	—	225
Operating income (loss)	**124**	**1,460**	**1,456**	**1,227**	**(1,359)**	**2,908**
Interest expense	65	—	—	—	1,915(c)	1,980
Income (loss) before taxes	**59**	**1,460**	**1,456**	**1,227**	**(3,274)**	**928**
Income tax (benefit) expense	(14)	—	(10)	(266)	1,068(d)	778
Net income (loss)	**$ 73**	**$ 1,460**	**$ 1,466**	**$ 1,493**	**$ (4,342)**	**$ 150**

(a) Adjustment to eliminate $417 of pre-acquisition intercompany revenues and cost of revenues between NuWave and ProModel.
(b) Adjustment to include pre-acquisition amortization of the acquired intangible assets of $283 for PCI, $637 for Open Solutions, and $439 for ProModel.
(c) Adjustment to (1) include the interest expense of $576 to finance the PCI Acquisition, $583 to finance the Open Solutions Acquisition, and $756 to finance the ProModel Acquisition as if each acquisition had taken place on January 1, 2020, based on the effective interest rate of the credit facility used to finance the acquisitions.
(d) Adjustment for income taxes of $79 expense for NuWave, $278 expense for PCI, $161 expense for Open Solutions, and $550 expense for ProModel, applying a statutory tax rate of 21% as if the acquisitions had taken place on January 1, 2020.

The following table summarizes our Successor 2020 Pro Forma Period statements of operations:

	Successor 2020 (Historical)	NuWave January 1, 2020 – June 18, 2020 (Historical)	PCI Nine months ended September 30, 2020 (Historical)	Open Solutions Nine months ended September 30, 2020 (Historical)	ProModel Nine months ended September 30, 2020 (Historical)	Acquisition Accounting Adjustments	Successor 2020 Pro Forma
Revenues	$ 9,183	$ 10,809	$ 55,093	$ 18,506	$ 12,182	$ (1,241)(a)	$ 104,532
Cost of revenues	6,325	5,436	43,088	10,750	7,326	(1,241)(a)	71,684
Gross margin	**2,858**	**5,373**	**12,005**	**7,756**	**4,856**	**—**	**32,848**
Operating expenses:							
Selling, general and administrative	2,024	3,266	7,183	3,418	1,201	4,792(b)	21,884
Research and development	258	—	77	—	—	—	335
Transaction expenses	1,662	—	—	—	—	8,429(c)	10,091
Operating (loss) income	**(1,086)**	**2,107**	**4,745**	**4,338**	**3,655**	**(13,221)**	**538**
Interest expense (income)	65	—	1	(3)	—	6,578(d)	6,641
(Loss) income before taxes	**(1,151)**	**2,107**	**4,744**	**4,341**	**3,655**	**(19,799)**	**(6,103)**
Income tax (benefit) expense	(296)	(6)	7	51	903	(1,995)(e)	(1,336)
Net (loss) income	**$ (855)**	**$ 2,113**	**$ 4,737**	**$ 4,290**	**$ 2,752**	**$ (17,804)**	**$ (4,767)**

(a) Adjustment to eliminate $1,241 of pre-acquisition intercompany revenues and cost of revenues between NuWave and ProModel.
(b) Adjustment to include pre-acquisition amortization of the acquired intangible assets of $735 for NuWave, $849 for PCI, $1,901 for Open Solutions, and $1,307 for ProModel.
(c) Adjustment for transaction costs related to the acquisition of PCI for $3,484, Open Solutions for $2,432, and ProModel $2,513.
(d) Adjustment to (1) include the interest expense of $861 to finance the NuWave Acquisition, $1,728 to finance the PCI Acquisition, $1,738 to finance the Open Solutions Acquisition, and $2,252 to finance the ProModel Acquisition as if each acquisition had taken place on January 1, 2020, based on the effective interest rate of the credit facility used to finance the acquisitions, and (2) eliminate $1 of pre-acquisition interest expense, including amortization of deferred financing fees, related to the outstanding debt balances for PCI, which were settled by the sellers of PCI with proceeds from the sale.
(e) Adjustment for income taxes of $113 expense for NuWave, $(283) benefit for PCI, $(414) benefit for Open Solutions, and $(1,411) benefit for ProModel, applying a statutory tax rate of 21% as if the acquisitions had taken place on January 1, 2020.

The following table summarizes our interim condensed consolidated statements of operations data:

	Successor				Predecessor		Successor	
	Three months ended September 30, 2021	Three months ended September 30, 2020	Nine months ended September 30, 2021	Period from May 22, 2020 through September 30, 2020	Three months ended September 30, 2020	Nine months ended September 30, 2020	Three months ended September 30, 2020 Q3 Pro Forma	Nine months ended September 30, 2020 Pro Forma
Revenues	$ 40,219	$ 7,802	$ 112,100	$ 9,183	$ 17,899	$ 55,093	$ 35,588	$ 104,532
Cost of revenues	29,421	5,584	81,859	6,325	13,972	43,088	25,209	71,684
Gross margin	**10,798**	**2,218**	**30,241**	**2,858**	**3,927**	**12,005**	**10,379**	**32,848**
Operating expenses:								
Selling, general and administrative	12,038	1,910	32,557	2,024	2,426	7,183	7,246	21,884
Research and development	1,363	184	4,158	258	41	77	225	335
Transaction expenses	—	—	—	1,662	—	—	—	10,091
Operating (loss) income	**(2,603)**	**124**	**(6,474)**	**(1,086)**	**1,460**	**4,745**	**2,908**	**538**
Interest expense	1,870	65	5,579	65	—	1	1,980	6,641
Other income, net	—	—	(1)	—	—	—	—	—
(Loss) income before taxes	**(4,473)**	**59**	**(12,052)**	**(1,151)**	**1,460**	**4,744**	**928**	**(6,103)**
Income tax (benefit) expense	(1,327)	(14)	(3,294)	(296)	—	7	778	(1,336)
Net (loss) income	**$ (3,146)**	**$ 73**	**$ (8,758)**	**$ (855)**	**$ 1,460**	**$ 4,737**	**$ 150**	**$ (4,767)**

Successor 2021 Q3 Period, Successor 2020 Q3 Period, Predecessor 2020 Q3 Period, and Successor 2020 Q3 Pro Forma Period

Revenues

	Successor 2021 Q3	Successor 2020 Q3	Predecessor 2020 Q3	Successor 2020 Q3 Pro Forma
Revenues:				
Cyber & Engineering	$ 19,229	$ —	$ 17,899	$ 17,899
Analytics	20,990	7,802	—	17,689
Total Revenues	**$ 40,219**	**$ 7,802**	**$ 17,899**	**$ 35,588**

Total revenue was $40,219 for the Successor 2021 Q3 Period as compared to $7,802 for the Successor 2020 Q3 Period, $17,899 for the Predecessor 2020 Q3 Period, and $35,588 for the Successor 2020 Q3 Pro Forma Period.

Cyber and Engineering revenue was $19,229 for the Successor 2021 Q3 Period as compared to $17,899 for the Predecessor 2020 Q3 Period and Successor 2020 Q3 Pro Forma Period. Revenue increased approximately $1,650 in the Successor 2021 Q3 Period relative to the Predecessor 2020 Q3 Period as a result of increased volume on existing contracts as well as new contract awards. The increase was partially offset by a decrease in revenue of approximately $320 in the Successor 2021 Q3 Period relative to the Predecessor 2020 Q3 period due to the completion of certain contracts.

Analytics revenue was $20,990 for the Successor 2021 Q3 Period as compared to $7,802 for the Successor 2020 Q3 Period and $17,689 for the Successor 2020 Q3 Pro Forma Period. Analytics revenue increased $13,188 from the Successor 2020 Q3 Period due to the inclusion of revenue from Open Solutions and ProModel. Analytics revenue increased $3,301 from the Successor 2020 Q3 Pro Forma Period. This increase was primarily attributable to new contract awards.

Cost of Revenues

	Successor 2021 Q3	Successor 2020 Q3	Predecessor 2020 Q3	Successor 2020 Q3 Pro Forma
Cost of revenues:				
Cyber & Engineering	$ 15,502	$ —	$ 13,972	$ 13,972
Analytics	13,919	5,584	—	11,237
Total cost of revenues	**$ 29,421**	**$ 5,584**	**$ 13,972**	**$ 25,209**

Total cost of revenues was $29,421 for the Successor 2021 Q3 Period as compared to $5,584 for the Successor 2020 Q3 Period, $13,972 for the Predecessor 2020 Q3 Period, and $25,209 for the Successor 2020 Q3 Pro Forma Period.

Cyber and Engineering cost of revenues as a percentage of revenue was 81% for the Successor 2021 Q3 Period as compared to 78% for the Predecessor 2020 Q3 and Successor 2020 Q3 Pro Forma Periods. The increase in cost of revenues as a percentage of revenue in the Successor 2021 Q3 Period relative to the Predecessor 2020 Q3 and Successor 2020 Q3 Pro Forma Periods was primarily driven by increased subcontractor costs.

Analytics cost of revenues as a percentage of revenue was 66% for the Successor 2021 Q3 Period as compared to 72% and 64% for the Successor 2020 Q3 Period and Successor 2020 Q3 Pro Forma Period, respectively. The increase in cost of revenues as a percentage of revenue for the Successor 2021 Q3 Period relative to the Successor 2020 Q3 Pro Forma Period was primarily due to increased subcontractor costs. The decrease in cost of revenues as a percentage of revenue for the Successor 2021 Q3 Period relative to the Successor 2020 Q3 Period was primarily due to contract mix.

Selling, General and Administrative

Selling, general and administrative expenses as a percentage of revenue for the Successor 2021 Q3 Period was 30% as compared to 24% for the Successor 2020 Q3 Period, 14% for the Predecessor 2020 Q3 Period, and 20% for the Successor 2020 Q3 Pro Forma Period. The increase in selling, general and administrative expenses as a percentage of revenue for the Successor 2021 Q3 Period relative to the Successor 2020 Q3, Predecessor 2020 Q3, and Successor 2020 Q3 Pro Forma Periods was primarily driven by increased payroll, information technology, and employee recruiting expenses incurred to increase personnel in advance of the planned growth of our business in the fourth quarter of 2021, as well as the increased compliance and reporting costs associated with preparing to become a public company. Additionally, the increase for the Successor 2021 Q3 Period includes $1,510 of capital market advisory fees related to preparation for the Business Combination, $1,482 related to the termination of certain legacy employee incentive benefits, $740 of non-recurring integration costs to streamline business functions across the Company and realize synergies from our acquisitions, and $773 of non-recurring commercial start-up costs incurred prior to the commencement of operations of the Company's commercial market solutions.

Research and Development

Research and development expenses were $1,363 for the Successor 2021 Q3 Period as compared to $184 for the Successor 2020 Q3 Period, $41 for the Predecessor 2020 Q3 Period, and $225 for the Successor 2020 Q3 Pro Forma Period. The increase in research and development expenses was driven by increased investment in various research projects aimed at continuing to develop and refine our solutions, including enhancing features and functionality, adding new modules, and improving the application of the latest AI/ML technologies in the solutions we deliver to our customers.

Interest Expense (Income)

Interest expense was $1,870 for the Successor 2021 Q3 Period as compared to $65 for the Successor 2020 Q3 Period, $0 for the Predecessor 2020 Q3 Period, and $1,980 for the Successor 2020 Q3 Pro Forma Period. The interest expense in the Successor 2021 Q3 Period was primarily incurred in connection with the Company's Antares Capital Credit Facility, which was entered into in December 2020. Refer to our *Liquidity and Capital Resources* discussion below for more information.

Income Tax (Benefit) Expense

Income tax benefit was $(1,327) for the Successor 2021 Q3 Period as compared to $(14) benefit for the Successor 2020 Q3 Period and $0 for the Predecessor 2020 Q3 Period.

The following table provides information regarding our income tax (benefit) expense during the periods indicated:

	Successor 2021 Q3	Successor 2020 Q3	Predecessor 2020 Q3
Income tax (benefit) expense	$ (1,327)	$ (14)	$ —
Effective tax rate	29.7%	(23.7)%	0.0%

Upon formation, the Successor was established as a limited liability company and elected to be taxed as a corporation for income tax purposes. Consequently, the Successor is generally subject to federal, state and local corporate income taxes. The effective tax rate for the Successor 2021 Q3 and Successor 2020 Q3 Periods differ from the U.S. federal income tax rate of 21.0% primarily due to state and local corporate income taxes, offset by non-deductible expenses. The Predecessor was established and taxed as a partnership and, therefore, was generally not subject to federal, state and local corporate income taxes.

As of September 30, 2021, the Company determined that it ismore-likely-than-not that substantially all of its deferred tax assets will be realized in the future.

Refer to Note H—Income Taxes of the Notes to interim condensed consolidated financial statements for further discussion.

Successor 2021 Period, Successor 2020 Period, Predecessor 2020 Period, and Successor 2020 Pro Forma Period

Revenues

	Successor 2021	Successor 2020	Predecessor 2020	Successor 2020 Pro Forma
Revenues:				
Cyber & Engineering	$ 58,039	$ —	$ 55,093	$ 55,093
Analytics	54,061	9,183	—	49,439
Total Revenues	**$112,100**	**$ 9,183**	**55,093**	**$ 104,532**

Total revenue was $112,100 for the Successor 2021 Period as compared to $9,183 for the Successor 2020 Period, $55,093 for the Predecessor 2020 Period, and $104,532 for the Successor 2020 Pro Forma Period.

Cyber and Engineering revenue was $58,039 for the Successor 2021 Period as compared to $55,093 for the Predecessor 2020 Period and Successor 2020 Pro Forma Period. Revenue increased approximately $3,350 in the Successor 2021 Period relative to the Predecessor 2020 and Successor 2020 Pro Forma Periods due to increased volume on existing contracts as well as new contract awards. The increase was partially offset by a decrease in revenue of approximately $404 in the Successor 2021 Period relative to the Predecessor 2020 and Successor 2020 Pro Forma Periods due to the completion of certain contracts.

Analytics revenue was $54,061 for the Successor 2021 Period as compared to $9,183 for the Successor 2020 Period and $49,439 for the Successor 2020 Pro Forma Period. Analytics revenue increased $44,878 from the Successor

2020 Period due to the inclusion of revenue from Open Solutions and ProModel, and the full nine months of activity for NuWave. Analytics revenue increased $4,622 from the Successor 2020 Pro Forma Period. This increase was primarily attributable to new contract awards.

Cost of Revenues

	Successor 2021	Successor 2020	Predecessor 2020	Successor 2020 Pro Forma
Cost of revenues:				
Cyber & Engineering	$ 46,642	$ —	$ 43,088	$ 43,088
Analytics	35,217	6,325	—	28,596
Total cost of revenues	**$ 81,859**	**$ 6,325**	**$ 43,088**	**$ 71,684**

Total cost of revenues was $81,859 for the Successor 2021 Period as compared to $6,325 for the Successor 2020 Period, $43,088 for the Predecessor 2020 Period, and $71,684 for the Successor 2020 Pro Forma Period.

Cyber and Engineering cost of revenues as a percentage of revenue was 80% for the Successor 2021 Period as compared to 78% for the Predecessor 2020 and Successor 2020 Pro Forma Periods. The increase in cost of revenues as a percentage of revenue in the Successor 2021 Period relative to the Predecessor 2020 and Successor 2020 Pro Forma Periods was primarily driven by increased subcontractor costs.

Analytics cost of revenues as a percentage of revenue was 65% for the Successor 2021 Period as compared to 69% and 58% for the Successor 2020 Period and Successor 2020 Pro Forma Period, respectively. The increase in cost of revenues as a percentage of revenue for the Successor 2020 Period relative to the Successor 2020 Pro Forma Period was primarily due to increased subcontractor costs. The decrease in cost of revenues as a percentage of revenue for the Successor 2020 Period relative to the Successor 2020 Period was primarily due to contract mix.

Selling, General and Administrative

Selling, general and administrative expenses as a percentage of revenue for the Successor 2021 Period was 29% as compared to 22% for the Successor 2020 Period, 13% for the Predecessor 2020 Period, and 21% for the Successor 2020 Pro Forma Period. The increase in selling, general and administrative expenses as a percentage of revenue for the Successor 2021 Period relative to the Successor 2020, Predecessor 2020, and Successor 2020 Pro Forma Periods was primarily driven by increased payroll, information technology, and employee recruiting expenses incurred to increase personnel in advance of the planned growth of our business in the second half of 2021, as well as the increased compliance and reporting costs associated with becoming a public company. Since January of 2021, we have hired over 40 employees across various corporate functions, to prepare for our transition to a public company, and within business development team to focus on our commercial growth strategy. Additionally, the increase for the Successor 2021 Period includes $3,956 of capital market advisory fees related to preparation for the Business Combination, $1,482 related to the termination of certain legacy employee incentive benefits, $1,245 of non-recurring integration costs to streamline business functions across the Company and realize synergies from our acquisitions, and $773 of non-recurring commercial start-up costs incurred prior to the commencement of operations of the Company's commercial market solutions.

Research and Development

Research and development expenses were $4,158 for the Successor 2021 Period as compared to $258 for the Successor 2020 Period, $77 for the Predecessor 2020 Period, and $335 for the Successor 2020 Pro Forma Period. The increase in research and development expenses was driven by increased investment in various research projects aimed at continuing to develop and refine our solutions, including enhancing features and functionality, adding new modules, and improving the application of the latest AI/ML technologies in the solutions we deliver to our customers.

Transaction Expenses

Transaction expense was $0 for the Successor 2021 Period as compared to $1,662 for the Successor 2020 Period, $0 for the Predecessor 2020 Period, and $10,091 for the Successor 2020 Pro Forma Period. The transaction expense in the Successor 2020 Period is related to the diligence costs and integration costs associated with the purchase of NuWave in 2020. The transaction expense in the Successor 2020 Pro Forma Period is related to the diligence costs and integration costs associated with the purchase of NuWave, PCI, Open Solutions and ProModel in 2020.

Interest Expense (Income)

Interest expense was $5,579 for the Successor 2021 Period as compared to $65 for the Successor 2020 Period, $1 for the Predecessor 2020 Period, and $6,641 for the Successor 2020 Pro Forma Period. The interest expense in the Successor 2021 Period was primarily incurred in connection with the Company's Antares Capital Credit Facility, which was entered into in December 2020. Refer to our *Liquidity and Capital Resources* discussion below for more information.

Income Tax (Benefit) Expense

Income tax benefit was $(3,294) for the Successor 2021 Period as compared to $(296) benefit for the Successor 2020 Period and income tax expense of $7 for the Predecessor 2020 Period.

The following table provides information regarding our income tax (benefit) expense during the periods indicated:

	Successor 2021	Successor 2020	Predecessor 2020
Income tax (benefit) expense	$ (3,294)	$ (296)	$ 7
Effective tax rate	27.3%	25.7%	0.1%

Upon formation, the Successor was established as a limited liability company and elected to be taxed as a corporation for income tax purposes. Consequently, the Successor is generally subject to federal, state and local corporate income taxes. The effective tax rate for the Successor 2021 and Successor 2020 Periods differ from the U.S. federal income tax rate of 21.0% primarily due to state and local corporate income taxes, offset by non-deductible expenses. The Predecessor was established and taxed as a partnership and, therefore, was generally not subject to federal, state and local corporate income taxes. The effective tax rate for Predecessor 2020 Period differs from the U.S. federal income tax rate of 0.0% due to state and local income taxes.

As of September 30, 2021, the Company determined that it ismore-likely-than-not that substantially all of its deferred tax assets will be realized in the future.

Refer to Note H—Income Taxes of the Notes to interim condensed consolidated financial statements for further discussion.

Supplemental Non-GAAP Information

The Company uses Adjusted EBITDA to evaluate its operating performance, generate future operating plans, and make strategic decisions, including those relating to operating expenses and the allocation of internal resources. Adjusted EBITDA is a financial measure not calculated in accordance with GAAP. Adjusted EBITDA is defined as net (loss) income adjusted for interest expense, net, income tax (benefit) expense, depreciation and amortization, acquisition costs, acquisition integration costs, capital market and advisory fees and equity-based compensation. Non-GAAP financial performance measures are used to supplement the financial information presented on a GAAP basis. This non-GAAP financial measure should not be considered in isolation or as a substitute for the relevant GAAP measures and should be read in conjunction with information presented on a GAAP basis. Because not all companies use identical calculations, our presentation of non-GAAP measures may not be comparable to other similarly titled measures of other companies.

Successor 2021 Q3 Period, Successor 2020 Q3 Period, Predecessor 2020 Q3 Period, and Successor 2020 Q3 Pro Forma Period

The following table presents a reconciliation of Adjusted EBITDA to net income (loss), computed in accordance with GAAP:

	Successor 2021 Q3	Successor 2020 Q3	Predecessor 2020 Q3	Successor 2020 Q3 Pro Forma
Net (loss) income	$ (3,146)	$ 73	$ 1,460	$ 150
Interest expense	1,870	65	—	1,980
Income tax (benefit) expense	(1,327)	(14)	—	778
Depreciation and amortization	1,759	330	18	1,902
EBITDA	**(844)**	**454**	**1,478**	**4,810**
Adjustments:				
Capital market advisory fees (i)	1,510	—	—	—
Termination of legacy benefits (ii)	1,482	—	—	—
Non-recurring integration costs (iii)	740	—	—	—
Commercial start-up costs (iv)	773	—	—	—
Management fees (v)	229	150	—	150
Equity-based compensation	30	—	25	303
Adjusted EBITDA	**$ 3,920**	**$ 604**	**$ 1,503**	**$ 5,263**

(i) The Company incurred capital market and advisory fees related to advisors assisting with preparation for the Business Combination.
(ii) The company terminated certain legacy employee incentive benefits with final payments being made in the fourth quarter of 2021.
(iii) Non-recurring internal integration costs related to streamlining business functions across the Company and realized synergies from our acquisitions.
(iv) Non-recurring commercial start-up costs incurred prior to the commencement of operations of the Company's commercial market solutions.
(v) Management and other related consulting fees paid to AE Partners. These fees will no longer be accrued or paid subsequent to the Business Combination.

Successor 2021 Period, Successor 2020 Period, Predecessor 2020 Period, and Successor 2020 Pro Forma Period

The following table presents a reconciliation of Adjusted EBITDA to net income (loss), computed in accordance with GAAP:

	Successor 2021	Successor 2020	Predecessor 2020	Successor 2020 Pro Forma
Net (loss) income	$ (8,758)	$ (855)	$ 4,737	$ (4,767)
Interest expense	5,579	65	1	6,641
Income tax (benefit) expense	(3,294)	(296)	7	(1,336)
Depreciation and amortization	5,432	374	48	5,401
EBITDA	**(1,041)**	**(712)**	**4,793**	**5,939**
Adjustments:				
Capital market advisory fees (i)	3,956	—	—	—
Transaction expenses (ii)	—	1,662	—	10,091
Termination of legacy benefits (iii)	1,482	—	—	—
Non-recurring integration costs (iv)	1,245	—	—	—
Commercial start-up costs (v)	773	—	—	—
Management fees (vi)	683	150	—	150
Equity-based compensation	86	—	74	902
Adjusted EBITDA	**$ 7,184**	**$ 1,100**	**$ 4,867**	**$ 17,082**

(i) The Company incurred capital market and advisory fees related to advisors assisting with preparation for the Business Combination.
(ii) For the Successor 2020 Period, the Company incurred acquisition costs related to the purchase of NuWave. For the Successor 2020 Pro Forma Period, the Company incurred acquisition costs related to the purchase of NuWave, PCI, Open Solutions and ProModel in 2020. Costs include both diligence costs and integration costs after each company was acquired.
(iii) The company has elected to terminate certain legacy employee incentive benefits with final payments being made in the fourth quarter of 2021.
(iv) Non-recurring internal integration costs related to streamlining business functions across the Company and realized synergies from our acquisitions.
(v) Non-recurring commercial start-up costs incurred prior to the commencement of operations of the Company's commercial market solutions.
(vi) Management and other related consulting fees paid to AE Partners. These fees will no longer be accrued or paid subsequent to the Business Combination.

Free Cash Flow

Free cash flow is defined as net cash from operations less capital expenditures. Management believes free cash flow is useful to investors, analysts, and others because it provides a meaningful measure of the company's ability to generate cash and meet its debt obligations.

The following table presents a reconciliation of free cash flow to net cash provided by (used in) operating activities, computed in accordance with GAAP:

	Successor 2021	Successor 2020	Predecessor 2020
Net cash provided by (used in) operating activities	$ 1,222	$ 182	$ 6,822
Capital expenditures	(601)	(57)	(115)
Free cash flow	**$ 621**	**$ 125**	**$ 6,707**
Free cash flow from acquired businesses		9,563	
Operating cash flow from acquired businesses		*9,765*	
Capital expenditures of acquired businesses		*(202)*	
Successor 2020 Pro Forma free cash flow (i)		**$ 9,688**	

(i) The Successor 2020 Pro Forma free cash flow represent free cash flow for the respective nine months ended September 30, 2020, adjusted for estimated free cash flow for NuWave, PCI, Open Solutions, and ProModel as if each of those transactions occurred at the beginning of the period. Adjustments to reflect the estimated free cash flows from acquired businesses includes certain transaction costs (and the associated tax impacts) not already included in the net loss, where applicable. The Successor 2020 Pro Forma free cash flow were not prepared in accordance with GAAP or the pro forma rules of Regulation S-X promulgated by the SEC and should not be considered as an alternative to net cash provided by (used in) operating activities determined in accordance with GAAP. We believe that the inclusion of Successor 2020 Pro Forma free cash flow is appropriate to provide additional information to investors because securities analysts and other investors may use this non-GAAP financial measure to assess our operating performance across periods on a consistent basis. The Successor 2020 Pro Forma free cash flow has limitations as an analytical tool and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP.

Key Performance Indicators

Backlog

We view growth in backlog as a key measure of our business growth. Backlog represents the estimated dollar value of contracts that we have been awarded for which work has not yet been performed, and in certain cases, our estimate of known opportunities for future contract awards on customer programs that we are currently supporting.

The majority of our historical revenue is derived from contracts with the Federal Government and its various agencies. In accordance with the general procurement practices of the Federal Government, most contracts are not fully funded at the time of contract award. As work under the contract progresses, our customers may add incremental funding up the initial contract award amount. We generally do not deliver goods and services to our customers in excess of the appropriated contract funding.

At the time of award, certain contracts may include options for our customers to procure additional goods and services under the contract. Options do not create enforceable rights and obligations until exercised by our customers and thus we only recognize revenue related to options as each option is exercised. Contracts with such provisions may or may not specify the exact scope, nor corresponding price, associated with options; however, these contracts will generally identify the expected period of performance for each option. In cases where we have negotiated the estimated scope and price of an option in the contract with our customer, we use that information to measure our backlog and we refer to this as Priced Unexercised Options. If a contract does not specify the scope, level-of-effort, or price related to options to procure additional goods and services, we estimate the backlog associated with those options based on our discussions with our customer, our current level of support on the customer's program, and the period of performance for each option that was negotiated in the contract. We refer to this as Unpriced Unexercised Options.

Many of the customer programs we support relate to key national security and defense interests. At the end of a contract, our customers may elect to modify our existing contract, in order to extend the period under which we provide additional good and services or may elect to continue to procure additional goods and services from us under a new contract. If our customer notifies us that a program we currently support will be continuing under a new contract, we estimate the backlog associated with that anticipated future contract ("***Anticipated Follow-on Awards***") based on the assumption that (i) we are highly likely to be awarded the contract because we are the incumbent, (ii) the program we support is of critical importance to national security and defense, and (iii) that if the contract was awarded to a different party, the transition would be highly disruptive to the achievement of our customer's objectives. For purposes of estimating backlog related to Anticipated Follow-on Awards, we assume that the goods and services that we will deliver under that future contract will be generally similar in scope and pricing compared to our current contract and that our current level of support on the customer program will persist under the new contract. Potential contract awards with existing customers on completely new programs, or with any new customer that we have not worked with historically, would not be included in Anticipated Follow-on Awards as there is far greater uncertainty as to whether those opportunities will be awarded to us.

We define backlog in these categories to provide the reader with additional context as to the nature of our backlog and so that the reader can understand the varying degrees of risk, uncertainty, and where applicable, management's estimates and judgements used in determining backlog at the end of a period. The categories of backlog are further defined below.

- *Funded Backlog.* Funded backlog represents the contract value of goods and services to be delivered under existing contracts for which funding is appropriated or otherwise authorized less revenue previously recognized on these contracts.
- *Unfunded backlog.* Unfunded backlog represents the contract value, or portion thereof, of goods and services to be delivered under existing contracts for which funding has not been appropriated or otherwise authorized.

- *Priced Unexercised Options:* Priced unexercised contract options represent the value of goods and services to be delivered under existing contracts if our customer elects to exercise all of the options available in the contract. For priced unexercised options, we measure backlog based on the corresponding contract values assigned to the options as negotiated in our contract with our customer.
- *Unpriced Unexercised Options:* Unpriced unexercised contract options represent the value of goods and services to be delivered under existing contracts if our customer elects to exercise all of the options available in the contract. For unpriced unexercised options, we estimate backlog generally under the assumption that our current level of support on the contract will persist for each option period.
- *Anticipated Follow-on Awards:* Anticipated Follow-on Awards represents our estimate of the value of goods and services to be delivered under a contract that has not yet been awarded to us, but where we believe we are highly likely to be awarded the contract because we are the incumbent on an ongoing customer program, the program we support is of critical importance to national security, and that if the contract was awarded to a different party, the transition would be highly disruptive to the achievement of our customer's objectives. We estimate backlog related to Anticipated Follow-on Awards based on the assumption that the goods and services that we will deliver under the anticipated future contract will be generally similar in scope and pricing compared to our current contract and that our current level of support on that program will persist under the new contract.

The following table summarizes certain backlog information:

	Successor As of September 30, 2021	Successor As of December 31, 2020
Funded	$ 103,605	$ 63,048
Unfunded	54,545	45,795
Priced, unexercised options	136,669	57,345
Unpriced, unexercised options	148,072	175,509
Anticipated follow-on awards	42,582	66,864
Total backlog	**$ 485,473**	**$ 408,561**

Liquidity and Capital Resources

Our primary sources of liquidity are cash flows provided by our operations and access to existing credit facilities. Our primary short-term cash requirements are to fund working capital, operating lease obligations, and short-term debt, including current maturities of long-term debt. Working capital requirements can vary significantly from period to period, particularly as a result of the timing of receipts and disbursements related to long-term contracts.

Our medium-term to long-term cash requirements are to service and repay debt and to invest in facilities, equipment, technologies, and research and development for growth initiatives.

Our ability to fund our cash needs will depend, in part, on our ability to generate cash in the future, which depends on our future financial results. Our future results are subject to general economic, financial, competitive, legislative and regulatory factors that may be outside of our control. Our future access to, and the availability of credit on acceptable terms and conditions, is impacted by many factors, including capital market liquidity and overall economic conditions.

We believe that our cash from operating activities generated from continuing operations during the year, together with available borrowings under our existing credit facilities, will be adequate for the next 12 months to meet our anticipated uses of cash flow, including working capital, operating lease obligations, capital expenditures and debt service costs. While we intend to reduce debt over time using cash provided by operations, we may also attempt to meet long-term debt obligations, if necessary, by obtaining capital from a variety of additional sources or by refinancing existing obligations. These sources include public or private capital markets, bank financings, proceeds from dispositions or other third-party sources.

As of September 30, 2021 (Successor), our available liquidity totaled $24,276, which comprised $10,776 of available cash and cash equivalents and $13,500 in available borrowings from our existing credit facilities. As of December 31, 2020 (Successor), our available liquidity totaled $24,704, which comprised $9,704 of available cash and cash equivalents and $15,000 in available borrowings from our existing credit facilities. The following table summarizes our existing credit facilities:

	Successor	
	September 30, 2021	December 31, 2020
Term Loan	$ 109,175	$ 110,000
Revolver	1,500	—
Total debt	110,675	110,000
Less: unamortized discounts and issuance costs	2,628	3,006
Total debt, net	108,047	106,994
Less: current portion	2,600	1,100
Long-term debt, net	**$ 105,447**	**$ 105,894**

Antares Capital Credit Facility

On December 21, 2020, the Company entered into the Antares Capital Credit Agreement, which includes the following:

(i) $110 million term loan (the "***Antares Capital Term Loan***") that matures on December 21, 2026. Proceeds from the Antares Capital Term Loan were used to finance the acquisition of ProModel, pay acquisition-related costs, fund working capital needs and other general corporate purposes;

(ii) $15 million revolving credit facility (the "***Antares Capital Revolving Credit Facility***") that matures on December 21, 2026. Proceeds from the revolving credit facility will be used to fund working capital needs, and other general corporate purposes. The Company has drawn $1,500 on the revolving credit facility as of September 30, 2021. As of December 31, 2020, the balance of the revolving credit facility of $15 million was undrawn and available to the Company.

The Antares Capital Credit Agreement is secured by a security interest in all rights, title or interest in or to certain assets and properties owned by the Company and the guarantors included in the Antares Capital Credit Agreement. The Antares Capital Credit Agreement requires the Company to meet customary affirmative and negative covenants, default provisions, representations and warranties and other terms and conditions. The Company is required to make mandatory prepayments of the outstanding principal and accrued interest under the Antares Capital Credit Agreement (i) upon the occurrence of certain events and (ii) to the extent a specified net leverage ratio is exceeded as evaluated on any test period ending date. The test period ending dates are March 31, June 30, September 30 and December 31 each year, which started on March 31, 2021 and will continue through the maturity of the agreement.

Upon consummation of the Merger, $200,000 of convertible note financing was issued bearing interest at a rate of 6.0% per annum, payable semi-annually, and convertible into shares of common stock at an initial Conversion Price of $11.50. The Conversion Price is subject to adjustments, including but not limited to, a Conversion Rate Reset 180 days after December 7, 2021 should certain daily volume-weighted average price thresholds be met. The convertible note financing matures five years after issuance.

We do not have any off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not combined in the financial statements. Additionally, we do not have an interest in, or relationships with, any special purpose entities.

Cash Flows

The following table summarizes certain information from our interim condensed consolidated statements of cash flows:

	Successor 2021	Successor 2020	Predecessor 2020
Net cash provided by operating activities	$ 1,222	$ 182	$ 6,822
Net cash used in investing activities	(825)	(26,900)	(115)
Net cash provided by (used in) financing activities	675	30,517	(4,011)
Net increase in cash and cash equivalents	1,072	3,799	2,696
Cash and cash equivalents at beginning of period	9,704	—	1,664
Cash and cash equivalents at end of period	**$ 10,776**	**$ 3,799**	**$ 4,340**

Operating activities

For the Successor 2021 Period, net cash provided by operating activities was $1,222. Net loss before deducting depreciation, amortization and other non-cash items generated a cash outflow of $6,152 while favorable changes in net working capital of $7,374 contributed to operating cash flows during this period. The favorable change in net working capital was largely driven by an increase in accounts payable of $6,737, an increase in accrued liabilities of $4,733, and an increase in contract liabilities of $1,595. These increases were partially offset by increases in prepaid expenses and other current assets of $5,829 and an increase in contact assets of $288.

For the Successor 2020 Period, net cash provided by operating activities was $182. Net loss before deducting depreciation, amortization and other non-cash items generated a cash outflow of $853 while favorable changes in net working capital of $1,035 contributed to operating cash flows during this period. The favorable change in net working capital was largely driven by an increase in accounts payable of $1,427, a decrease in contract assets of $526, and an increase in accrued liabilities of $321. These increases were partially offset by an increase in accounts receivable of $1,410.

For the Predecessor 2020 Period, net cash provided by operating activities was $6,822. Net income before deducting depreciation, amortization and other non-cash items generated a cash inflow of $4,854 and was further impacted by a favorable change in net working capital of $1,968 during this period. The favorable change in net working capital was largely driven by an increase for accrued liabilities of $1,313 and an increase in accounts payable of $840. These increases were partially offset by an increase in contract assets of $269.

Investing activities

For the Successor 2021 Period, net cash used in investing activities was $825, consisting of the purchase of property and equipment of $601 and the settlement of escrow accounts related to the acquisition of businesses of $224.

For the Successor 2020 Period, net cash used in investing activities was $26,900, consisting of acquisition of businesses of $26,843 and the purchase of property and equipment of $57.

For the Predecessor 2020 Period, net cash used in investing activities was $115, consisting of the purchase of property and equipment.

Financing activities

For the Successor 2021 Period, net cash provided by financing activities was $675, consisting of proceeds from the Antares Capital Revolver of $1,500 and repayments of the Antares Credit Capital Facility of $825.

For the Successor 2020 Period, net cash provided by financing activities was $30,517, consisting of cash inflows from Parent's contribution of $15,298 and proceeds from short term debt of $15,219.

For the Predecessor 2020 Period, net cash used in financing activities was $4,011, consisting of distributions to members.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations and commitments as of December 31, 2020.

	Total	Less than 1 Year	1 – 3 Years	3 – 5 Years	More than 5 Years
Operating lease commitments	$ 4,580	$ 1,449	$1,713	$ 987	$ 431
Term loan	110,000	1,100	2,200	2,200	104,500
Total	**$114,580**	**$ 2,549**	**$3,913**	**$3,187**	**$104,931**

The contractual obligations and commitments in the table above are associated with agreements that are enforceable and legally binding. The Company has drawn $1,500 on the revolving credit facility during September of 2021. There has been no other material changes in our contractual obligations and commitments other than in the ordinary course of business since our year ended December 31, 2020.

Critical Accounting Policies and Estimates

Our significant accounting policies are summarized in Note B in our audited combined financial statements for the year ended December 31, 2020. For the critical accounting estimates used in preparing our interim condensed consolidated financial statements, we make assumptions and judgments that can have a significant impact on revenue, cost and expenses, and other expense (income), net, in our interim condensed consolidated statements of operations and income, as well as, on the value of certain assets and liabilities on our interim condensed consolidated balance sheets. We base our assumptions, judgments and estimates on historical experience and various other factors that we believe are reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions or conditions.

In accordance with the Company's policies, we regularly evaluate estimates, assumptions, and judgments; our estimates, assumptions, and judgments are based on historical experience and on factors we believe are reasonable under the circumstances. The results involve judgments about the carrying values of assets and liabilities not readily apparent from other sources. If our assumptions or conditions change, the actual results the Company reports may differ from these estimates. We believe the following critical accounting policies affect the more significant estimates, assumptions, and judgments we use to prepare our interim condensed consolidated financial statements.

Emerging Growth Company

Section 102(b)(1) of the Jumpstart Our Business Startups Act of 2012 (the "***JOBS Act***") exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that an emerging growth company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such an election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period, which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

This may make comparison of the Company's financial statements with another public company that is neither an emerging growth company nor an emerging growth company that has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Business Combinations, Goodwill and Intangible Assets

Under the acquisition method of accounting, the Company recognizes tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values at acquisition date. The accounting for business combinations requires us to make significant estimates and assumptions, especially with respect to goodwill and intangible assets.

Goodwill

The Company allocates the fair value of purchase consideration in a business combination to tangible assets acquired, liabilities assumed, and intangible assets acquired based on their estimated fair values. The excess of the fair value of purchase consideration over the fair values of these identifiable assets and liabilities is allocated to goodwill. The allocation of the purchase consideration requires management to make significant estimates and assumptions, especially with respect to intangible assets. These estimates can include, but are not limited to, future expected cash flows from acquired customers and acquired technology from a market participant perspective, useful lives and discount rates. Management's estimates of fair value are based upon assumptions believed to be reasonable but which are inherently uncertain and unpredictable, and, as a result, actual results may differ from estimates. During the measurement period, which is up to one year from the acquisition date, we may record adjustments to the assets acquired and liabilities assumed with the corresponding offset to goodwill. Upon the conclusion of the measurement period, any subsequent adjustments are recorded to earnings.

We assess goodwill for impairment at least annually, as of the October 1, and whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. For the purposes of impairment testing, we have determined that we have two reporting units. Our test of goodwill impairment starts with a qualitative assessment to determine whether it is necessary to perform a quantitative goodwill impairment test. If qualitative factors indicate that the fair value of the reporting unit is more likely than not less than its carrying amount, then a quantitative goodwill impairment test is performed. We performed a qualitative assessment at the end of 2020 and based on our qualitative assessment, a quantitative assessment was not required, and no goodwill impairment was recognized for the year ended December 31, 2020.

The discounted cash flow approach requires management to make certain assumptions based upon information available at the time the valuations are performed. Actual results could differ from these assumptions. We believe the assumptions used are reflective of what a market participant would have used in calculating fair value considering current economic conditions.

Additional risks for goodwill across all reporting units include, but are not limited to:

- Our failure to reach our internal forecasts could impact our ability to achieve our forecasted levels of cash flows and reduce the estimated discounted value of our reporting units;
- adverse technological events that could impact our performance;
- volatility in equity and debt markets resulting in higher discount rates; and
- significant adverse changes in the regulatory environment or markets in which we operate.

It is not possible at this time to determine if an impairment charge would result from these factors. We will continue to monitor our goodwill for potential impairment indicators in future periods.

Intangible assets

Identifiable finite-lived intangible assets, including technology and customer relationships, have been acquired through the Company's various business combinations. The fair value of the acquired technology and customer relationships has been estimated using various underlying judgments, assumptions, and estimates. Potential changes

in the underlying judgments, assumptions, and estimates used in our valuations of acquired intangible assets could result in different estimates of the future fair values. A potential increase in discount rates, a reduction in projected cash flows or a combination of the two could lead to a reduction in estimated fair values, which may result in impairment charges that could materially affect our financial statements in any given year. The approaches used for determining the fair value of finite-lived technology and customer relationships acquired depends on the circumstances; the Company has used the income approach (within the income approach, various methods are available such as multi-period excess earnings, with and without, incremental and relief from royalty methods). Within each income approach method, a tax amortization benefit is included, which represents the tax benefit resulting from the amortization of that intangible asset depending on the tax jurisdiction where the intangible asset is held.

Finite-lived intangible assets are reported at cost, net of accumulated amortization, and are amortized on a straight-line basis over their estimated useful lives. Significant judgment is also required in assigning the respective useful lives of intangible assets. Our assessment of intangible assets that have a finite life is based on a number of factors including the competitive environment, market share, brand history, underlying product life cycles, attrition rate, operating plans, cash flows (i.e., economic life based on the discounted and undiscounted cash flows), future usage of intangible assets and the macroeconomic environment.

We evaluate the recoverability of our intangible assets for possible impairment whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amounts to the future undiscounted cash flows the intangible assets are expected to generate. If such review indicates that the carrying amount of our intangible assets is not recoverable, the carrying amount of such assets is reduced to fair value.

Revenue Recognition

The recognition and measurement of revenue requires the use of judgments and estimates. Specifically, judgment is used in interpreting complex arrangements with nonstandard terms and conditions and determining when all criteria for revenue recognition have been met. The Company's revenues are derived from the sale of artificial intelligence, machine learning, and technical consulting solutions and services.

The Company engages in long-term contracts for production and service activities and generally recognizes revenue over time (versus point in time recognition) due to the fact that the Company's ongoing performance creates an asset with no alternative use to the Company and the Company has an enforceable right to payment for performance completed to date. The Company considers the nature of these contracts and the types of products and services provided when determining the proper accounting for a particular contract. The Company performs under various types of contracts, which generally include firm-fixed-price ("***FFP***") and time-and-materials ("***T&M***") contracts.

The Company assesses each contract at its inception to determine whether it should be combined with other contracts. When making this determination, the Company considers factors such as whether two or more contracts were negotiated and executed at or near the same time or were negotiated with an overall profit objective. If combined, the Company treats the combined contracts as a single contract for revenue recognition purposes.

The Company evaluates the products or services promised in each contract at inception to determine whether the contract should be accounted for as having one or more performance obligations. Significant judgment is required in determining performance obligations, and these decisions could change the amount of revenue and profit recorded in a given period.

The Company determines the transaction price for each contract based on the consideration the Company expects to receive for the products or services being provided under the contract. For contracts where a portion of the price may vary, the Company estimates variable consideration at the most likely amount, which is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur. The Company analyzes the risk of a significant revenue reversal and if necessary constrains the amount of variable consideration recognized in order to mitigate this risk.

At the inception of a contract, the Company estimates the transaction price based on its current rights and does not contemplate future modifications (including unexercised options) or follow-on contracts until they become legally enforceable. Contracts are often subsequently modified to include changes in specifications, requirements or price, which may create new or change existing enforceable rights and obligations. Depending on the nature of the modification, the Company considers whether to account for the modification as an adjustment to the existing contract or as a separate contract. Our contracts with the U.S. Government often contain options to renew existing contracts for an additional period of time (generally a year at a time) under the same terms and conditions as the original contract, and generally do not provide the customer any material rights under the contract. Therefore, such modifications are accounted for as if they were part of the existing contract and recognized as a cumulative adjustment to revenue. We account for renewal options as separate contracts when they include distinct goods or services at standalone selling prices.

For contracts with multiple performance obligations, the Company allocates the transaction price to each performance obligation based on the estimated standalone selling price of the product or service underlying each performance obligation. In circumstances where the standalone selling price is not directly observable, we estimate the standalone selling price using the expected cost-plus margin approach.

The Company recognizes revenue as performance obligations are satisfied and the customer obtains control of the products and services. In determining when performance obligations are satisfied, the Company considers factors such as contract terms, payment terms and whether there is an alternative future use of the product or service. Substantially all of the Company's revenue is recognized over time as the Company performs under the contract because control of the work in process transfers continuously to the customer.

For performance obligations to deliver products with continuous transfer of control to the customer, revenue is recognized based on the extent of progress towards completion of the performance obligation, generally using the percentage-of-completion cost-to-cost measure of progress for our contracts because it best depicts the transfer of control to the customer as we incur costs on our contracts. Under the percentage-of-completion cost-to-cost measure of progress, the extent of progress towards completion is measured based on the ratio of costs incurred to date to the total estimated costs to complete the performance obligation(s).

Our cost estimation process is based on the professional knowledge of our professionals and draws on their significant experience and judgment. Accounting for long-term contracts requires significant judgment relative to estimating total contract revenues and costs, in particular, assumptions relative to the amount of time to complete the contract, including the assessment of the nature and complexity of the work to be performed. The Company's estimates are based upon the professional knowledge and experience of its personnel, who review each long-term contract to assess the contract's schedule, performance, technical matters and estimated cost at completion. Changes in estimates are applied retrospectively for contracts executed after the date of acquisition and are applied via the Accounting Standards Codification ("***ASC***") 805, *Business Combinations* ("***ASC 805***") reset method described above for contracts existing at the date of acquisition. When adjustments in estimated contract costs are identified, such revisions may result in current period adjustments to earnings applicable to performance in prior periods.

Impairment of Long-Lived Assets

The Company evaluates the recoverability of the carrying value of long-lived assets whenever events or circumstances indicate the carrying amount may not be recoverable. If a long-lived asset is tested for recoverability and the undiscounted estimated future cash flows to which the asset relates is less than the carrying amount of the asset, the asset cost is adjusted to fair value and an impairment loss is recognized as the amount by which the carrying amount of a long-lived asset exceeds its fair value. No such impairment charges were recognized during the periods presented.

Using a discounted cash flow method involves significant judgment and requires the Company to make significant estimates and assumptions, including long-term projections of cash flows, market conditions and appropriate discount rates. Judgments are based on historical experience, current market trends, consultations with external valuation specialists and other information. If facts and circumstances change, the use of different estimates and assumptions could result in a materially different outcome. The Company generally develops these forecasts based on recent sales data, projections based on existing backlog, acquisitions, and estimated future growth of the market in which it operates.

Income Taxes

Significant judgments are required in order to determine the realizability of tax assets. In assessing the need for a valuation allowance, we evaluate all significant available positive and negative evidence, including historical operating results, estimates of future sources of taxable income, carry-forward periods available, the existence of prudent and feasible tax planning strategies and other relevant factors. The Company recognizes a tax benefit only if it is more likely than not the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement. The Company recognizes interest and penalties related to uncertain tax positions in its provision (benefit) for income taxes.

Equity-Based Compensation

Successor

Class A Units granted to board of directors

Certain members of the board of directors of the Company have elected to receive their compensation for their services as a board member in stock, Class A units of the Parent Company. The number of units granted or to be granted by the Parent Company are determined by dividing the compensation payable for the quarter by the fair value of the Class A units at the end of each respective quarter. The total value of the Class A units granted to such board of directors for the three and nine-month periods ended September 30, 2021 is $30 and $86, respectively, and is reflected in the selling, general and administrative expenses within the condensed consolidated statements of operations.

Class B Unit Incentive Plan

In February 2021, the Company's Parent adopted a written compensatory benefit plan (the "***Class B Unit Incentive Plan***") to provide incentives to present and future directors, managers, officers, employees, consultants, advisors, and/or other service providers of the Company's Parent or its Subsidiaries in the form of the Parent's Class B Units ("***Incentive Units***"). Incentive Units have a participation threshold of $1.00 and are divided into three tranches ("***Tranche I***," "***Tranche II***," and "***Tranche III***"). Tranche I Incentive Units are subject to performance-based, service-based, and market-based conditions. The grant date fair value for the Incentive Units was $5.19.

On July 29, 2021, the Company's Parent amended the Class B Unit Incentive Plan so that the Tranche I and the Tranche III Incentive Units will immediately become fully vested, subject to continued employment or provision of services, upon the closing of the transaction stipulated in the Merger Agreement. The Company's Parent also amended the Class B Unit Incentive Plan so that the Tranche II Incentive Units will vest on any liquidation event, as defined in the Class B Unit Incentive Plan, rather than only upon the occurrence of an Exit Sale, subject to the market-based condition stipulated in the Class B Unit Incentive Plan prior to its amendment.

Equity-based compensation for awards with performance conditions is based on the probable outcome of the related performance condition. The performance conditions required to vest per the amended Incentive Plan remain improbable until they occur due to the unpredictability of the events required to meet the vesting conditions. As such events are not considered probable until they occur, recognition of equity-based compensation for the Incentive Units is deferred until the vesting conditions are met. Once the event occurs, unrecognized compensation cost associated with the performance-vesting Incentive Units (based on their modification date fair value) will be recognized based on the portion of the requisite service period that has been rendered.

The modification date fair value of the Incentive Units was $9.06 per unit. No equity-based compensation was recognized for the Successor 2021 Q3 Period. As of September 30, 2021 (Successor), there was approximately $85.2 million of unrecognized compensation costs related to Incentive Units.

Predecessor

On June 11, 2019, the Predecessor granted 100 Class B Incentive Units to a Member in consideration for the Member's services to the Predecessor, subject to terms and conditions stated in the profits interest grant agreement. The Class B Incentive Units granted upon full vesting represented, 10% percent interest in the Predecessor. The Class B Incentive Units were non-voting profits interest which were subject to vesting and restrictions. According to the vesting schedule, 10 Units vested on June 11, 2019 and 90 Units would vest on January 1, 2024. The Class B Incentive Units shall have the same voting rights as the Class A Members beginning on January 1, 2024.

The Class B Incentive Units granted only had a service condition, and equity-based compensation for the Class B Incentive Units was recognized on a straight-line basis over the requisite service period. The fair value of the awards for which equity-based compensation cost was recognized was estimated using the Black-Scholes options pricing model, which uses assumptions such as a risk-free interest rates, discount rates and volatility rates. The historical volatility used in the determination of the fair value of the Class B Incentive Units was based on analysis of the historical volatility of guideline public companies and factors specific to the Predecessor.

Recent Accounting Pronouncements

See Note B—Summary of Significant Accounting Policies of the interim condensed consolidated financial statements for a discussion of recently issued accounting pronouncements.

Properties

The facilities of the Company are described in the Definitive Proxy Statement in the section titled "*Information About New BigBear*" and is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding the beneficial ownership of shares of Common Stock of the Company upon the Closing of the Business Combination by:

- each person known by GigCapital4 to be the beneficial owner of more than 5% of the common stock of the Company upon the Closing of the Business Combination;
- each of the Company's officers and directors; and
- all officers and directors of the Company, as a group upon the Closing of the Business Combination.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she, or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

Unless otherwise indicated, the Company believes that all persons named in the table have sole voting and investment power with respect to all shares of common stock of the Company beneficially owned by them.

Name and Address of Beneficial Owner	Number of Shares	% of Class (1)
GigAcquisitions4, LLC (2),(5),(6),(7)	9,552,000	7.0%
AE Industrial Partners (3)	113,250,000	83.5%
Sean Battle (4)		
Pamela Braden (4)		
Dr. Reginald Brothers (4)		
Peter Cannito (4)		
Dr. Raluca Dinu (2),(6)	9,552,000	7.0%
Jeffry R. Dyer (4)		
Brian Frutchey (4)		
Paul Fulchino (4)		
Samuel J. Gordy (4)		
Jeffrey Hart (4)		
Dorothy D. Hayes (2)	12,000	*
Raanan I. Horowitz (2)		
Dr. Avi S. Katz (2),(5)	9,552,000	7.0%
Joshua Kinley (4)		
Kirk Konert (4)		
All directors and officers as a group (15 individuals)	9,564,000	

* Less than one percent.

(1) Based on 135,566,227 shares of Common Stock outstanding as of December 7, 2021.

(2) The business address for this person is 1731 Embarcadero Road, Suite 200, Palo Alto California.

(3) BBAI Ultimate Holdings, LLC and AE BBAI Aggregator, LP are controlled by AE Industrial Partners Fund II, LP, AE Industrial Partners Fund II-A, LP and AE Industrial Partners Fund II-B, LP (collectively, the "**AE *Partners Funds*")**. The general partner of the BBAI Ultimate Holdings, LLC is AE Industrial Partners Fund II GP, LP, which in turn is managed by its general partner AeroEquity GP, LLC. AE BBRED GP, LLC is the general partner of AE BBAI Aggregator, LP which the AE Partners Funds hold all interests in. AeroEquity GP, LLC is controlled by its managing members, Michael Greene and David Rowe. Messrs. Greene and Rowe make all voting and investment decisions with respect to the securities held by AE Industrial Partners. Each of the entities and individuals named above disclaims beneficial ownership of the New BigBear securities held of record by BBAI Ultimate Holdings, LLC, except to the extent of its pecuniary interest therein. The business address of each of the foregoing entities and persons is 2500 N. Military Trail, Suite 470, Boca Raton, Florida 33431.

(4) The business address for this person is 6811 Benjamin Franklin Drive, Suite 200, Columbia, Maryland 21046.

(5) Represents shares held by GigAcqusitions4, LLC. The shares held by GigAcquisitions4, LLC are beneficially owned by Dr. Avi Katz, who has sole voting and dispositive power over the shares held by GigAcquisitions4, LLC.

(6) Represents shares held by GigAcquisitions4, LLC. Dr. Dinu is a member of GigFounders, LLC, which has a financial and voting interest in GigAcquisitions4, LLC as a member of GigAcquisitions4, LLC and that entitles this partnership to participate in any economic return of GigAcquisitions4, LLC in accordance with terms negotiated with the other holders of financial and voting interests in GigAcquisitions4, LLC. Accordingly, the shares of Common Stock held by GigAcquisitions4, LLC, subject to the interests of such other holders, are indirectly and beneficially owned by Dr. Dinu by virtue of her financial interest in GigFounders, LLC.

(7) Does not include 283,333 shares of Common Stock underlying warrants that are not exercisable within 60 days.

Directors and Executive Officers

The Company's directors and executive officers after the Closing are described in the Definitive Proxy Statement in the section titled "*Management After the Business Combination*" and is incorporated herein by reference.

Executive Compensation

The executive compensation of the Company's executive officers and directors is described in the Definitive Proxy Statement in the section titled "*Management After the Business Combination—Post-Combination Company Executive Compensation*" and is incorporated herein by reference.

Certain Relationships and Related Transactions, and Director Independence

The certain relationships and related party transactions of the Company are described in the Definitive Proxy Statement in the section titled "*Certain Relationships and Related Transactions*" and are incorporated herein by reference. Director independence is described in the Definitive Proxy Statement in the section titled "*Management After The Business Combination*" and that information is incorporated herein by reference.

Legal Proceedings

The Company's legal proceedings are described in the Definitive Proxy Statement in the sections titled "*Information about the Company Prior to the Business Combination"* and *"Information About New BigBear"* and are incorporated herein by reference.

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

The Company's common stock and warrants began trading on the NYSE under the symbols "BBAI" and "BBAI.WS," on December 8, 2021, subject to ongoing review of the Company's satisfaction of all listing criteria post-Business Combination. The Company has not paid any cash dividends on shares of its common stock to date and does not intend to pay cash dividends. The payment of cash dividends in the future will be dependent upon the Company's revenues and earnings, if any, capital requirements and general financial condition. The payment of any dividends will be within the discretion of the Company's board of directors. It is the present intention of the Company's board of directors to retain all earnings, if any, for use in the Company's business operations and, accordingly, the Company's board does not anticipate declaring any dividends in the foreseeable future.

Information regarding GigCapital4's common stock, units and warrants and related stockholder matters are described in the Definitive Proxy Statement in the section titled "*Description of Securities*" and such information is incorporated herein by reference.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth under Item 3.02 of this Current Report on Form 8-K concerning the sale and issuance of unsecured convertible notes, warrants to purchase common stock and shares of common stock.

Description of Registrant's Securities

The description of the Company's securities is contained in the Definitive Proxy Statement in the section titled "*Description of Securities*" and is incorporated herein by reference.

Indemnification of Directors and Officers

Reference is made to the disclosure set forth under Item 5.02 of this Current Report on Form 8-K concerning indemnification agreements entered into with each of the Company's directors and executive officers.

Financial Statements and Supplementary Data

Reference is made to the disclosure set forth under Item 9.01 of this Current Report on Form 8-K concerning the financial statements and supplementary data of BigBear and GigCapital4.

Financial Statements and Exhibits

Reference is made to the disclosure set forth under Item 9.01 of this Report concerning the financial information of BigBear and GigCapital4.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

In connection with the Closing, the Company issued $200,000,000 of Convertible Notes to the Note Investors pursuant to the terms of the Note Subscription Agreements, the Indenture and the Global Note. The disclosure contained in Item 1.01 of this Report is also incorporated herein by reference.

This summary is qualified in its entirety by reference to (i) the Amended and Restated Convertible Note Subscription Agreements, the form of which is included as Exhibit 10.1 to this Current Report and is incorporated herein by reference, (ii) the Indenture, which is included as Exhibit 10.2 to this Current Report and is incorporated herein by reference, and (iii) the Credit Agreement, which is included as Exhibit 10.17 to this Current Report and is incorporated herein by reference.

Item 3.02. Unregistered Securities

The Convertible Notes issued in connection with the Closing of the Business Combination are convertible into up to 23,058,494 shares of Company Common Stock. The disclosure contained in Item 1.01 of this Report is also incorporated herein by reference.

This summary is qualified in its entirety by reference to (i) the Convertible Notes Subscription Agreements, the form of which is included as Exhibit 10.1 to this Current Report and is incorporated herein by reference, and the (ii) the Indenture, including the form of Global Note attached as Exhibit A thereto, which is included as Exhibit 10.2 to this Current Report and is incorporated herein by reference.

As previously disclosed in the Current Report on Form 8-K filed on November 30, 2021, on November 29, 2021, GigCapital4 and an affiliate of BBAI Holdings, AE BBAI Aggregator, LP, a Delaware limited partnership (the "***AE Subscriber***") entered into a Backstop Subscription Agreement (the "***Backstop Subscription Agreement***") whereby the AE Subscriber has committed to purchase at the Closing up to 7,500,000 shares of Company Common Stock at a per share purchase price of $10.00, for a maximum total amount of $75,000,000 (the "***Original Subscription Amount***"). As previously disclosed in the Current Report on Form 8-K filed on December 7, 2021, on December 6, 2021, GigCapital4 and the AE Subscriber entered into the First Amendment to Backstop Subscription Agreement whereby they agreed to amend the Backstop Subscription Agreement to provide that the AE Subscriber committed to purchase 8,000,000 shares of Company Common Stock for an aggregate purchase price of $80,000,000. On December 7, 2021, the AE Subscriber purchased, and the Company issued to the AE Subscriber, 8,000,000 shares of Company Common Stock.

In addition, as previously disclosed in the Current Report on Form 8-K filed on December 7, 2021, on December 6, 2021, GigCapital4 entered into payment agreements with each of Oppenheimer & Co. Inc. ("***Oppenheimer***"), Nomura Securities International, Inc. ("***Nomura***") and BMO Capital Markets Corp. ("***BMO***"). In addition, on December 6, 2021, GigCapital4, BBAI Holdings and William Blair & Company, L.L.C. ("***William Blair***") entered into a payment agreement. Collectively, these payment agreements are referred to as the "***Payment Agreements***."

The Payment Agreements provide that the Company, at the Closing, will pay cash and issue shares of Company Common Stock to each of Oppenheimer, Nomura, BMO and William Blair, as (i) consideration for the services (a) rendered by Oppenheimer, BMO and William Blair as placement agents to GigCapital4, (b) rendered by BMO as financial advisor to GigCapital4, and (c) rendered by William Blair as financial advisor to BBAI Holdings, and (ii) settlement for the deferred underwriting commissions due and owing at the Closing by the Company to Oppenheimer and Nomura. The amount of cash and shares of Company Common Stock are as follows:

	Cash	Number of Shares of Stock
Oppenheimer	$8,338,560.00	833,856
BMO	$2,480,000.00	248,000
Nomura	$1,004,640.00	100,464
William Blair	$3,130,000.00	313,000

On December 7, 2021, the Company issued the above number of shares of Company Common Stock to theabove-named parties to the Payment Agreements.

Item 3.03. Material Modification to Rights of Security Holders

Second Amended and Restated Certificate of Incorporation

Immediately prior to the Closing of the Business Combination, GigCapital4's amended and restated certificate of incorporation, dated February 8, 2021 (the "***Charter***"), was further amended and restated to:

(a) change the post-combination company's name to BigBear.ai Holdings, Inc.;

(b) classify and divide the Board into three classes, each with terms expiring at different times;

(c) delete the second sentence in Article II and delete the prior provisions under, and references to, Article IX (Business Combination Requirements; Existence) of the prior amended and restated certificate of incorporation;

(d) amend certain terms in Article X (Corporate Opportunities) with respect tocertain non-employee directors of the combined company pursuing outside business activities and corporate opportunities; and

(e) amend the exclusive forum provision in the prior amended and restated certificate of incorporation to conform to recent SEC guidance regarding the exclusion of certain potential claims from exclusive forum charter provisions.

As previously reported in the Current Report on Form8-K filed with the SEC on December 3, 2021, the GigCapital4 stockholders approved this amendment and restatement of the Charter at the Special Meeting. This summary is qualified in its entirety by reference to the text of the second amended and restated certificate of incorporation, which is included as Exhibit 3.1 hereto and incorporated herein by reference.

Amended and Restated Bylaws

In connection with the Closing of the Business Combination, the Company's bylaws were amended and restated to reflect the Company's name change in connection with the Business Combination and to provide for the go-forward governance of the Company in a manner consistent with the Investor Rights Agreement, the Company's Certificate of Incorporation and applicable law. This summary is qualified in its entirety by reference to the text of the amended and restated bylaws of the Company, which is included as Exhibit 3.2 hereto and incorporated herein by reference.

Item 4.01. Changes in Registrant's Certifying Accountants.

BPM LLP ("***BPM***"), GigCapital4's independent registered public accounting firm prior to the Business Combination, was informed on December 7, 2021 that it was dismissed as the Company's independent registered

public accounting firm. Effective December 7, 2021, the Company's board of directors approved the engagement of Grant Thornton LLP ("***Grant Thornton***") as the Company's independent registered public accounting firm to audit the Company's consolidated financial statements for the year ending December 31, 2021. Grant Thornton previously served as the independent registered public accounting firm of BigBear.ai Holdings, LLC, NuWave Solutions, LLC, Open Solutions Group, LLC, and ProModel (a carve-out of ProModel Government Solutions, Inc.) prior to the Business Combination.

BPM's report on GigCapital4's financial statements as of December 31, 2020 and for the period from December 4, 2020 (inception) through December 31, 2020 did not contain an adverse opinion or disclaimer of opinion, nor were such reports qualified or modified as to uncertainties, audit scope, or accounting principles. During the period from December 4, 2020 (inception) through December 31, 2020 and the subsequent interim period through December 7, 2021, there were no "disagreements" (as defined in Item 304(a)(1)(iv) of Regulation S-K under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")) between the Company and BPM on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of BPM, would have caused it to make a reference to the subject matter of the disagreement in connection with its reports on the Company's financial statements for such periods.

During the period from December 4, 2020 (inception) through December 31, 2020, and the subsequent interim period through December 7, 2021, there were no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act).

During the period from December 4, 2020 (inception) through December 31, 2020 and the subsequent interim period through December 7, 2021, GigCapital4's did not consult with Grant Thornton regarding either: (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the financial statements of GigCapital4 or BigBear, and no written report or oral advice was provided to GigCapital4, Inc. by Grant Thornton that Grant Thornton concluded was an important factor considered by BigBear in reaching a decision as to the accounting, auditing or financial reporting issue; or (ii) any matter that was the subject of a disagreement (as defined in Item 304(a)(1)(iv) of Regulation S-K) or a "reportable event" (as defined in Item 304(a)(1)(v) of Regulation S-K).

The Company has provided BPM with a copy of the foregoing disclosures and has requested that BPM furnish the Company with a letter addressed to the SEC, which is attached hereto as Exhibit 16.1, stating whether it agrees with such disclosures made by the Company set forth above, and, if not, stating the respects in which it does not agree.

Item 5.01. Changes in Control of Registrant.

Reference is made to the disclosure in the Definitive Proxy Statement in the section titled "*Proposal No. 1— The Business Combination Proposal,*" which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report on Form 8-K, which is incorporated herein by reference.

Immediately after giving effect to the Business Combination, there were approximately 135.57 million shares of common stock of the Company outstanding. As of such time, our officers and directors and their affiliated entities held 90.6% of our outstanding shares of common stock.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Appointment of Directors and Officers

The following persons are serving as executive officers and directors of the Company upon the Closing, with Dr. Reginald Brothers, Jeffry Dyer, Brian Frutchey, Samuel Gordy and Joshua Kinley having been named as executive officers effective upon the Closing on December 7, 2021 and each of the directors having been elected by the GigCapital4 stockholders to the board also upon the Closing on December 7, 2021. For biographical and current compensatory information concerning the executive officers and directors, see the disclosure in the Definitive Proxy Statement in the sections titled "*Management After the Business Combination*" which is incorporated herein by reference.

Name	Age	Position
Dr. Reginald Brothers	62	Chief Executive Officer, Director
Jeffry Dyer	49	President of Commercial
Brian Frutchey	44	Chief Technology Officer
Samuel Gordy	61	Chief Operating Officer
Joshua Kinley	47	Chief Financial Officer
Sean Battle	52	Director
Peter Cannito	49	Director, Chairman
Pamela Braden	63	Director
Dr. Raluca Dinu	47	Director
Paul Fulchino	75	Director
Jeffrey Hart	32	Director
Dorothy D. Hayes	70	Director
Raanan I. Horowitz	61	Director
Dr. Avi Katz	63	Director
Kirk Konert	34	Director

Effective upon the Closing on December 7, 2021, Dr. Raluca Dinu and Brad Weightman resigned as executive officers of GigCapital4, and each of Neil Miotto and Andrea Betti-Berutto, following their not standing for re-election to the Board, resigned as directors of GigCapital4.

On December 7, 2021, the board of directors reclassified three directors, such that Dr. Avi S. Katz and Dr. Raluca Dinu were made Class II directors and Dorothy Hayes was made a Class I director.

2021 Long-Term Incentive Plan and the 2021 Employee Stock Purchase Plan

As previously reported in the Current Report on Form8-K filed with the SEC on December 3, 2021, at the Special Meeting, the GigCapital4 stockholders considered and approved the BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan (the "***2021 Plan***") and the BigBear.ai Holdings, Inc. 2021 Employee Stock Purchase Plan (the "***2021 ESPP***," and together with the 2021 Plan, the "***Equity Plans***"), and reserved an aggregate of 18,571,240 shares of common stock for issuance under the 2021 Plan and an aggregate of 1,857,124 shares of common stock for issuance under the 2021 ESPP. The Equity Plans were previously approved, subject to stockholder approval, by the Board of GigCapital4 on August 12, 2021. The Equity Plans became effective immediately upon the Closing of the Business Combination. The number of shares of common stock reserved for issuance under the Equity Plans are subject to an "evergreen" provision pursuant to which such number of shares will automatically increase on the first day of each fiscal year beginning with the 2022 fiscal year in an amount for the 2021 Plan equal to five percent (5%), and for the 2021 ESPP equal to one percent (1%), in each case of the total number of shares of common stock issued and outstanding on the last day of the immediately preceding fiscal year or such lesser amount as determined by the board of directors.

The Company's Board of Directors also adopted on December 7, 2021 a form of Employee Restricted Stock Unit Agreement, a form ofNon-Employee Director Restricted Stock Unit Agreement, a form of Nonqualified Stock Option Award Agreement and a form of Performance Stock Unit Agreement that the Company will generally use for grants under its 2021 Plan and that are included herein as Exhibit 10.6, Exhibit 10.7, Exhibit 10.8 and Exhibit 10.9, respectively.

A more complete summary of the terms of the Incentive Plan is set forth in the Definitive Proxy Statement in the section titled "*Proposal No. 5—The Equity Plans Proposal.*" That summary and the foregoing description of the 2021 Plan and the 2021 ESPP are qualified in their entirety by reference to the text of the 2021 Plan and the 2021 ESPP, which are filed as Exhibit 10.4 and Exhibit 10.5 hereto respectively, and incorporated herein by reference to this Current Report on Form 8-K.

Indemnification Agreements for Company Directors and Officers

In connection with the closing of the Business Combination, the Company entered into indemnification agreements with each of its directors and officers (the "***Indemnification Agreements***"). The Indemnification Agreements provide the directors and executive officers with contractual rights to indemnification and expense advancement. The foregoing description of the Indemnification Agreements is not complete and is subject to, and qualified in its entirety by reference to the text of the form of Indemnification Agreement, which is included as Exhibit 10.3 to this Current Report on Form 8-K.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

The information set forth in Item 3.03 to this Current Report onForm 8-K is incorporated by reference into this Item 5.03.

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, the Company ceased being a shell company. Reference is made to the disclosure in the Definitive Proxy Statement in the section titled "*Proposal No. 1— The Business Combination Proposal,*" which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report on Form 8-K.

Item 8.01. Other Events

As a result of the Business Combination and by operation ofRule 12g-3(a) promulgated under the Exchange Act, BigBear.ai is a successor issuer to GigCapital4. BigBear.ai hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act.

Item 9.01 Financial Statements and Exhibits.

(a)-(b) Financial Statements.

The audited balance sheet of GigCapital4, Inc., as of December 31, 2020, and the related statements of operations and comprehensive loss, stockholders' equity, and cash flows for the period of December 4, 2020 (date of inception) through December 31, 2020, and the related notes thereto and report of independent registered public accounting firm, in the Definitive Proxy Statement in the section titled "*Summary Historical Financial Information of the Company*" are incorporated herein by reference.

The audited consolidated balance sheets of BigBear.ai Holdings, LLC as of December 31, 2020 and 2019, the related consolidated statements of operations, other comprehensive income loss, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2020, and the related notes thereto and report of independent registered public accounting firm, in the Definitive Proxy Statement in the section titled "*Summary Historical Financial Information of BigBear.ai Holdings, LLC*" are incorporated herein by reference.

The unaudited pro forma condensed combined financial statements as of December 31, 2020 and for the year ended December 31, 2020 are filed with this Current Report on Form 8-K as Exhibit 99.1 to this Current Report onForm 8-K and incorporated herein by reference.

(d) Exhibits.

Exhibit	Description
2.1 †	Agreement and Plan of Merger, dated as of June 4, 2021, by and among GigCapital4, Inc., GigCapital4 Merger Sub Corporation, BigBear.ai Holdings, LLC and BBAI Ultimate Holdings, LLC, as amended by the Amendment to Merger Agreement, dated as of August 6, 2021 (included as Annex A to the Definitive Proxy Statement filed pursuant to Section 14(a) on November 5, 2021)
2.2	Amendment No. 2 to Merger Agreement, dated as of November 29, 2021 (incorporated by reference to Exhibit 10.1 filed on the Company's Current Report on Form 8-K, filed by the Registrant on November 30, 2021)
3.1	Second Amended and Restated Certificate of Incorporation of BigBear.ai Holdings, Inc.
3.2	Bylaws of BigBear.ai Holdings, Inc.

10.1	Form of Amended and Restated Convertible Note Subscription Agreement and form of Revised Indenture (incorporated by reference to Exhibit 10.3 filed on the Company's Current Report on Form 8-K, filed by the Registrant on November 30, 2021)
10.2	Indenture, dated as of December 7, 2021, by and among BigBear.ai Holdings, Inc., the Guarantors (as defined in the Indenture) and Wilmington Trust, National Association
10.3#	Form of Indemnification Agreement
10.4#	BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan
10.5#	BigBear.ai Holdings, Inc. 2021 Employee Stock Purchase Plan
10.6#	Form of Employee Restricted Stock Unit Agreement
10.7#	Form of Non-Employee Director Restricted Stock Unit Agreement
10.8#	Form of Nonqualified Stock Option Award Agreement
10.9#	Form of Performance Stock Unit Agreement
10.10	Backstop Subscription Agreement, dated as of November 29, 2021, by and between GigCapital4, Inc. and AE BBAI Aggregator, LP (incorporated by reference to Exhibit 10.2 filed on the Company's Current Report on Form 8-K, filed by the Registrant on November 30, 2021)
10.11	First Amendment to Backstop Subscription Agreement, dated as of December 6, 2021, by and between GigCapital4, Inc. and AE BBAI Aggregator, LP (incorporated by reference to Exhibit 10.1 filed on the Company's Current Report on Form 8-K, filed by the Registrant on December 7, 2021)
10.12	Payment Agreement, dated December 6, 2021, by and between GigCapital4, Inc. and Oppenheimer & Co. Inc. (incorporated by reference to Exhibit 10.3 filed on the Company's Current Report on Form 8-K, filed by the Registrant on December 7, 2021)
10.13	Payment Agreement, dated December 6, 2021, by and between GigCapital4, Inc. and Nomura Securities International, Inc. (incorporated by reference to Exhibit 10.4 filed on the Company's Current Report on Form 8-K, filed by the Registrant on December 7, 2021)
10.14	Payment Agreement, dated December 6, 2021, by and between GigCapital4, Inc. and BMO Capital Markets Corp. (incorporated by reference to Exhibit 10.5 filed on the Company's Current Report on Form 8-K, filed by the Registrant on December 7, 2021)
10.15	Payment Agreement, dated December 6, 2021, by and among GigCapital4, Inc., BBAI Ultimate Holdings, LLC and William Blair & Company, L.L.C. (incorporated by reference to Exhibit 10.6 filed on the Company's Current Report on Form 8-K, filed by the Registrant on December 7, 2021)
10.16	Amended and Restated Investor Rights Agreement, dated December 6, 2021, by and among GigCapital4, Inc., BBAI Ultimate Holdings, LLC, AE BBAI Aggregator, LP, GigAcquisitions4, LLC, Oppenheimer & Co. Inc., Nomura Securities International, Inc., BMO Capital Markets Corp., William Blair & Company, L.L.C., and Other Holders (as defined in the Amended and Restated Investor Rights Agreement) (incorporated by reference to Exhibit 10.7 filed on the Company's Current Report on Form 8-K, filed by the Registrant on December 7, 2021)
10.17	Credit Agreement, dated as of December 7, 2021, by and among BigBear.ai Holdings, Inc. the other borrowers party thereto from time to time, the lenders from time to time party hereto and Bank of America, N.A., as administrative agent and collateral agent for the lenders
10.18	Employment Agreement, dated as of October 23, 2020, between PCI Strategic Management, LLC, and Joshua Kinley
10.19	Offer Letter, dated as of May 22, 2020, on behalf of AE Industrial Partners Fund II, L.P., to Mr. Reginald Brothers
16.1	Letter from BPM LLP to Securities and Exchange Commission, dated December 13, 2021
99.1	Unaudited Pro Forma Condensed Combined Financial Statements of BigBear.ai Holdings, LLC as of December 31, 2020 and for the year ended December 31, 2020
99.2	Unaudited consolidated financial statements of BigBear.ai Holdings, LLC as of and for the three months ended September 30, 2021
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

Indicates a management contract or compensatory plan, contract or arrangement.

† Schedules and similar attachments to this Exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of such omitted materials to the SEC upon request.

SIGNATURE

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 hereunto duly authorized.

Dated: December 13, 2021

By: /s/ Dr. Reginald Brothers
Name: Dr. Reginald Brothers
Title: Chief Executive Officer

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

BIGBEAR.AI HOLDINGS, INC.

ARTICLE I
NAME

The name of the Corporation is BigBear.ai Holdings, Inc.

ARTICLE II
REGISTERED OFFICE AND AGENT

The address of the registered office of the Corporation in the State of Delaware is County of New Castle, 1209 Orange Street, Wilmington, DE 19801. The name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV
CAPITAL STOCK

The total number of shares of all classes of stock that the Corporation shall have authority to issue is 501,000,000, which shall be divided into two classes as follows:

(i) 500,000,000 shares of common stock, par value $0.0001 per share ("Common Stock"); and

(ii) 1,000,000 shares of preferred stock, par value $0.0001 per share ("Preferred Stock").

A. ***Capital Stock***.

1. The board of directors of the Corporation (the "Board of Directors") is hereby expressly authorized, by resolution or resolutions, at any time and from time to time, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix, without further stockholder approval, the number of shares constituting such series and the designation of such series, the powers (including voting powers), preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, of such series of Preferred Stock. The powers (including voting powers), preferences and relative, participating, optional and other special rights of, and the qualifications, limitations or restrictions thereof, of each series of Preferred Stock, if any, may differ from those of any and all other series at any time outstanding.

2. Each holder of record of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders are entitled to vote generally, including the election or removal of directors (other than the election or removal of directors, if any, elected exclusively by one or more series of Preferred Stock). Except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.

3. Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled to only such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any certificate of designation relating to such series of Preferred Stock).

4. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends, dividends may be declared and paid ratably on the Common Stock out of the assets of the Corporation that are legally available for this purpose at such times and in such amounts as the Board of Directors in its discretion shall determine.

5. Upon the dissolution, liquidation or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the distribution of assets of the Corporation upon such dissolution, liquidation or winding up of the Corporation, the holders of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

6. The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or the Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

ARTICLE V
AMENDMENT OF THE CERTIFICATE OF INCORPORATION AND BYLAWS

A. The Corporation reserves the right to amend or repeal this Certificate of Incorporation in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation. Except as otherwise required by this Certificate of Incorporation or by applicable law, whenever any vote of the holders of stock of the Corporation is required to amend or repeal any provision of this Certificate of Incorporation, such amendment or repeal shall require the affirmative vote of the majority of the outstanding shares of stock of the Corporation entitled to vote on such amendment or repeal, and the affirmative vote of the majority of the outstanding shares of each class entitled to vote thereon as a class. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, at any time when the Partners and their Permitted Transferees (each as defined in that certain Investor Rights Agreement, dated as of June 4, 2021, by and among the GigCapital4, Inc. a Delaware corporation and predecessor to the Corporation, the Partners, GigAcquisitions4, LLC, a Delaware limited liability company ("Sponsor"), and any other parties thereto from time to time (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Investor Rights Agreement")) beneficially own, in the aggregate, less than 50% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote required by applicable law, the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class: this Article V, Article VI and Article IX. For the purposes of this Certificate of Incorporation, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

B. The Board of Directors is expressly authorized to make, alter, amend, change, add to, rescind or repeal, in whole or in part, the bylaws of the Corporation (as in effect from time to time, the "Bylaws") without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware, this Certificate of Incorporation or the Investor Rights Agreement. Except as otherwise provided herein, in the Investor Rights Agreement or in the Bylaws, the Bylaws may be amended or repealed, and new Bylaws may be adopted, by the affirmative vote of not less than two thirds (2/3) of the outstanding shares of stock of the Corporation entitled to vote on such amendment, repeal or adoption, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares of stock of the Corporation entitled to vote on such amendment or repeal, voting together as a single class. Notwithstanding anything to the contrary contained in this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote of the stockholders, at any time when the Partners and their Permitted Transferees beneficially own, in the aggregate, less than 50% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designation relating to any series of Preferred Stock), by the Bylaws or by applicable law, the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to amend, alter, rescind, change, add or repeal, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith; provided, however, that no Bylaw hereafter adopted by the stockholders shall invalidate any prior act of the Board of Directors that was valid at the time of such act prior to the adoption of such Bylaw.

ARTICLE VI
BOARD OF DIRECTORS

A. Except as otherwise provided in this Certificate of Incorporation or the DGCL, and subject to any restrictions provided in the Investor Rights Agreement, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. Except as otherwise provided for or fixed pursuant to the Investor Rights Agreement or any certificate of designation with respect to any series of Preferred Stock, the total number of directors shall be determined from time to time exclusively by resolution adopted by the Board of Directors; provided, that any determination by the Board of Directors to increase or decrease the total number of directors shall require the approval of 66 2/3% of the directors present at a meeting at which a quorum is present. The directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III, with such division effective immediately following the election of initial directors by the incorporator. Class I directors shall initially serve for a term expiring at the Corporation's annual meeting of stockholders to be held in 2022, Class II directors shall initially serve for a term expiring at the Corporation's annual meeting of stockholders to be held in 2023 and Class III directors shall initially serve for a term expiring at the Corporation's annual meeting of stockholders to be held in 2024. Commencing with the annual meeting of stockholders to be held in 2022, the directors of the class to be elected at each annual meeting shall be elected for a three-year term. In no case shall a decrease in the number of directors remove or shorten the term of any incumbent director. Any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her earlier death, resignation, retirement, disqualification or removal from office. The Board of Directors is authorized to assign members of the Board of Directors already in office to their respective class, effective at the time the division of the directors into classes is effective.

B. Without limiting the rights of any party to the Investor Rights Agreement, any newly-created directorship on the Board of Directors that results from an increase in the number of directors and any vacancy occurring in the Board of Directors (whether by death, resignation, retirement, disqualification, removal or other cause) may be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director or by the stockholders; provided, however, that, subject to the aforementioned rights granted to holders of one or more series of Preferred Stock or the rights of any holders of Common Stock pursuant to the Investor Rights Agreement, at any time when the Partners and their Permitted Transferees beneficially own, in the aggregate, less than 50% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any newly-created directorship on the Board of Directors that results from an increase in the number of directors and any vacancy occurring in the Board of Directors shall be filled only by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

C. Without limiting the rights of any party to the Investor Rights Agreement, any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed at any time either with or without cause by the affirmative vote of a majority in voting power of all outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class; provided, however, that at any time when the Partners and their Permitted Transferees beneficially own, in the aggregate, less than 50% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, any such director or all such directors may be removed only for cause and only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

D. Elections of directors need not be by written ballot unless the Bylaws shall so provide.

E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, retirement, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

F. As used in this Article VI only, the term "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person, and the term "Person" means any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

ARTICLE VII
LIMITATION OF DIRECTOR LIABILITY

A. To the fullest extent permitted by the DGCL as it now exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty owed to the Corporation or its stockholders.

B. Neither the amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation, nor, to the fullest extent permitted by the DGCL, any modification of law shall eliminate, reduce or otherwise adversely affect any right or protection of a current or former director of the Corporation existing at the time of such amendment, repeal, adoption or modification.

C. Notwithstanding anything herein to the contrary, the affirmative vote of not less than two thirds (2/3) of the outstanding shares of stock of the Corporation entitled to vote thereon, and the affirmative vote of not less than two thirds (2/3) of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of this Article VII.

ARTICLE VIII
CONSENT OF STOCKHOLDERS IN LIEU OF MEETING, ANNUAL AND SPECIAL MEETINGS OF STOCKHOLDERS

A. At any time when the Partners and their Permitted Transferees beneficially own, in the aggregate, 50% or more of the voting power of the stock of the Corporation entitled to vote generally in the election of directors, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote,

if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the books in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand, or by certified or registered mail, return receipt requested. At any time when the Partners and their Permitted Transferees beneficially own, in the aggregate, less than 50% of the voting power of the stock of the Corporation entitled to vote generally in the election of directors, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent by such holders; provided, however, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock. Whenever this paragraph permits stockholders to act by consent, the Bylaws shall not contain any provision that impedes or delays such an action by consent and shall not contain any provision requiring the stockholders to request that the Board fix a record date in connection therewith.

B. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time only by or at the direction of the Board of Directors or the Chairman of the Board of Directors.

C. An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed exclusively by resolution of the Board of Directors or a duly authorized committee thereof.

ARTICLE IX
COMPETITION AND CORPORATE OPPORTUNITIES

A. In recognition and anticipation that (i) certain directors, principals, officers, employees and/or other representatives of AE Industrial Partners, LP ("AE LP") and its affiliated PE Funds (as defined in the Investor Rights Agreement and, together with AE LP, for purposes of this Article IX, "AE"), Institutional Partners (as defined in the Investor Rights Agreement), Sponsor and their respective Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, (ii) AE, the Institutional Partners, Sponsor and their respective Affiliates, including (I) any portfolio company in which they or any of their respective investment fund Affiliates have made a debt or equity investment (and vice versa) or (II) any of their respective limited partners, non-managing members or other similar direct or indirect investors may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) members of the Board of Directors who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates, including (I) any portfolio company in which they or any of their respective investment fund Affiliates have made a debt or equity investment (and vice versa) or (II) any of their respective limited partners, non-managing members or other similar direct or indirect investors may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article IX are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve AE, any Institutional Partner, Sponsor, the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

B. None of (i) AE, (ii) any Institutional Partner, (iii) Sponsor or (iv) any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation in both his or her director and officer capacities) or their respective Affiliates (the Persons (as defined below) identified in (i), (ii), (iii) and (iv) above being referred to, collectively, as "Identified Persons" and, individually, as an "Identified Person") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in and possessing interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business in which the Corporation or any of its subsidiaries now engages or proposes to engage or (2) competing with the Corporation or any of its subsidiaries, on its own account, or in partnership with, or as an employee, officer, director or shareholder of any other Person, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted from time to time by the laws of the State of Delaware, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity that may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section (C) of this Article IX. Subject to said Section (C) of this Article IX, in the event that any Identified Person acquires knowledge of a potential transaction or matter that may be a corporate or other business opportunity for itself, herself or himself, or any of its or his or her Affiliates, and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty (fiduciary, contractual or otherwise) to communicate or present such transaction or matter to the Corporation or any of its subsidiaries or any Institutional Partner, as the case may be and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any subsidiary of the Corporation or any Institutional Partner for breach of any duty (fiduciary, contractual or otherwise) as a stockholder, director or officer of the Corporation by reason of the fact that such Identified Person, directly or indirectly, pursues or acquires such opportunity for itself, herself or himself, directs such opportunity to another Person or does not present such opportunity to the Corporation or any of its subsidiaries or any Institutional Partner (or its Affiliates).

C. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section (B) of this Article IX shall not apply to any such corporate opportunity.

D. In addition to and notwithstanding the foregoing provisions of this Article IX, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (iii) is one in which the Corporation has no interest or reasonable expectancy.

E. For purposes of this Article IX, (i) "Affiliate" shall mean (a) in respect of AE or any Institutional Partner or Sponsor, any Person that, directly or indirectly, is controlled by AE or such Institutional Partner or Sponsor (as applicable), controls AE or such Partner or Sponsor (as applicable) or is under common control with AE, such Institutional Partner or Sponsor (as applicable) and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (b) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (c) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (ii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

F. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article IX.

ARTICLE X
DGCL SECTION 203 AND BUSINESS COMBINATIONS

A. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

B. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

1. prior to such time, the Board of Directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; or

2. upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent (notwithstanding the provisions of Article VIII hereof), by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation that is not owned by the interested stockholder; or

4. the stockholder became an interested stockholder inadvertently and (i) as soon as practicable divested itself of ownership of sufficient shares so that the stockholder ceased to be an interested stockholder and (ii) was not, at any time within the three-year period immediately prior to a business combination between the Corporation and such stockholder, an interested stockholder but for the inadvertent acquisition of ownership.

C. For purposes of this Article X, references to:

1. "AE" means AE Industrial Partners, LP and its affiliates, together with their respective affiliates, subsidiaries, successors and assigns (other than the Corporation and its subsidiaries).

2. "AE Direct Transferee" means any person that acquires (other than in a registered public offering) directly from AE or any of its successors or any "group," or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act beneficial ownership of 15% or more of the then outstanding voting stock of the Corporation.

3. "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

4. "associate," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

5. "business combination," when used in reference to the Corporation and any interested stockholder of the Corporation, means:

   (i) any merger or consolidation of the Corporation (other than a merger effected pursuant to Section 253 or 267 of the DGCL) or any direct or indirect majority-owned subsidiary of the Corporation (a) with the interested stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section (B) of this Article X is not applicable to the surviving entity;

   (ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

   (iii) any transaction that results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g), 253 or 267 of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is

distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (c)-(e) of this subsection (iii) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(iv) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation that has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary that is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(v) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (i)-(iv) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

6. "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article X, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

7. "interested stockholder" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder or (iii) the affiliates and associates of any such person described in clauses (i) and (ii); provided, however, that "interested stockholder" shall not include (a) AE or any AE Direct Transferee, or any of their respective affiliates or successors or any "group," or any member of

any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (b) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided, that such person specified in this clause (b) shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of (x) further corporate action not caused, directly or indirectly, by such person or (y) an acquisition of a *de minimis* number of such additional shares. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

8. "owner," including the terms "own" and "owned," when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

   (i) beneficially owns such stock, directly or indirectly; or

   (ii) has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

   (iii) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of subsection (ii) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

9. "person" means any individual, corporation, partnership, unincorporated association or other entity.

10. "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

11. "voting stock" means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference in this Article X to a percentage of voting stock shall refer to such percentage of the votes of such voting stock.

ARTICLE XI
MISCELLANEOUS

A. Forum.

1. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director or officer or other employee of the Corporation to the Corporation or the Corporation's stockholders; (iii) any action asserting a claim against the Corporation or any current or former director or officer or other employee of the Corporation arising pursuant to any provision of the DGCL or the Corporation's Certificate of Incorporation or Bylaws (as either may be amended, restated, modified, supplemented or waived from time to time); (iv) any action asserting a claim against the Corporation or any current or former director or officer or other employee of the Corporation governed by the internal affairs doctrine; or (v) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the DGCL, shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware). For the avoidance of doubt, this Article XI(A)(1) shall not apply to any action or proceeding asserting a claim under the Securities Act of 1933 (the "Securities Act") or the Exchange Act.

2. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

B. Consent to Jurisdiction. If any action the subject matter of which is within the scope of Article XI(A) above is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Article XI(A) above (an "FSC Enforcement Action") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

C. Severability. If any provision or provisions in the Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision or provisions in any other circumstance and of the remaining provisions in the Certificate of Incorporation and the application of such provision or provisions to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

D. Facts Ascertainable. When the terms of this Certificate of Incorporation refer to a specific agreement or other document or a decision by any body, person or entity to determine the meaning or operation of a provision hereof, the secretary of the Corporation shall maintain a copy of such agreement, document or decision at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any stockholder who makes a request therefor.

E. Deemed Notice and Consent. Any person (as defined in Article X) purchasing or otherwise acquiring any security of the Corporation shall be deemed to have notice of and consented to this Article XI.

BYLAWS
OF

BIGBEAR.AI HOLDINGS, INC.

* * * *

ARTICLE I

Offices

Section 1.01 Registered Office. The registered office and registered agent of BigBear.ai Holdings, Inc., a Delaware corporation (the "Corporation") shall be as set forth in the Certificate of Incorporation (as defined below). The Corporation may also have offices in such other places in the United States or elsewhere (and may change the Corporation's registered agent) as the board of directors of the Corporation (the "Board of Directors") may, from time to time, determine or as the business of the Corporation may require as determined by any officer of the Corporation.

ARTICLE II

Meetings of Stockholders

Section 2.01 Annual Meetings. Annual meetings of stockholders may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board of Directors shall determine and state in the notice of meeting. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication, including by webcast, as described in Section 2.11 of these Bylaws (these "Bylaws"), in accordance with the General Corporation Law of the State of Delaware (the "DGCL"). The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.02 Special Meetings. Special meetings of the stockholders may only be called in the manner provided in the Corporation's certificate of incorporation as then in effect (as the same may be amended from time to time, the "Certificate of Incorporation") and may be held either within or without the State of Delaware. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication, including by webcast, as described in Section 2.11 of these Bylaws, in accordance with the DGCL. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors or the Chairman of the Board of Directors.

Section 2.03 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) as provided in the Investor Rights Agreement (as defined in the Certificate of Incorporation), (b) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Section 2.04, (c) by or at the direction of the Board of Directors or any authorized committee thereof, or (d) by any stockholder of the Corporation who (i) was a stockholder of record at the time the notice provided for in this Section 2.03 was given, on the record date for the determination of stockholders of the Corporation entitled to vote at the meeting, and at the time of the meeting, (ii) is entitled to vote at the meeting, and (iii) subject to Section 2.03(C)(4), complies with the notice procedures set forth in these Bylaws as to such business or nomination. Section 2.03(A)(1)(d) shall be the exclusive means for a stockholder to make nominations (other than pursuant to Section 2.03(A)(1)(a)) or submit other business before an annual meeting of stockholders (other than pursuant to Rule14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")).

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.03(A)(1)(d), the stockholder must have given timely notice thereof in writing and otherwise in proper form in accordance with this Section 2.03(A)(2) to the Secretary of the Corporation, and, in the case of business other than nominations of persons for election to the Board of Directors, such other business must constitute a proper matter for stockholder action under applicable law. To be timely, a stockholder's notice shall be delivered to the Secretary not earlier than the Close of Business on the 120th calendar day prior to the first anniversary of the preceding year's annual meeting nor later than the Close of Business on the 90th calendar day prior to the first anniversary of the date of the preceding year's annual meeting (and the annual meeting of stockholders of the Corporation for calendar year 2021 shall be deemed to have been held on December 3, 2021 for purposes of this Section 2.03); *provided,* that in the event that the date of the annual meeting is more than 30 calendar days before or more than 70 calendar days after the anniversary date of the preceding year's annual meeting, or if no annual meeting was held in the preceding year (other than in connection with calendar year 2021), notice by the stockholder to be timely must be so delivered not earlier than the Close of Business on the 120th calendar day prior to the date of such annual meeting and not later than the Close of Business on the later of the 90th calendar day prior to the date of such annual meeting or the tenth calendar day following the calendar day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these Bylaws. Notwithstanding anything in this Section 2.03(A)(2) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 calendar days prior to the first anniversary of the preceding year's annual meeting of stockholders, then a stockholder's notice required by this Section 2.03 shall be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary of the Corporation not later than the Close of Business on the tenth calendar day following the day on which such public announcement is first made by the Corporation.

(3) To be in proper form, a stockholder's notice delivered to the Secretary pursuant to this Section 2.03 must:

(a) set forth, as to each person whom the Noticing Stockholder (as defined herein) proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person (present and for the past five years), (iii) the Ownership Information (as defined herein) for such person and any member of the immediate family of such person, or any Affiliate or Associate (as such terms are defined herein) of such person, or any person acting in concert therewith, (iv) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (v) a complete and accurate description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings (whether written or oral) during the past three years, and any other material relationships, between or among the Holders and/or any Stockholder Associated Person (as such terms are defined herein), on the one hand, and each proposed nominee and any member of the immediate family of such proposed nominee, and his or her respective Affiliates and Associates, or others acting in concert therewith, on the other hand, including, without limitation all biographical and related party transaction and other information that would be required to be disclosed pursuant to the federal and state securities laws, including Rule 404 promulgated under Regulation S-K (the "Regulation S-K") under the Securities Act of 1933 (the "Securities Act") (or any successor provision), if any Holder and/or any Stockholder Associated Person were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant;

(b) if the notice relates to any business other than nominations of persons for election to the Board of Directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, (ii) the text, if any, of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), (iii) the reasons for conducting such business at the meeting and any material interest of each Holder and any Stockholder Associated Person in such business, and (iv) a description of all agreements, arrangements and understandings between each Holder and any Stockholder Associated Person and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) set forth, as to the stockholder giving the notice (the "Noticing Stockholder") and the beneficial owner, if any, on whose behalf the nomination or proposal is made (collectively with the Noticing Stockholder, the "Holders" and each, a "Holder"): (i) the name and address as they appear on the Corporation's books and records of each Holder and the name and address of any Stockholder Associated Person, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by each Holder and any Stockholder Associated Person (*provided*, *however*, that for purposes of this Section 2.03(A)(3), any such person shall in all events be deemed to beneficially own any shares of the Corporation as to which such person has a right to acquire beneficial ownership of at any time in the future), (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived, in whole or in part, from the value of

any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by each Holder and any Stockholder Associated Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding or relationship pursuant to which each Holder and any Stockholder Associated Person has a right to vote or has granted a right to vote any shares of any security of the Corporation, (D) any Short Interest held by each Holder and any Stockholder Associated Person presently or within the last 12 months in any security of the Corporation (for purposes of this Section 2.03 a person shall be deemed to have a "Short Interest" in a security if such person, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any agreement, arrangement or understanding (including any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) between and among each Holder, any Stockholder Associated Person, on the one hand, and any person acting in concert with any such person, on the other hand, with the intent or effect of which may be to transfer to or from any such person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation or to increase or decrease the voting power of any such person with respect to any security of the Corporation, (F) any direct or indirect legal, economic or financial interest (including Short Interest) of each Holder and any Stockholder Associated Person in the outcome of any vote to be taken at any annual or special meeting of stockholders of the Corporation or any other entity with respect to any matter that is substantially related, directly or indirectly, to any nomination or business proposed by any Holder under this Section 2.03, (G) any rights to dividends on the shares of the Corporation owned beneficially by each Holder and any Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation, (H) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which any Holder and any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns any interest in a general partner or is the manager or managing member or, directly or indirectly, beneficially owns any interest in the manager or managing member of a limited liability company or similar entity, and (I) any performance-related fees (other than an asset-based fee) that each Holder and any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice (Sub-clauses (A) through (I) above of this Section 2.03(A)(3)(c)(ii) shall be referred, collectively, as the "Ownership Information"), (iii) a representation by the Noticing Stockholder that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting, will continue to be a stockholder of record of the Corporation entitled to vote at such meeting through the date of such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (iv) a representation as to whether any Holder and/or any Stockholder Associated Person intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such proposal or nomination, (v) a certification that each Holder and any Stockholder Associated Person has complied with all applicable federal, state and other legal requirements in connection with its acquisition of shares or other securities of the Corporation and

such person's acts or omissions as a stockholder of the Corporation, (vi) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, and (vii) a representation as to the accuracy of the information set forth in the notice; and (vi) with respect to each person nominated for election to the Board of Directors, include a completed and signed questionnaire, representation and agreement and any and all other information required by Section 2.03(D).

(4) A Noticing Stockholder shall further update and supplement its notice of any nomination or other business proposed to be brought before a meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.03(A) shall be true and correct (a) as of the record date for the meeting and (b) as of the date that is ten Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof. Such update and supplement shall be delivered to the Secretary not later than three Business Days after the later of the record date or the date notice of the record date is first publicly announced (in the case of the update and supplement required to be made as of the record date for the meeting) and not later than seven Business Days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to the meeting), or any adjournment, recess, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of ten Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof).

(5) The Corporation may also, as a condition to any such nomination or business being deemed properly brought before an annual meeting, require any Holder or any proposed nominee to deliver to the Secretary, within five Business Days of any such request, such other information as may reasonably be requested by the Corporation, including such other information as may be reasonably required by the Board of Directors, in its sole discretion, to determine (a) the eligibility of such proposed nominee to serve as a director of the Corporation, (b) whether such nominee qualifies as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation, or any publicly disclosed corporate governance guideline or committee charter of the Corporation and (c) such other information that the Board of Directors determines, in its sole discretion, could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting under Section 2.02. At any time that the stockholders are not prohibited from filling vacancies or newly created directorships on the Board of Directors, nominations of persons for election to the Board of Directors to fill any vacancy or newly created directorship may be made at a special meeting of stockholders at which any proposal to fill any vacancy or unfilled newly created directorship is to be presented to the stockholders (1) as provided in the Investor Rights Agreement, (2) by or at the direction of the Board of Directors or any committee thereof or (3) by any stockholder of the Corporation who (a) was a stockholder of record at the time the notice provided for in this Section 2.03 was given, on the record date for the determination of stockholders of the Corporation entitled to vote at the meeting, and at the time of

the meeting, (b) is entitled to vote at the meeting, and (c) subject to Section 2.03(C)(4), complies with the notice procedures set forth in these Bylaws as to such business or nomination, including delivering the stockholder's notice required by Section 2.03(A) with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 2.03(D)) to the Secretary not earlier than the Close of Business on the 120th calendar day prior to such special meeting, nor later than the Close of Business on the later of the 90th calendar day prior to such special meeting or the tenth calendar day following the day on which public announcement is first made of the date of the special meeting and of the nominees, if any, proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General.

(1) Except as provided in Section 2.03(C)(4) only such persons who are nominated in accordance with the procedures set forth in this Section 2.03 or the Investor Rights Agreement shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation serve as directors and only such business shall be conducted at an annual or special meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall, in addition to making any other determination that may be appropriate for the conduct of the meeting, have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall be disregarded. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting (whether or not a quorum is present), to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants and on stockholder approvals; and (vi) restricting the use of cell phones, audio or video recording devices and similar devices at the meeting. The chairman of the meeting's rulings on procedural matters shall be final. Notwithstanding the foregoing provisions of this Section 2.03, unless otherwise required by law, if the Noticing Stockholder (or a qualified representative thereof) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be

disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.03, to be considered a qualified representative of the Noticing Stockholder, a person must be a duly authorized officer, manager or partner of such Noticing Stockholder or must be authorized by a writing executed by such Noticing Stockholder or an electronic transmission delivered by such Noticing Stockholder to act for such Noticing Stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, the meeting of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(2) For purposes of these Bylaws,

(a) "Affiliate" shall mean, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, through one or more intermediaries or otherwise. The term "control" means the ownership of a majority of the voting securities of the applicable Person or the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the applicable Person, whether through ownership of voting securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto; provided, that, in no event shall the Corporation or any of its subsidiaries be considered an Affiliate of any portfolio company (other than the Corporation and its subsidiaries) of any investment fund affiliated with any direct or indirect equityholder of the Corporation nor shall any portfolio company (other than the Corporation and its subsidiaries) of any investment fund affiliated with any direct or indirect equityholder of the Corporation be considered to be an Affiliate of the Corporation or its subsidiaries.

(b) "Associate(s)" shall have the meaning attributed to such term in Rule 12b-2 under the Exchange Act and the rules and regulations promulgated thereunder.

(c) "Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in Jacksonville, Florida or New York, New York are authorized or obligated by law or executive order to close.

(d) "Close of Business" shall mean 5:00 p.m. local time at the principal executive offices of the Corporation, and if an applicable deadline falls on the Close of Business on a day that is not a Business Day, then the applicable deadline shall be deemed to be the Close of Business on the immediately preceding Business Day.

(e) "delivery" of any notice or materials by a stockholder as required to be "delivered" under this Section 2.03 shall be made by both (i) hand delivery, overnight courier service, or by certified or registered mail, return receipt required, in each case, to the Secretary at the principal executive offices of the Corporation, and (ii) electronic mail to the Secretary at [***] or such other email address for the Secretary as may be specified in the Corporation's proxy statement for the annual meeting of stockholders immediately preceding such delivery of notice or materials.

(f) "person" means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, governmental agency or instrumentality or other entity of any kind.

(g) "public announcement" shall mean any method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public or the furnishing or filing of any document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(h) "Stockholder Associated Person" shall mean as to any Holder (i) any person acting in concert with such Holder, (ii) any person controlling, controlled by or under common control with such Holder or any of their respective Affiliates and Associates, or person acting in concert therewith and (iii) any member of the immediate family of such Holder or an affiliate or associate of such Holder.

(3) Notwithstanding the foregoing provisions of this Section 2.03, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.03; *provided, however,* that, to the fullest extent permitted by law, any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.03(A) and Section 2.03(B). Nothing in these Bylaws shall be deemed to affect any rights of (a) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or any other applicable federal or state securities law with respect to that stockholder's request to include proposals in the Corporation's proxy statement, or (b) the holders of any class or series of stock having a preference over the Common Stock (as defined in the Certificate of Incorporation) as to dividends or upon liquidation to elect directors under specified circumstances.

(4) Notwithstanding anything to the contrary contained in this Section 2.03, for as long as the Investor Rights Agreement remains in effect with respect to the Partners or the Sponsor (each as defined in the Certificate of Incorporation), neither the Sponsor nor any Partner (to the extent then subject to the Investor Rights Agreement) shall be subject to the notice procedures set forth in Section 2.03(A)(2), Section 2.03(A)(3), Section 2.03(A)(4), Section 2.03(A)(5), Section 2.03(B) or Section 2.03(D) with respect to any annual or special meeting of stockholders in respect of any matters that are contemplated by the Investor Rights Agreement.

(D) Submission of Questionnaire. Representation and Agreement. To be eligible to be a nominee for election orre-election as a director of the Corporation pursuant to Section 2.03(A)(1)(d), a proposed nominee must deliver in writing (in accordance with the time periods prescribed for delivery of notice under this Section 2.03) to the Secretary (1) a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request of any stockholder of record identified by name within five Business Days of such written request) and (2) a written representation and agreement (in the form provided by the Secretary upon written request of any stockholder of record

identified by name within five Business Days of such request) that such person (a) is not and will not become a party to (i) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a Director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a Director of the Corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, (c) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable rules of the exchanges upon which the securities of the Corporation are listed and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation and (d) in such person's individual capacity and on behalf of any Holder on whose behalf the nomination is being made, intends to serve a full term if elected as a director of the Corporation.

Section 2.04 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a timely notice in writing or by electronic transmission, in the manner provided in Section 232 of the DGCL, of the meeting, which shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purposes for which the meeting is called, shall be mailed to or transmitted electronically by the Secretary of the Corporation to each stockholder of record entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

Section 2.05 Quorum. Unless otherwise required by law, the Certificate of Incorporation or the rules of any stock exchange upon which the Corporation's securities are listed, the holders of record of a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on that matter. Once a quorum is present to organize a meeting, it shall not be broken by the subsequent withdrawal of any stockholders.

Section 2.06 Voting. Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy in any manner provided by applicable law, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Unless required by the Certificate of Incorporation or applicable law, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the voting power of the shares of stock present in person or represented by proxy and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which, by express provision of applicable law, of the rules or regulations of any stock exchange applicable to the Corporation, of any regulation applicable to the Corporation or its securities, of the Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing sentence and subject to the Certificate of Incorporation, all elections of directors shall be determined by a plurality of the votes cast in respect of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 2.07 Chairman of Meetings. The Chairman of the Board of Directors, if one is elected, or, in his or her absence or disability or refusal to act, the Chief Executive Officer of the Corporation, or in the absence, disability or refusal to act of the Chairman of the Board of Directors and the Chief Executive Officer, a person designated by the Board of Directors shall be the chairman of the meeting and, as such, preside at all meetings of the stockholders.

Section 2.08 Secretary of Meetings. The Secretary of the Corporation shall act as Secretary at all meetings of the stockholders. In the absence, disability or refusal to act of the Secretary, the chairman of the meeting shall appoint a person to act as Secretary at such meetings.

Section 2.09 Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Certificate of Incorporation and in accordance with applicable law.

Section 2.10 Adjournment. At any meeting of stockholders of the Corporation, if less than a quorum be present, the chairman of the meeting or stockholders holding a majority in voting power of the shares of stock of the Corporation, present in person or by proxy and entitled to vote thereon, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present. Any business may be transacted at the adjourned meeting that might have been transacted at the meeting originally noticed. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each

stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

Section 2.11 Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(A) participate in a meeting of stockholders; and

(B) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication,

provided that

(i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;

(ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.12 Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such

inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election

ARTICLE III

Board of Directors

Section 3.01 Powers. Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not, by the DGCL or the Certificate of Incorporation, directed or required to be exercised or done by the stockholders.

Section 3.02 Number and Term; Chairman. Subject to the Certificate of Incorporation and the Investor Rights Agreement, the total number of directors shall be determined from time to time exclusively by resolution adopted by the Board of Directors; provided that any determination by the Board of Directors to increase or decrease the total number of directors shall require the approval of 66 2/3% of the directors present at a meeting at which a quorum is present. The term of each director shall be as set forth in the Certificate of Incorporation. Directors need not be stockholders. The Board of Directors shall elect a Chairman of the Board, who shall have the powers and perform such duties as provided in these Bylaws and as the Board of Directors may from time to time prescribe. The Chairman of the Board shall preside at all meetings of the Board of Directors at which he or she is present. If the Chairman of the Board is not present at a meeting of the Board of Directors, the Chief Executive Officer (if the Chief Executive Officer is a director and is not also the Chairman of the Board) shall preside at such meeting, and, if the Chief Executive Officer is not present at such meeting or is not a director, a majority of the directors present at such meeting shall elect one of their members to preside over such meeting.

Section 3.03 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President or the Secretary of the Corporation. The resignation shall take effect at the time or the happening of any event specified therein, and if no time or event is specified, at the time of its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise expressly provided in the resignation.

Section 3.04 Removal. Subject to the Investor Rights Agreement, directors of the Corporation may be removed in the manner provided in the Certificate of Incorporation and applicable law.

Section 3.05 Vacancies and Newly Created Directorships. Except as otherwise provided by law and subject to the Investor Rights Agreement, vacancies occurring in any directorship (whether by death, resignation, retirement, disqualification, removal or other cause) and newly created directorships resulting from any increase in the number of directors shall be filled in accordance with the Certificate of Incorporation. Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

Section 3.06 Meetings. Regular meetings of the Board of Directors may be held at such places and times as shall be determined from time to time by the Board of Directors. Special meetings of the Board of Directors may be called by the Chief Executive Officer of the Corporation, the President of the Corporation or the Chairman of the Board of Directors, and shall be called by the Chief Executive Officer, the President or the Secretary of the Corporation if directed by the Board of Directors and shall be at such places and times as they or he or she shall fix. Notice need not be given of regular meetings of the Board of Directors. At least 24 hours before each special meeting of the Board of Directors, either written notice, notice by electronic transmission or oral notice (either in person or by telephone) of the time, date and place of the meeting shall be given to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.07 Quorum, Voting and Adjournment. Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, a majority of the total number of directors shall constitute a quorum for the transaction of business. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

Section 3.08 Committees; Committee Rules. Subject to the Investor Rights Agreement, the Board of Directors may designate one or more committees, including but not limited to an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any Bylaw of the Corporation. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present at a meeting of the committee at which a quorum is present. Unless otherwise provided in such a resolution, in the event that a member and that member’s alternate, if alternates are designated by the Board of

Directors, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 3.09 Action Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or any committee thereof, as the case may be, consent thereto in writing or by electronic transmission. The writing or writings or electronic transmission or transmissions shall be filed in the minutes of proceedings of the Board of Directors in accordance with applicable law.

Section 3.10 Remote Meeting. Unless otherwise restricted by the Certificate of Incorporation, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting by means of conference telephone or other communications equipment in which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

Section 3.11 Compensation. The Board of Directors shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Section 3.12 Reliance on Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE IV

Officers

Section 4.01 Number. The officers of the Corporation shall include a Chief Executive Officer, a President and a Secretary, each of whom shall be elected by the Board of Directors and who shall hold office for such terms as shall be determined by the Board of Directors and until their successors are elected and qualify or until their earlier resignation or removal. In addition, the Board of Directors may elect one or more Vice Presidents, including one or more Executive Vice Presidents or Senior Vice Presidents, a Treasurer and one or more Assistant Treasurers and one or more Assistant Secretaries, who shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. Any number of offices may be held by the same person.

Section 4.02 Other Officers and Agents. The Board of Directors may appoint such other officers and agents as it deems advisable, who shall hold their office for such terms and shall exercise and perform such powers and duties as shall be determined from time to time by the Board of Directors.

Section 4.03 Powers. Each of the officers of the Corporation elected by the Board or appointed by an officer in accordance with these Bylaws shall have the powers and duties prescribed by law, by these Bylaws or by the Board of Directors and, in the case of appointed officers, the powers and duties prescribed by the appointing officer, and, unless otherwise prescribed by these Bylaws or by the Board of Directors or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office.

Section 4.04 Corporate Funds and Checks. The funds of the Corporation shall be kept in such depositories as shall from time to time be prescribed by the Board of Directors or its designees selected for such purposes. All checks or other orders for the payment of money shall be signed by the Chief Executive Officer, the President, a Vice President, the Treasurer, the Secretary, an Assistant Treasurer, an Assistant Secretary or such other person or agent as may from time to time be authorized and with such countersignature, if any, as may be required by the Board of Directors.

Section 4.05 Contracts and Other Documents. The Chief Executive Officer, the President, a Vice President, the Treasurer, the Secretary, an Assistant Treasurer, an Assistant Secretary or such other officer or officers as may from time to time be authorized by the Board of Directors or any other committee given specific authority in the premises by the Board of Directors during the intervals between the meetings of the Board of Directors, shall have power to sign and execute on behalf of the Corporation deeds, conveyances and contracts, and any and all other documents requiring execution by the Corporation.

Section 4.06 Ownership of Stock of Another Corporation. Unless otherwise directed by the Board of Directors, the Chief Executive Officer, the President, a Vice President, the Treasurer, the Secretary, an Assistant Treasurer, an Assistant Secretary or such other officer or agent as shall be authorized by the Board of Directors, shall have the power and authority, on behalf of the Corporation, to attend and to vote at any meeting of securityholders of any entity in which the Corporation holds securities or equity interests and may exercise, on behalf of the Corporation, any and all of the rights and powers incident to the ownership of such securities or equity interests at any such meeting, including the authority to execute and deliver proxies and consents on behalf of the Corporation.

Section 4.07 Delegation of Duties. In the absence, disability or refusal of any officer to exercise and perform his or her duties, the Board of Directors may delegate to another officer such powers or duties.

Section 4.08 Resignation and Removal. Any officer of the Corporation may be removed from office for or without cause at any time by the Board of Directors. Any officer may resign at any time in the same manner prescribed under Section 3.03 of these Bylaws.

Section 4.09 Vacancies. Subject to the Investor Rights Agreement, the Board of Directors shall have the power to fill vacancies occurring in any office.

ARTICLE V

Stock

Section 5.01 Shares With Certificates.

The shares of stock of the Corporation shall be uncertificated and shall not be represented by certificates, except to the extent as may be required by applicable law or as otherwise authorized by the Board of Directors.

If shares of stock of the Corporation shall be certificated, such certificates shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two authorized officers of the Corporation (it being understood that each of the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary, and any Assistant Secretary of the Corporation shall be an authorized officer for such purpose), certifying the number and class of shares of stock of the Corporation owned by such holder. Any or all of the signatures on the certificate may be a facsimile. The Board of Directors shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class, and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars. The name of the holder of record of the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the books of the Corporation. With respect to all uncertificated shares, the name of the holder of record of such uncertificated shares represented, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

Section 5.02 Shares Without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, if required by the DGCL, shall, within a reasonable time after the issue or transfer of shares without certificates, send the stockholder a statement of the information required by the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided that the use of such system by the Corporation is permitted in accordance with applicable law.

Section 5.03 Transfer of Shares. Shares of stock of the Corporation shall be transferable upon its books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, upon surrender to the Corporation by delivery thereof (to the extent evidenced by a physical stock certificate) to the person in charge of the stock and transfer books and ledgers. Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of capital stock of the Corporation that are not represented by a certificate shall be transferred in accordance with any procedures adopted by the Corporation or its agent and applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Corporation to do so. The Corporation shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

Section 5.04 Lost, Stolen, Destroyed or Mutilated Certificates. A new certificate of stock or uncertificated shares may be issued in the place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed, and the Corporation may, in its discretion, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond, in such sum as the Corporation may direct, in order to indemnify the Corporation against any claims that may be made against it in connection therewith. A new certificate or uncertificated shares of stock may be issued in the place of any certificate previously issued by the Corporation that has become mutilated upon the surrender by such owner of such mutilated certificate and, if required by the Corporation, the posting of a bond by such owner in an amount sufficient to indemnify the Corporation against any claim that may be made against it in connection therewith.

Section 5.05 List of Stockholders Entitled To Vote. The Corporation shall prepare, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting *(provided, however,* if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten days prior to the meeting (a) on a reasonably accessible electronic network; *provided* that the information required to gain access to such list is provided with the notice of meeting or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 5.05 or to vote in person or by proxy at any meeting of stockholders.

Section 5.06 Fixing Date for Determination of Stockholders of Record.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for

making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 5.07 Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of stock or notification to the Corporation of the transfer of uncertificated shares with a request to record the transfer of such share or shares, the Corporation may treat the registered owner of such share or shares as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner of such share or shares. To the fullest extent permitted by law, the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VI

Notice and Waiver of Notice

Section 6.01 Notice. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Other forms of notice shall be deemed given as provided in the DGCL. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 6.02 Waiver of Notice. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting (in person or by remote communication) shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE VII

Indemnification

Section 7.01 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith; *provided, however,* that, except as provided in Section 7.03 with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors. Any reference to an officer of the Corporation in this Article VII shall be deemed to refer exclusively to the Chief Executive Officer, President and Secretary of the Corporation appointed pursuant to Article IV of these Bylaws, and to any Vice President,

Treasurer, Assistant Secretary, Assistant Treasurer, other officer of the Corporation appointed by the Board of Directors pursuant to Article IV of these Bylaws or other person designated by the title of "Vice President" of the Corporation, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors or equivalent governing body of such other entity pursuant to the certificate of incorporation and bylaws or equivalent organizational documents of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 7.02 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 7.01, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred by the indemnitee in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article VII (which shall be governed by Section 7.03) (hereinafter an "advancement of expenses"); *provided, however,* that, if the DGCL requires or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made solely upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified or entitled to advancement of expenses under Section 7.01 and Section 7.02 or otherwise.

Section 7.03 Right of Indemnitee to Bring Suit. If a claim under Section 7.01 or Section 7.02 is not paid in full by the Corporation within (i) 60 days after a written claim for indemnification has been received by the Corporation or (ii) 20 days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its

stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation. Notwithstanding the foregoing, if an indemnitee is successful on the merits or otherwise in the defense of any proceeding (or in the defense of any claim, issue or matter therein), indemnitee shall be indemnified for his or her expenses (including attorneys' fees) actually and reasonably incurred in such defense, and the Corporation may not assert the failure to satisfy a standard of conduct as a basis to deny indemnification, or as a basis to recover amounts advanced, in connection with such defense.

Section 7.04 Indemnification Not Exclusive.

(A) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article VII, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article VII, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(B) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director or officer of the Corporation at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article VII, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation or contribution by the indemnitee-related entities and no right of advancement or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 7.04(B) of Article VII, entitled to enforce this Section 7.04(B) of Article VII.

For purposes of this Section 7.04(B) of Article VII, the following terms shall have the following meanings:

(1) The term "indemnitee-related entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(2) The term "jointly indemnifiable claims" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to Delaware law, any agreement or certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

Section 7.05 Nature of Rights. The rights conferred upon indemnitees in this Article VII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 7.06 Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 7.07 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE VIII

Miscellaneous

Section 8.01 Electronic Transmission. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 8.02 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.03 Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall be the calendar year.

Section 8.04 Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 8.05 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

Section 8.06 Severability. If any provision or provisions in these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision or provisions in any other circumstance and of the remaining provisions in these Bylaws and the application of such provision or provisions to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any security of the Corporation shall be deemed to have notice of and consented to this Section 8.06.

ARTICLE IX

Amendments

Section 9.01 Amendments. The Board of Directors is authorized to make, repeal, alter, amend and rescind, in whole or in part, these Bylaws without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware, the Certificate of Incorporation or the Investor Rights Agreement. Notwithstanding any other provisions of these Bylaws or any provision of law which might otherwise permit a lesser vote of the stockholders, at any time when the Partners and their Permitted Transferees beneficially own, in the aggregate, less than 50% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock (as defined in the Certificate of Incorporation)), these Bylaws or applicable law, the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of these Bylaws (including, without limitation, this Section 9.01) or to adopt any provision inconsistent herewith.

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Exhibit 10.2

Execution Version

BIGBEAR.AI HOLDINGS, INC.

THE GUARANTORS PARTY HERETO

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of December 7, 2021

6.00% Convertible Senior Notes due 2026

TABLE OF CONTENTS

EXHIBIT

INDENTURE dated as of December 7, 2021 among BIGBEAR.AI HOLDINGS, INC., a Delaware corporation, as issuer (the "**Company**," as more fully set forth in Section 1.01), the Guarantors party hereto from time to time and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as trustee (the "**Trustee**," as more fully set forth in Section 1.01).

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 6.00% Convertible Senior Notes due 2026 (the "**Notes**"), initially in an aggregate principal amount not to exceed $200,000,000, and each of the Guarantors has duly authorized the issuance of its Guarantee, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company and the Guarantors have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as provided in this Indenture, the valid, binding and legal obligations of the Company, and this Indenture the valid, binding and legal agreement of the Company, the Guarantors and the Trustee, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes and the Guarantees have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, each of the Company and the Guarantors covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein," "hereof," "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"**30-Day ADTV**" means, as of any date and with respect to any shares of Common Stock, an amount equal to the arithmetic average of the products, for each Trading Day in the thirty (30) Trading Day period ending on, and including, the Trading Day immediately preceding such date, of (i) the daily trading volume in such shares of Common Stock on the applicable exchange for such Trading Day and (ii) the Daily VWAP for such Trading Day; *provided* that in the case of calculating the amount in this clause (ii) with respect to any shares of Common Stock, in respect of any Trading Day occurring on or subsequent to the Ex-Dividend Date for such dividend or distribution, such amount shall be increased by

an amount of cash in U.S. dollars per share of Common Stock distributed, or to be distributed, in such dividend or distribution, net of any applicable withholding taxes, as determined by the Conversion Agent, unless such dividend or distribution does not occur, in which case such amount shall be reduced to the amount that would then be in effect if such dividend or distribution had not been declared.

"**Acquired Indebtedness**" means, with respect to any specified Person, (a) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming, a Subsidiary of, such specified Person; and (b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 6.03.

"**Additional Shares**" shall have the meaning specified in Section 14.14(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, the determination of whether one Person is an "**Affiliate**" of another Person for purposes of this Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

"**Amended & Restated Convertible Note Subscription Agreement**" means, collectively, the Subscription Agreements dated as of November 29, 2021, each between the Company and the Subscriber defined therein.

"**Applicable Procedures**" means, with respect to a Depositary, as to any matter at any time, the policies and procedures of such Depositary, if any, that are applicable to such matter at such time.

"**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the issue date of the Notes, directly or indirectly managed or advised by a Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with such Holder's and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively such Holder and all other Attribution Parties to the Maximum Percentage.

"**Backstop Subscription Agreement**" means that certain Backstop Subscription Agreement, dated as of November 29, 2021, by and between the Company and AE BBAI Aggregator, LP, as amended, restated, amended and restated, supplemented or otherwise modified on or prior to the date hereof.

"**Bank Lenders**" means any commercial bank; *provided* that Antares Capital LP (and its Affiliates) and the other lenders party thereto on the Issue Date shall each constitute a "Bank Lender" until the first anniversary of the Issue Date solely to the extent that the Existing Antares Credit Agreement remains outstanding following the Issue Date and constitutes a Credit Facility permitted under Section 4.09(b)(i)(B).

"**BCA**" means the agreement and plan of merger by and among GigCapital4, Inc., GigCapital4 Merger Sub Corporation, BigBear.ai Holdings, LLC and BBAI Ultimate Holdings, LLC dated as of June 4, 2021, as amended, restated, amended and restated, supplemented or otherwise modified on or prior to the date hereof.

"**Board of Directors**" means, with respect to any Person, the board of directors (or similar body) of such Person or a committee thereof duly authorized to act for it hereunder.

"**Board Resolution**" means, with respect to any Person, a copy of a resolution certified by an Officer of such Person to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification.

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to close or be closed; *provided*, *however*, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home," "shelter-in-place," "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day

"**Capital Stock**" means, for any entity, any and all shares, interests (including partnership, limited liability company or membership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity issued by that entity; *provided* that debt securities that are convertible into or exchangeable for Capital Stock shall not constitute Capital Stock prior to their conversion or exchange, as the case may be.

"**Capitalized Lease Obligation**" means an obligation that is required to be classified and accounted for as a capitalized lease (and, for the avoidance of doubt, not a straight-line or operating lease) for financial reporting purposes in accordance with GAAP. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP; *provided* that all obligations of the Company and its Subsidiaries that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect on January 1, 2015 (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease Obligation) for purposes of this Indenture regardless of any change in GAAP following January 1, 2015 (that would otherwise require such obligation to be recharacterized as a Capitalized Lease Obligation).

"**Capitalized Software Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Subsidiaries.

"**Clause A Distribution**" shall have the meaning specified in Section 14.04(c).

"**Clause B Distribution**" shall have the meaning specified in Section 14.04(c).

"**Clause C Distribution**" shall have the meaning specified in Section 14.04(c).

"**close of business**" means 5:00 p.m. (New York City time).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers, trustees or others that will control the management or policies of such Person.

"**Common Stock**" means the Common Stock of the Company, par value $0.0001 per share, subject to Section 14.07.

"**Company**" shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

"**Company Mandatory Conversion Condition**" means the conditions required for the Company to cause Notes to be converted pursuant to Section 14.03(a).

"**Company Transaction Expenses**" means all accrued fees, costs and expenses of BBAI Ultimate Holdings, LLC, the Company and their Subsidiaries incurred in connection with the negotiation, preparation and execution of the Transaction Agreements, the performance and compliance with all Transaction Agreements and conditions contained herein to be performed or complied with at or before the Issue Date, and the consummation of the Transactions, including the fees, costs, expenses and disbursements of counsel, accountants, advisors and consultants of BBAI Ultimate Holdings, LLC, the Company and their Subsidiaries, whether paid or unpaid prior to the Issue Date.

"**Company Order**" means a written order of the Company, signed on behalf of the Company by an Officer.

"**Consolidated Adjusted EBITDA**" means, for any period, Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (ix) and (x) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Company and its Subsidiaries:

(i) total interest expense determined in accordance with GAAP (including, (A) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (B) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (C) non-cash interest payments, (D) the interest component of Capitalized Lease Obligations, (E) net payments, if any, pursuant to interest Swap Agreements with respect to Indebtedness, (F) amortization of deferred financing fees, debt issuance costs, commissions and fees, (G) the interest component of any pension or other post-employment benefit expense, and (H) to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed)),

(ii) without duplication, provision for taxes based on income (or similar taxes in lieu of income taxes), profits or capital gains of the Company and the Subsidiaries, including federal, foreign, state, local, franchise, excise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations paid or accrued during such period and, to the extent reflected as a charge in the statement of such Consolidated Net Income (regardless of classification), and any tax distributions made during, or with respect to, such period,

(iii) depreciation and amortization expense, including the amortization of deferred financing fees or costs, debt issuance costs, commissions, fees, and expenses, capitalized expenditures, Capitalized Software Expenditures or costs, amortization of expenditures relating to software, license and Intellectual Property payments, amortization of any lease related assets recorded in purchase accounting, depreciation of lease payments, customer acquisition costs, unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, depreciation of goodwill, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and incentive payments, conversion costs, and contract acquisition costs of such Person and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP,

(iv) (A) extraordinary, one-time and non-recurring charges, expenses or losses and (B) any non-cash charges on sales of assets outside of the ordinary course of business,

(v) any other non-cash charges, expenses or losses, including, without limitation, any non-cash asset retirement costs, non-cash increase in expenses resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments or due to purchase accounting, or any other acquisition, non-cash compensation charges, non-cash expense relating to the vesting of warrants, impairment charges, write-offs or write-downs for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Company may determine not to add back such non-cash item in the current period or (ii) to the extent the Company determines to add back such non-cash item in the current period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period) and non-cash translation (gain) loss,

(vi) retention, recruiting, relocation, integration and severance, signing and stay bonuses and expenses, including payments made to employees, producers or others who are subject to non-compete agreements, and stock option and other equity-based compensation expenses,

(vii) restructuring costs, integration costs, opening, pre-opening, consolidation and closing costs for facilities, transactions fees and expenses,

(viii) (A) other accruals, charges, payments, fees and expenses, or any amortization thereof, related to, or otherwise incurred in connection with, the Transactions (including all Company Transaction Expenses), and (B) fees, costs and expenses (to the extent not capitalized) related to any amendments, waivers, restatements, supplements or modifications to the Notes after the Issue Date,

(ix) to the extent actually received or expected by the Company in good faith to be received within three hundred sixty-five (365) days of such determination and not already included in Consolidated Net Income, proceeds of business interruption insurance to the extent replacing lost revenue for such period (it being understood and agreed that, to the extent such anticipated amounts are not actually received within such three hundred sixty-five (365) day period, such amounts shall be deducted in calculating Consolidated Adjusted EBITDA),

(x) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated Adjusted EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated Adjusted EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xi) any non-cash increase in expenses (A) resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments (including any non-cash increase in expenses as a result of last-in first-out and/or first-in first-out methods of accounting) or any other acquisition or (B) due to purchase accounting,

(xii) non-cash accruals by the Company and its Subsidiaries accrued during such period in respect of purchase price holdbacks, earn-outs and other similar contingent obligations to the extent deducted in calculating Consolidated Net Income of the Company and its Subsidiaries,

(xiii) any non-cash losses from disposed, abandoned or discontinued operations or product lines,

(xiv) any non-cash losses or charges resulting from the application of ASC 606,

(xv) any net increases in deferred revenue liabilities (including current portion), and

(xvi) the amount of all non-cash net periodic benefit costs recognized by the Company, any Guarantor or any Subsidiaries with respect to any defined benefit pension plan, and

minus (b) without duplication and to the extent included in arriving at such Consolidated Net Income,(i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Adjusted EBITDA in any prior period) including non-cash gains as a result of last-in first-out and/or first-in first-out methods of accounting, (ii)(x) any extraordinary or unusual net gains and (y) any gains on sales of assets outside of the ordinary course of business (cash and non-cash), (iii) any net gains from disposed, abandoned or discontinued operations or product lines and (iv) any net decreases in deferred revenue liabilities (including current portion); *provided* that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA (x) currency translation gains and losses related to currency re-measurements of Indebtedness (including the net loss or gain (i) resulting from Swap Agreements for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation gains or losses to the extent such gains or losses are non-cash items;

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations;

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period any income (loss) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Agreements or (iii) other derivative instruments; and

(D) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period the estimated pro forma service costs of pension, post-retirement employee benefits plans.

Notwithstanding anything to the contrary contained herein, all amounts added to Consolidated Adjusted EBITDA pursuant to clauses (a)(vi) and (a)(vii) above, together with all amounts excluded from Consolidated Net Income pursuant to clause (a)(ii) thereof, shall not exceed, in the aggregate, 7.5% of Consolidated Adjusted EBITDA (determined after giving effect to all such amounts that would be added back pursuant to the foregoing, subject to the limitations set forth in this sentence with respect to such add-backs and adjustments).

"**Consolidated Adjusted Ratio Debt EBITDA**" means, for any period, Consolidated Adjusted EBITDA for such period, plus:

(a) without duplication and, to the extent deducted (and not added back or excluded) in arriving at Consolidated Adjusted EBITDA or Consolidated Net Income, the sum of the following amounts for such period with respect to the Company and its Subsidiaries:

(i) costs associated with implementation of operational and reporting systems and technology initiatives (including any such payments made in connection with the consummation of the Transactions),

(ii) (A) business optimization expenses and charges (including costs and expenses relating to business optimization programs and new systems design, upgrade and implementation costs), and (B) (i) *pro forma* results for acquisitions and dispositions of business entities or properties or assets constituting a division or line of business of any business entity, and (ii) the "run rate" amount of cost savings, operating expense reductions, other operating expense improvements and cost synergies projected by the Company in good faith to be realizable in connection with the Transactions or any Specified Transactions or the implementation of an operational initiative or operational

change (including, to the extent applicable, from the Transactions or the effect of new customer contracts that have at least one full quarter of operations (with such operations annualized) or projects or increased pricing or volume in existing customer contracts) before or after the Issue Date (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions, other operating improvements and cost synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions, other operating improvements and cost synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (ii) (B) to the extent duplicative of any expenses or charges otherwise added to Consolidated Adjusted Ratio Debt EBITDA, whether through a pro forma adjustment or otherwise, for such period, and

(iii) adjustments (A) evidenced by or contained in a quality of earnings report prepared with respect to the target of an acquisition or other investment permitted hereunder by a "big-four" nationally recognized accounting firm or regionally recognized accounting firm or (B) consistent with Regulation S-X,

minus (b) without duplication and to the extent included in arriving at such Consolidated Adjusted EBITDA,non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Adjusted Ratio Debt EBITDA in any prior period).

Notwithstanding anything to the contrary contained herein, all amounts added to Consolidated Adjusted EBITDA pursuant to clauses (a)(vi) and (a)(vii) of such definition and (ii) all amounts added to Consolidated Ratio Debt EBITDA pursuant to clause (a) above, shall not exceed, in the aggregate, 25% of Consolidated Adjusted Ratio Debt EBITDA (determined after giving effect to all such amounts that would be added back pursuant to the foregoing). For the avoidance of doubt, Consolidated Adjusted Ratio Debt EBITDA shall be calculated including *pro forma* adjustments.

"**Consolidated Net Income**" means, for any period, the net income (loss) of the Company and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided*, *however*, that, without duplication,

(a) (i) costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans, and (ii) (1) costs, charges and expenses related to acquisitions after the Issue Date and (2) to the start-up, pre-opening, opening, closure, and/or consolidation of distribution centers, operations, offices and facilities and related contract termination costs shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) any net after-tax effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Capital Stock of any Person, in each case other than in the ordinary course of business, as determined in good faith by the Company, shall be excluded,

(d) the net income (loss) for such period of any Person that is not a Subsidiary of the Company or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Company shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or cash equivalents (or to the extent subsequently converted into cash or cash equivalents) to the Company or a Subsidiary thereof in respect of such period,

(e) any impairment charge or asset write-off or write-down (other than write-offs or write-downs of accounts receivable and inventory), including impairment charges or asset write-offs or write-downs related to intangible assets, goodwill, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP or Commission guidelines, and the amortization of intangibles arising pursuant to GAAP or Commission guidelines shall be excluded,

(f) any (i) equity or phantom equity based non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation, and (ii) cash charges associated with the rollover, acceleration or payout of Capital Stock by managers, officers, directors, consultants or employees of the Company, or any Subsidiary, shall be excluded,

(g) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any investment, acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture, to the extent actually reimbursed, or, so long as the Company has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within three hundred sixty-five (365) days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365-day period), shall be excluded,

(h) to the extent covered by insurance or a third party and actually paid for or reimbursed, or indemnified, or, so long as the Company reasonably expects that such amount will in fact be paid for or reimbursed by the insurer or third party and only to the extent that such amount is in fact paid for, reimbursed or indemnified within three hundred sixty-five (365) days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such three hundred sixty-five (365) days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(i) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Company or any of its Subsidiaries or such Person's assets are acquired by the Company or any of its Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated Adjusted Ratio Debt EBITDA on a Pro Forma Basis),

(j) the purchase accounting effects of adjustments in component amounts required or permitted by GAAP (including in the inventory, property and equipment, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Company and its Subsidiaries), as a result of the Transactions, any acquisition constituting an investment permitted under this Indenture consummated prior to or after the Issue Date, or the amortization or write-off of any amounts thereof shall be excluded,

(k) any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowance related to such items, shall be excluded,

(l) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period shall be excluded,

(m) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(n) any non-cash adjustments resulting from the application of Accounting Standards Codification Topic No. 460, Guarantees, or any comparable regulation, shall be excluded, and

(o) (i) accruals and reserves (including contingent liabilities) that are (A) established or adjusted within twelve months (12) after the Issue Date that are so required to be established as a result of the Transactions or (B) established or adjusted within twelve (12) months after the closing of any acquisition (other than any such other acquisition in the ordinary course of business) that are so required to be established or adjusted as a result of such acquisition, in each case in accordance with GAAP or (ii) charges, accruals, expenses and reserves as a result of adoption or modification of accounting policies, shall be excluded.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Subsidiaries in any period, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance.

For the avoidance of doubt, Consolidated Net Income shall be calculated, including *pro forma* adjustments.

"**Consolidated Total Indebtedness**" means, as of any date of determination, all Indebtedness of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, consisting of (a) Indebtedness for borrowed money (including unreimbursed obligations under letters of credit and the outstanding principal balance of all third party Indebtedness of such Person represented by notes, bonds and similar instruments), (b) Capitalized Lease Obligations and purchase money Indebtedness and (c) all obligations of such Person in respect of Disqualified Stock. For the avoidance of doubt, it is understood that obligations under Treasury Management Arrangements do not constitute Consolidated Total Indebtedness.

"**Consolidated Total Indebtedness Ratio**" means, as of any date of determination, the ratio of (a) the Consolidated Total Indebtedness of the Company and its Subsidiaries on the date of determination *minus* Unrestricted Cash as of such date to (b) (i) with respect to the calculation of Consolidation Total Indebtedness Ratio for purposes of Section 4.08(b)(ix), the Consolidated Adjusted EBITDA of the Company and its Subsidiaries for the most recent Four Quarter Period for which consolidated financial statements are available and (ii) with respect to the calculation of Consolidation Total Indebtedness Ratio for purposes of Section 4.09(b)(xx), the Consolidated Adjusted Ratio Debt EBITDA of the Company and its Subsidiaries for the most recent Four Quarter Period for which consolidated financial statements are available.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds:

(i) for the purchase or payment of any such primary obligation; or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Conversion Agent**" shall have the meaning specified in Section 4.02.

"**Conversion Date**" shall have the meaning specified in Section 14.02(c).

"**Conversion Obligation**" shall have the meaning specified in Section 14.01(a).

"**Conversion Price**" means as of any time, $1,000, *divided by* the Conversion Rate as of such time.

"**Conversion Rate**" shall have the meaning specified in Section 14.01(a).

"**Corporate Trust Office**" means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at Wilmington Trust, National Association, Global Capital Markets, 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attention: BigBear.ai Notes Administrator, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

"**Credit Agreement**" means the Credit Agreement, dated as of December 7, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among, *inter alios*, BigBear.ai Holdings, Inc., a Delaware corporation, the other borrowers from time to time party thereto, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent and collateral agent.

"**Credit Facility**" or "**Credit Facilities**" means, with respect to the Company or its Subsidiaries, one or more debt facilities (including, without limitation, the Credit Agreement) or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted under Section 4.09 hereof) or adds Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

"**Custodian**" means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

"**Daily VWAP**" means the per share volume-weighted average price as displayed under the heading "**Bloomberg VWAP**" on Bloomberg page "**BBAI<equity> AQR**" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day up to and including the final closing print (which is indicated by Condition Code "6" in Bloomberg) (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The "**Daily VWAP**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Depositary**" means, with respect to each Global Note, the Person specified in Section 2.05(b) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Disposition**" or "**Dispose**" means the sale, lease, sublease, or other disposition of any property of any Person.

"**Disqualified Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than, in each case, any provision requiring an offer to purchase such Capital Stock as a result of a change of control, delisting, asset sale or similar provision or any other provision permitting holders to convert such Capital Stock so long as any right of the holders thereof upon the occurrence of a change of control, delisting, asset sale or similar provision shall be subject to the prior repayment in full in cash of the Notes and the other Note Obligations); *provided* that if such Capital Stock are issued pursuant to a plan for the benefit of any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries or by any such plan to such Persons, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"**Distributed Property**" shall have the meaning specified in Section 14.04(c).

"**Domestic Subsidiary**" means any Subsidiary of the Company incorporated or organized under the laws of the U.S., any state thereof, the District of Columbia.

"**Effective Date**" shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, "**Effective Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Eligible Market**" means The New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market.

"**Equity Conditions**" means, with respect to a given date of determination: (i) on each day during the period beginning thirty (30) days prior to such applicable date of determination and ending on and including such applicable date of determination (the "**Equity Conditions Measuring Period**") either (x) one or more registration statements filed with the Commission pursuant to the Amended & Restated Convertible Note Subscription Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Stock to be issued in connection with the event requiring this determination (without regard to any limitations on conversion set forth herein) (a "**Required Minimum Securities Amount**") or (y) all shares of Common Stock issuable upon conversion of the applicable Notes shall be eligible for sale pursuant to Rule 144 of the Securities Act, and the Company is then current with its required filings with the Commission; (ii) on each day during the Equity Conditions Measuring Period, the Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Notes) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation, as applicable; (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of the Notes on a timely basis in accordance herewith and to the extent required hereby in all material respects; (iv) [reserved]; (v) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Notes being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Change (as defined in the Indenture) shall have occurred which has not been abandoned, terminated or consummated; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause (1) any registration statement required to be filed with the Commission pursuant to the Amended & Restated Convertible Note Subscription Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of all shares of Common Stock issuable upon conversion of the applicable Notes in accordance with the terms of the Amended & Restated Convertible Note Subscription Agreement or (2) any shares of Common Stock issuable upon conversion of the applicable Notes to not be eligible for sale pursuant to Rule 144 and the Company is then current with its filings with the Commission, (viii) [reserved]; (ix) [reserved];

(x) on each Trading Day during the Equity Conditions Measuring Period, there shall not have occurred any Volume Failure as of such applicable date of determination; (xi) on the applicable date of determination all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the portion of this Note being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full from the authorized and available shares of Common Stock of the Company; (xii) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Indenture); or (xiii) the shares of Common Stock issuable pursuant to the event requiring the satisfaction of the Equity Conditions are duly authorized and will be listed and eligible upon issuance for trading on an Eligible Market.

"**Equity Conditions Failure**" means, with respect to any date of determination, the Equity Conditions have not been satisfied (or waived in writing by the applicable Holder).

"**Equity Conditions Measuring Period**" shall have the meaning specified in the definition of "Equity Conditions."

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Exchange Election**" shall have the meaning specified in Section 14.12.

"**Excluded Entity**" means any Subsidiary that is not a Material Subsidiary; *provided* that any Subsidiary that provides a guarantee of the Obligations of the Company or the Guarantors, as applicable, under the Credit Agreement or any other Indebtedness of the Company or of any Guarantor shall not be an Excluded Entity.

"**Existing Antares Credit Agreement**" means that certain Credit Agreement, dated as of December 21, 2020, by and among, *inter alios*, BigBear.ai Intermediate Holdings, LLC (f/k/a Lake Finance, LLC), as the parent, BigBear.ai, LLC (f/k/a Lake Acquisition, LLC), as the borrower, the other borrowers party thereto, guarantors party thereto, Antares Capital LP, as administrative agent and collateral agent, and the lenders party thereto, as amended, amended and restated, supplemented, waived and/or otherwise modified prior to the date hereof.

"**Expiration Date**" shall have the meaning specified in Section 14.04(e).

"**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in an arm's length transaction not involving distress or necessity of either party, determined in good faith by (unless otherwise provided in this Indenture) the Board of Directors of the Company, taking into account all relevant factors determinative of value, including, without limitation, preference rights, lack of liquidity, control and restrictions on marketability and transferability.

"**Foreign Subsidiary**" means any direct or indirect Subsidiary of the Company or any Guarantor that is not a Domestic Subsidiary.

"**Form of Assignment and Transfer**" means the "**Form of Assignment and Transfer**" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Repurchase Notice**" means the "**Form of Fundamental Change Repurchase Notice**" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Note**" means the "**Form of Note**" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "**Form of Notice of Conversion**" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Four Quarter Period**" means a period of four consecutive full fiscal quarters, treated as one period.

"**FPAs**" means those certain Forward Share Purchase Agreements, by and between the Company and each of (1) Glazer Capital, LLC and Meteora Capital LLC, on behalf of itself and its affiliated investment funds, (2) Highbridge Tactical Credit Master Fund, L.P and Highbridge SPAC Opportunity Fund, L.P., and (3) Tenor Opportunity Master Fund, Ltd.

"**Fundamental Change**" shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs prior to the Maturity Date:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Wholly Owned Subsidiaries and any Permitted Holders, files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination or changes solely in par value) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property and/or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into or exchanged for cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's direct or indirect Wholly Owned Subsidiaries; *provided*, *however*, that neither (x) a transaction described in clause (A) or (B) in which the holders of all classes of the Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction nor (y) any merger of the Company solely for the purpose of changing its jurisdiction of incorporation that results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity shall be a Fundamental Change pursuant to this clause (b);

(c) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other Common Equity underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market, The Nasdaq Global Market or The Nasdaq Capital Market (or any of their respective successors);

provided, *however*, that a transaction or transactions described in clauses (a) or (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration becomes Reference Property for the Notes, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights (subject to the provisions of Section 14.02(a)).

Any event, transaction or series of related transactions that constitute a Fundamental Change under both clause (a) and clause (b) above (determined without regard to the proviso in clause (b) above) shall be deemed to be a Fundamental Change solely under clause (b) above (and, for the avoidance of doubt, shall be subject to the proviso in clause (b) above).

For the avoidance of doubt, the transactions contemplated by the BCA shall not constitute a "Fundamental Change.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 15.02(d).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 15.02(c)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 15.02(a).

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time*provided*, *however*, that, subject to Section 1.04, if the Company notifies the Trustee that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the issuance of the Notes in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. The amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations shall be determined in accordance with the definition of Capitalized Lease Obligations.

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Group**" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule13d-5 thereunder.

"**Guarantee**" means the joint and several guarantees of the Company's payment obligations under this Indenture and the Notes, issued by the Guarantors pursuant to Article 13 of this Indenture.

"**Guarantor**" means each Subsidiary of the Company that becomes a guarantor of the Notes pursuant to the provisions of this Indenture, in each case until released from its Guarantee pursuant to the terms of this Indenture; *provided*, that an Excluded Entity shall not be required to become a Guarantor.

"**Hedging Obligations**" of any Person means the obligations of such person pursuant to any interest rate agreement, currency agreement or commodity agreement.

"**Holder**," as applied to any Note, or other similar terms, means any Person in whose name at the time a particular Note is registered on the Note Register (and in the case of a Global Note and solely with respect to Section 6.12 and Section 14.13, the indirect holder of Notes held through its participant).

"**Immediate Family Member**" means, with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual's estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Indebtedness**" of any Person means, without duplication:

(a) all obligations of such Person for borrowed money,

(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments,

(c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person,

(d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) accounts payable incurred in the ordinary course of business and not past due by more than ninety (90) days and (y) any earn-out obligations until such obligations become due and payable liabilities on the balance sheet of such Person in accordance with GAAP) and have not been paid within ninety (90) days thereof,

(e) all Indebtedness of others secured by any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed,

(f) all guarantees by such Person of Indebtedness of others set forth in clauses (a)-(e) and (g)-(j) of this definition,

(g) all Capitalized Lease Obligations of such Person,

(h) all obligations of such Person in respect of Disqualified Stock;

(i) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have not been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of incurrence), and

(j) net obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction (the amount of any such obligations to be equal at any time to the net payments under such agreement or arrangement giving rise to such obligation that would be payable by such Person at the termination of such agreement or arrangement);

with respect to clauses (a), (b), (c), (d), (g), (h) and (j) above, if and to the extent that any of the foregoing Indebtedness (other than letters of credit) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided*, *however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include: (1) Contingent Obligations (other than, for the avoidance of doubt, those described in clause (f) above) incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) any earn-out obligations, contingent consideration, purchase price adjustments, deferred purchase money amounts, milestone and/or bonus payments (whether performance or time-based), and royalty, licensing, revenue and/or profit sharing arrangements, in each case, characterized as such and arising expressly out of purchase and sale contracts, development arrangements or licensing arrangements; (5) deferred compensation; (6) accrued expenses; (7) obligations in respect of Preferred Stock that is not Disqualified Stock; (8) Obligations in respect of Treasury Management Arrangements; (9) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) incurred prior to the Issue Date or in the ordinary course of business or consistent with past practice; (10) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes; and (11) amounts owed to dissenting stockholders (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets not prohibited by this Indenture.

Notwithstanding anything in this Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification section 815 and related interpretations to the extent such effects would otherwise increase or decrease the amount of Indebtedness deemed outstanding for purposes of this Indenture, (so that such outstanding amount differs from the principal amount of such Indebtedness payable at maturity) as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Indenture but for the application of this sentence shall not be deemed an incurrence of Indebtedness under this Indenture.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Independent Financial Advisor**" means a third-party accounting, appraisal or investment banking firm or consultant, in each case, of national standing, that is, in the good faith determination of the Company, qualified to perform the task for which it has been engaged; *provided* that such firm or appraiser is not an Affiliate of the Company.

"**Intellectual Property**" means the rights in and to (a) all inventions and discoveries (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, (c) all copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith, (d) all know-how, trade secrets and confidential business information, whether patentable or unpatentable and whether or not reduced to practice (including ideas, research and development, know-how, formulas, compositions and manufacturing and production process and techniques, technical data, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals), (e) designs, (f) all computer software (including data and related documentation), (g) all other proprietary rights and (h) all licenses and agreements in connection therewith.

"**Interest Make-Whole Amount**" means, with respect to the conversion of any Note, in an amount, denominated in U.S. dollars, equal to the sum of all regularly scheduled interest payments, if any, due on such Note on each Interest Payment Date occurring after the Conversion Date for such conversion and on or before December 15, 2025; *provided*, *however*, that for these purposes, the amount of interest due on the Interest Payment Date immediately after such Conversion Date will be deemed to be the following amount: (x) if such Conversion Date is prior to December 15, 2024, an amount equal to twelve months of interest, (y) if such Conversion Date is on or after December 15, 2024, any accrued and unpaid interest, if any, at such Conversion Date, *plus* any remaining amounts that would be owed to, but excluding, December 15, 2025, including all regularly scheduled interest payments and (z) if such Conversion Date is on or after December 15, 2025, an amount equal to zero.

"**Interest Payment Date**" means each June 15 and December 15 of each year, beginning on June 15, 2022.

"**Issue Date**" means December 7, 2021.

"**Joint Venture**" means any joint venture entity in which the Company or any of its Subsidiaries holds Capital Stock (but which is not a Wholly Owned Subsidiary).

"**Last Reported Sale Price**" of the Common Stock (or other security for which a closing sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "**Last Reported Sale Price**" shall be the last quoted bid price per share for the Common Stock (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the "**Last Reported Sale Price**" shall be the average of the mid-point of the last bid and ask prices per share for the Common Stock (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The "**Last Reported Sale Price**" shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"**Lien**" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"**Limited Condition Transaction**" means any (i) acquisition of any assets, business or person or investment not prohibited by this Indenture (including acquisitions subject to a letter of intent or purchase agreement), in each case, the consummation of which is not conditioned on the availability of, or on obtaining, financing, (ii) redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment, (iii) Disposition or (iv) Restricted Payment.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

"**Make-Whole Fundamental Change Period**" shall have the meaning specified in Section 14.03(a).

"**Mandatory Conversion**" means a conversion pursuant to Section 14.03(a).

"**Mandatory Conversion Date**" means the Conversion Date for a Mandatory Conversion, as provided in Section 14.03(c).

"**Market Disruption Event**" means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Material Domestic Subsidiary**" means, at any date of determination, each of Domestic Subsidiary of the Company (a) whose total assets at the last day of the most recent Four Quarter Period for which consolidated financial statements are available were equal to or greater than 5.00% of the consolidated total assets of the Company and its Subsidiaries at such date or (b) whose gross revenues for such Four Quarter Period were equal to or greater than 5.00% of the consolidated gross revenues of the Company and its Subsidiaries for such period, in each case, determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Issue Date, Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 7.50% of the consolidated total assets of the Company and its Subsidiaries as of the end of the most recently ended fiscal quarter of the Company for which financial statements are available or more than 7.50% of the consolidated gross revenues of the Company and its Subsidiaries for the most recent Four Quarter Period for which financial statements are available, then the Company shall, not later than 60 days after the date by which financial statements for such fiscal quarter are available, (i) designate one or more of such Domestic Subsidiaries as "Material Domestic Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 4.14 applicable to such Subsidiary.

"**Material Foreign Subsidiary**" means, at any date of determination, each Foreign Subsidiary of the Company (a) whose total assets at the last day of the most recent Four Quarter Period for which consolidated financial statements are available were equal to or greater than 5.00% of the consolidated total assets of the Company and its Subsidiaries at such date or (b) whose gross revenues for such Four Quarter Period were equal to or greater than 5.00% of the consolidated gross revenues of the Company and its Subsidiaries for such period, in each case, determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Issue Date, Foreign Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 7.50% of the consolidated total assets of the Company and its Subsidiaries as of the end of the most recently ended fiscal quarter of the Company for which financial statements are available or more than 7.50% of the consolidated gross revenues of the Company and its Subsidiaries for the most recent Four Quarter Period for which financial statements are available, then the Company shall, not later than 60 days after the date by which financial statements for such fiscal quarter are available, (i) designate one or more of such Foreign Subsidiaries as "Material Foreign Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 4.14 applicable to such Subsidiary.

"**Material Intellectual Property**" means Intellectual Property owned by or licensed to the Company or any of the Guarantors which is material to the business of the Company and its Subsidiaries, including, without limitation, any Intellectual Property created in connection with any current or future contract with a third party customer or government entity, which, in each case, represents revenue (or contracted for revenue) in an amount that is greater than 5.00% of the consolidated revenue of the Company and its subsidiaries, taken as a whole, for the most recently completed Four Quarter Period for which consolidated financial statements are available.

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

"**Maturity Date**" means December 15, 2026.

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture.

"**Note Register**" shall have the meaning specified in Section 2.05(a).

"**Note Registrar**" shall have the meaning specified in Section 2.05(a).

"**Notice of Conversion**" shall have the meaning specified in Section 14.02(a)(ii).

"**Obligations**" means any principal, interest, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

"**Officer**" means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Secretary, any assistant Treasurer, any assistant Secretary, General Counsel, any Assistant General Counsel, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "**Vice President**").

"**Officer's Certificate,**" when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed on behalf of the Company by an Officer of the Company that meets the requirements of Section 17.05.

"**open of business**" means 9:00 a.m. (New York City time).

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, that is delivered to the Trustee.

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes surrendered for purchase in accordance with Article 15 for which Paying Agent holds money sufficient to pay the Fundamental Change Repurchase Price, in accordance with Section 15.04(b);

(e) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and

(f) Notes repurchased by the Company pursuant to the last sentence of Section 2.10 after the Company surrenders them to the Trustee for cancellation in accordance with Section 2.08.

"**Paying Agent**" shall have the meaning specified in Section 4.02.

"**Permitted Holders**" means, collectively, (i) AE Industrial Partners, LP and its Affiliates, including any funds, partnerships or other investment vehicles or Subsidiaries managed or directly or indirectly controlled by them but not including, however, any portfolio companies of the foregoing, (ii) any Person who is acting solely as an underwriter in connection with a public or private offering of Capital Stock of the Company, acting in such capacity and (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members and any members of such group; *provided* that, in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in clause (i), collectively, have beneficial ownership of more than 50% of the total voting power of the Capital Stock of the Company held by such group.

"**Permitted Liens**" means:

(a) Liens imposed by law for taxes or other governmental charges that are not yet due or are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto have been set aside in the applicable financial statements in accordance with GAAP;

(b) Carriers,' warehousemen's, mechanics,' materialmen's, repairmen's and other like Liens imposed by applicable laws, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto have been set aside in the applicable financial statements in accordance with GAAP;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws, other than any Lien imposed by ERISA;

(d) Deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) Liens (i) securing judgments, awards, attachments and/or decrees for the payment of money not constituting an Event of Default, (ii) arising out of judgments or awards against the Company, or the Subsidiaries with respect to which an appeal or other proceeding for review is then being pursued and (iii) notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings for which adequate reserves have been made;

(f) Liens consisting of survey exceptions, minor encumbrances, ground leases, easements, or reservations of, rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines, and other similar purposes, or zoning, building codes, or other restrictions (including, minor defects or irregularities in title and similar encumbrances) as to the use of a Real Estate Asset or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness for borrowed money and which do not individually or in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business as currently conducted or as contemplated to be conducted;

(g) Liens on fixed or capital assets of the Company or any Guarantor which secure Indebtedness permitted under clause (iii) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of the applicable assets and (iii) such Liens shall attach only to the assets acquired, plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof (including after-acquired property that is (A) affixed or incorporated into the property or assets covered by such Lien, (B) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets, and (C) the proceeds and products thereof) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations relating to any Indebtedness or other obligations to which such Liens relate;

(h) Liens securing Indebtedness permitted under clause (xxii) of the definition of Permitted Indebtedness so long as such Liens shall attach only to the assets acquired, plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property

or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) that secured (or, under the written arrangements under which such Liens arose, could secure the obligations relating to any Indebtedness or other obligations to which such Liens relate;

(i) Landlords' and lessors' statutory Liens in respect of rent not in default;

(j) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, Liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(k) Liens arising from precautionary UCC filings regarding "true" operating leases or the consignment of goods to the Company or any Guarantor or bailee arrangements entered into in the ordinary course of business;

(l) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided*, *further*, that such Liens may not extend to any other property or other assets owned by the Company or any Subsidiaries (other than Subsidiaries of such Person);

(m) Liens on property or other assets at the time the Company or a Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation, consolidation or business combination with or into the Company, any Guarantor or any of their respective Subsidiaries; *provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger, consolidation or business combination; *provided*, *further*, that the Liens may not extend to any other property owned by the Company or any of its Subsidiaries (other than Subsidiaries of such Person);

(n) Liens on earnest money deposits made in connection with an agreement to purchase assets or Capital Stock of a Person, or in connection with an agreement to dispose of any property in an asset sale not prohibited hereby;

(o) ground leases in respect of real property on which facilities owned or leased by the Company or any of its Subsidiaries are located;

(p) (i) licenses or sublicenses granted by the Company and/or its Subsidiaries permitted (or not expressly restricted) in accordance with the terms of this Indenture, (ii) leases or subleases granted by the Company or any of its Subsidiaries to other Persons not materially interfering with the conduct of the business of the Company or any Subsidiary, (iii) any interest or title of a lessor, sublessor or licensor under any Capitalized Lease Obligations, (iv) restriction or encumbrance to which the interest or title of such lessor or sublessor may be subject, (v) subordination of the interest of the lessee or sub-lessee under such Capitalized Lease Obligations to any restriction or encumbrance referred to in the preceding clause (iv) and (vi) royalty, revenue, profit sharing or buy/sell arrangements arising out of Joint Ventures, purchase and sale contracts, development contracts or other arrangements expressly permitted hereunder;

(q) Liens in connection with any zoning, building, land use or similar law or right reserved to or vested in any governmental authority to control or regulate the use of any or dimensions of real property or the structure thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(r) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any Joint Venture or similar arrangement pursuant to any Joint Venture or similar agreement;

(s) Liens (i) 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 in the ordinary course of business or (ii) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(t) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Company or the Subsidiaries;

(u) Liens deemed to exist in connection with investments in repurchase agreements;

(v) Liens arising (i) out of conditional sale, title retention, consignment or similar arrangements for the sale of any asset in the ordinary course of business and not prohibited by this Indenture or (ii) by operation of law under Article 2 of the Uniform Commercial Code (and/or any similar Requirement of Law under any jurisdiction);

(w) Liens (i) in favor of the Company and any Guarantor and/or (ii) granted by any entity that is not the Company or any Guarantor in favor of any Subsidiary that is not the Company or any Guarantor, in each case of the foregoing clauses (i) and (ii), securing intercompany Indebtedness permitted under Section 4.09;

(x) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty or liability insurance to the Company or any Subsidiaries or any other insurance or self-insurance arrangements;

(y) Liens on cash and cash equivalents that are earmarked to be used to satisfy or discharge Indebtedness; *provided* (i) such cash and/or cash equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied or discharged, (ii) such Liens extend solely to the account in which such cash and/or cash equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied or discharged and (iii) the satisfaction or discharge of such Indebtedness is expressly permitted hereunder;

(z) Liens or rights of set-off against credit balances of the Company or any of the Subsidiaries with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to the Company or any Subsidiaries in the ordinary course of business to secure the obligations of any Subsidiary to the credit card issuers or credit card processors as a result of fees and charges;

(aa) deposits of cash with the owner or lessor of premises leased and operated by the Company or any Subsidiaries to secure the performance of the Company's, any Guarantor's and such Subsidiary's obligations under the terms of the lease for such premises;

(bb) the modification, replacement, renewal or extension of any Lien permitted by his Indenture; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, (B) proceeds and products thereof and customary security deposits and (C) assets subject to any cross collateralization of obligations owed to the holder of such Lien, and (ii) the renewal, extension, restructuring or refinancing of the obligations secured or benefited by such Liens is permitted by Section 4.09 (to the extent constituting Indebtedness);

(cc) Liens securing Hedging Obligations; and

(dd) Liens (i) consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business and (ii) Liens on equipment of the Company or any Subsidiary granted in the ordinary course of business to the Company or such Subsidiary's client at which such equipment is located.

For purposes of determining compliance with this definition, (i) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but may be incurred under any combination of such categories (including in part under one such category and in part under any other such category) and (ii) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Company shall, in its sole discretion, classify such Lien (or any portion thereof) in any manner that complies with this definition.

"**Permitted Refinancing**" and "**Permitted Refinancing Indebtedness**" means, with respect to any Person, any Indebtedness that is incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness (or unutilized commitment in respect of Indebtedness) existing on the Issue Date or incurred (or established) in compliance with the Indenture including Indebtedness that refinances refinancing Indebtedness *provided* that:

(a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing;

(b) such Permitted Refinancing Indebtedness has a final maturity date the same as or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(c) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is Subordinated Indebtedness, such Permitted Refinancing Indebtedness is subordinated in right of payment on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged (*provided* that payments necessary to avoid such Subordinated Indebtedness being classified as applicable high yield discount obligation for purposes of Code Section 163(i) shall be required even if the Indebtedness being so refinanced did not expressly provide for such payments);

(d) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is unsecured Indebtedness, such Permitted Refinancing Indebtedness is unsecured Indebtedness;

(e) such Permitted Refinancing Indebtedness is not incurred by a Person other than the Company and any of the Guarantors to renew refund, refinance, replace, defease or discharge any Indebtedness of the Company or a Guarantor; and

(f) is not secured by a Lien on any assets other than the assets securing the Indebtedness being Refinanced plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof (including after-acquired property that is (A) affixed or incorporated into the property or assets covered by such Lien, (B) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (C) the proceeds and products thereof) that secured (or, under the written arrangements under which such Liens arose, could secure) the obligations relating to any Indebtedness or other obligations to which such Liens relate, unless otherwise permitted by Section 4.10;

provided, that clause (b) above will not apply to any refinancing of any Indebtedness secured by a Lien permitted by this Indenture.

"**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Physical Notes**" means permanent certificated Notes in registered form issued in minimum denominations of $1,000 principal amount and integral multiples in excess thereof.

"**Physical Settlement**" shall have the meaning specified in Section 14.02(a).

"**Physical Settlement Method**" means, with respect to any conversion of Notes, the Physical Settlement.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Pro Forma Basis**," "**pro forma effect**" and "**pro forma adjustments**" means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.03.

"**Real Estate Asset**" means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of the Company or the Subsidiaries in and to real property (including, but not limited to, land, improvements and fixtures thereon).

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors of the Company, by statute, by contract or otherwise).

"**Reference Property**" shall have the meaning specified in Section 14.07(a).

"**Refunding Capital Stock**" shall have the meaning specified in Section 4.08(b)(xi).

"**Registrable Securities**" shall have the meaning set forth in the Amended & Restated Convertible Note Subscription Agreement.

"**refinance**" means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in this Indenture shall have a correlative meaning.

"**Regular Record Date**," with respect to any Interest Payment Date, means the June 1 or December 1 (whether or not such day is a Business Day) immediately preceding the applicable June 15 or December 15 Interest Payment Date, respectively.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

"**Restricted Cash**" means cash and cash equivalents held by the Company and its Subsidiaries that would appear as "restricted" on a consolidated balance sheet of the Company or any of its Subsidiaries.

"**Restricted Securities**" shall have the meaning specified in Section 2.05(c).

"**Restrictive Legend**" shall have the meaning specified in Section 2.05(c).

"**Rule 144**" means Rule 144 as promulgated under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Rule 144A**" means Rule 144A as promulgated under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "**Scheduled Trading Day**" means a Business Day.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Settlement Amount**" has the meaning specified in Section 14.02(a)(i).

"**Share Exchange Event**" has the meaning specified in Section 14.07(a).

"**Significant Subsidiary**" means a Subsidiary of the Company that meets the definition of "significant subsidiary" in Article 1, Rule 1-02(w) of Regulation S-X under the Exchange Act as in effect on the date of this Indenture; *provided* that, in the case of a Subsidiary of the Company that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) thereof, such Subsidiary shall not be deemed to be a Significant Subsidiary.

"**Specified Transaction**" means (i) any investment that results in a Person becoming a Subsidiary of the Company, (ii) any acquisition, (iv) any disposition that results in a Subsidiary ceasing to be a Subsidiary of the Company, (v) any investment constituting an acquisition of assets constituting a business unit, line of business or division of, or all or substantially all of the Capital Stock of, another Person or any disposition of a business unit, line of business or division of the Company or anyd Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, (vi) any incurrence or repayment of Indebtedness, (vii) any Restricted Payment or (viii) any other event that by the terms of this Indenture requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis or giving pro forma effect to any such transaction or event that by the terms of this Indenture requires such test to be calculated on a "Pro Forma Basis" or after giving "Pro Forma Effect."

"**Spin-Off**" shall have the meaning specified in Section 14.04(c).

"**Stock Price**" shall have the meaning specified in Section 14.03(c).

"**Subordinated Indebtedness**" means, with respect to the Notes,

(a) any Indebtedness of the Company which is by its terms subordinated in right of payment to the Notes, and

(b) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

"**Successor Company**" shall have the meaning specified in Section 11.01(a)(i).

"**Swap Agreement**" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or the Subsidiaries shall be a Swap Agreement.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The Nasdaq Stock Market LLC or, if the Common Stock (or such other security) is not then listed on The Nasdaq Stock Market LLC, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, "**Trading Day**" means a Business Day; and *provided*, *further*, that for purposes of determining amounts due upon conversion only, "**Trading Day**" means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on The Nasdaq Stock Market LLC or, if the Common Stock is not then listed on The Nasdaq Stock Market LLC, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, "**Trading Day**" means a Business Day.

"**Transactions**" means the Mergers (as defined in the BCA), any transactions directly or indirectly related to the consummation of the Mergers pursuant to the BCA, the issuance of the Notes, entry into the Credit Agreement, consummation of the transactions contemplated by the Transaction Agreements, the FPAs and the Backstop Subscription Agreement, the consummation of any other transaction in connection with the foregoing and the payment of expenses related to the foregoing.

"**Transaction Agreements**" shall mean this Indenture, the BCA, the Investor Rights Agreement, the Sponsor Agreement, the Voting and Support Agreement, the Amended and Restated Note Subscription Agreements, the Amended and Restated Charter of GigCapital4, Inc., the Amended and Restated Bylaws of GigCapital4, Inc. and the Confidentiality Agreement (all as defined in the BCA) and all the other written agreements, documents, instruments and certificates entered into in connection herewith or therewith or required to be delivered hereunder or thereunder and any and all exhibits and schedules hereto or thereto.

"**transfer**" shall have the meaning specified in Section 2.05(d).

"**Treasury Capital Stock**" shall have the meaning specified in Section 4.08(b)(xi).

"**Treasury Management Arrangement**" means any agreement or other arrangement governing the provision of treasury or cash management services, including, without limitation, deposit accounts, overdraft, overnight draft, credit cards, debit cards, p-cards (including purchasing cards, employee credit card programs and commercial cards), funds transfer, automated clearinghouse, direct debit, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services, netting services, cash pooling arrangements, credit and debit card acceptance or merchant services and other treasury or cash management services.

"**Trigger Event**" shall have the meaning specified in Section 14.04(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "**Trust Indenture Act**" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Trustee**" shall mean or include each Person who is then a Trustee hereunder.

"**unit of Reference Property**" shall have the meaning specified in Section 14.07(a).

"**Unrestricted Cash**" means cash and cash equivalents in excess of any Restricted Cash that would be stated on the balance sheet of a Person and its Subsidiaries.

"**Valuation Period**" shall have the meaning specified in Section 14.04(c).

"**Volume Failure**" means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the "**Volume Failure Measuring Period**"), is less than $2,000,000 (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such Volume Failure Measuring Period.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (i) the amount of each then-remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of such Indebtedness, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(b) the then-outstanding principal amount of such Indebtedness.

"**Wholly Owned Subsidiary**" means, with respect to any Person, any direct or indirect Subsidiary of such Person, except that, solely for purposes of this definition, the reference to "more than 50%" in the definition of "**Subsidiary**" shall be deemed replaced by a reference to "100%," the calculation of which shall exclude nominal amounts of the voting power of shares of Capital Stock or other interests in the relevant Subsidiary not held by such person to the extent required to satisfy local minority interest requirements outside of the United States.

Section 1.02 *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

Section 1.03 *Pro Forma Basis.*

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Consolidated Total Indebtedness Ratio, shall be calculated in the manner prescribed by this Section 1.03.

(b) For purposes of calculating any financial ratio or test or basket that is based on a percentage of Consolidated Adjusted EBITDA or Consolidated Adjusted Ratio Debt EBITDA, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to Section 1.03(d)) that have been made during the applicable Four Quarter Period, and, if applicable, subsequent to such Four Quarter Period and prior to or substantially concurrently with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated Adjusted EBITDA, Consolidated Adjusted Ratio Debt EBITDA, consolidated total assets and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Four Quarter Period (or, in the case of the determination of consolidated total assets, the last day of the applicable Four Quarter Period). If since the beginning of any applicable Four Quarter Period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Company or any of its Subsidiaries since the beginning of such Four Quarter Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.03, then such financial ratio or test (or the calculation of consolidated total assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.03.

(c) For purposes of clause (a)(ii)(B) of the definition of Consolidated Adjusted Ratio Debt EBITDA, whenever pro forma effect is to be given to the Transactions, a Specified Transaction, the implementation of an operational initiative or operational change, the pro forma calculations (i) shall be made in good faith by an Officer of the Company and (ii) may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions, other operating expense improvements and cost synergies resulting from, or relating to, such initiative or change, such Transaction or such Specified Transaction projected by the Company in good faith to be realizable as a result of actions taken or expected to be taken (calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and cost synergies had been realized on the first day of such period as if such cost savings, operating expense reductions, other operating improvements and cost synergies were realized during the entirety of such period and such that "run-rate" means the full recurring projected benefit for a period that is associated with any action taken or expected to be taken (including any savings or other benefits expected to result from the elimination of a public target's compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions), and any such adjustments shall be included in the initial pro forma calculation of such financial ratios or tests or basket that is based on a percentage of Consolidated Adjusted EBITDA relating to such initiative or change (or, with respect to the Transactions, within eighteen (18) months after the consummation of the Transactions), such Transaction or such Specified Transaction (and in respect of any subsequent pro forma calculation in which such initiative or change, such Transaction or such Specified Transaction is given pro forma effect) and during any applicable subsequent Four Quarter Period in which the effects thereof are expected to be realizable, relating to such initiative or change, such Transaction or such Specified Transaction; *provided* that (x) a duly completed certificate signed by an Officer of the Company shall be delivered to the Trustee, certifying that such cost savings, operating expense reductions, other operating improvements and/or cost synergies are readily identifiable, factually supportable and have been determined in good faith by the Company to be reasonably anticipated to be realizable in the good faith judgment of the Company, within eighteen (18) months after the consummation of such initiative or change (or, with respect to the Transactions, within eighteen (18) months after the consummation of the Transactions), such Transaction or such Specified Transaction, which is expected to result in such cost savings, operating expense reductions, other operating improvements or cost synergies and (y) no cost savings, operating expense reductions, other operating improvements or cost synergies shall be added pursuant to clause (ii) above to the extent

duplicative of any expenses or charges otherwise added to Consolidated Adjusted Ratio Debt EBITDA (or any component thereof), whether through a pro forma adjustment or otherwise, for such period; *provided*, *further*, that all amounts added back to Consolidated Adjusted Ratio Debt EBITDA pursuant to clause (ii) above, together with (i) all amounts added to Consolidated Adjusted EBITDA pursuant to clauses (a)(vi) and (a)(vii) of such definition (and all amounts excluded from thereof) and (ii) all amounts added to Consolidated Ratio Debt EBITDA pursuant to clause (a) of such definition and (iii) all amounts excluded from Consolidated Net Income pursuant to clause (a)(ii) thereof shall not exceed, in the aggregate, 25% of Consolidated Adjusted Ratio Debt EBITDA (determined after giving effect to all such amounts that would be added back pursuant to the foregoing).

(d) In the event that the Company or any Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of any financial ratio or test, (i) during the applicable Four Quarter Period or (ii) subsequent to the end of the applicable Four Quarter Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Four Quarter Period.

(e) In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Indenture which requires the calculation of any financial ratio or test, including the Consolidated Total Indebtedness Ratio;

(ii) testing availability under baskets set forth in this Indenture (including baskets measured as a percentage of Consolidated Adjusted EBITDA); or

(iii) determining compliance with Defaults or Events of Default;

in each case, at the option of the Company (the Company's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into or irrevocable notice is given in respect of such transaction (or such later date as specified by the Company from time to time) (the "**LCT Test Date**"), and if, after giving pro forma effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recent Four Quarter Period ending prior to the LCT Test Date, the Company or its any of its Subsidiaries would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with for all purposes; *provided* that if financial statements for one or more subsequent fiscal periods or monthly financials are available, the Company may elect, in its sole discretion, to redetermine all such ratios, tests or baskets on the basis of such financial statements in which case such date or redetermination shall thereafter be deemed to be the applicable date the definitive agreements for such Limited Condition Transaction are entered into. For the avoidance of doubt, if the Company has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been satisfied as a result of fluctuations in any such ratio, test or basket (including due to fluctuations of the target of any Limited Condition Transaction), including due to fluctuations in Consolidated Adjusted EBITDA, Consolidated Adjusted Ratio Debt EBITDA or consolidated total assets, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been satisfied as a result of such fluctuations. If the Company has made an LCT Election for any Limited Condition Transaction, then in connection with any

event or transaction occurring after the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement or date for redemption, repurchase, defeasance, satisfaction and discharge or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction (a "**Subsequent Transaction**") in connection with which a ratio, test or basket availability calculation must be made on a pro forma basis or giving pro forma effect to such Subsequent Transaction, for purposes of determining whether such ratio, test or basket availability has been complied with under this Indenture, any such ratio, test or basket shall be required to be satisfied on a pro forma basis assuming such Limited Condition Transaction and other transactions in connection therewith have been consummated; *provided* that, solely with respect to any such ratio, test or basket calculated with respect to a Restricted Payment or payment on account of Indebtedness under any Subordinated Indebtedness, the calculation of any such ratio, test or basket shall also be required to be satisfied on a non-pro forma basis until such time as such Subsequent Transaction is actually consummated.

Section 1.04 *Accounting Terms; GAAP.*

All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Indenture shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (a) unless the Company has requested an amendment pursuant to this Section 1.04 with respect to the treatment of operating leases and Capitalized Lease Obligations and until such amendment has become effective, all obligations of any Person that would have been treated as operating leases for purposes of GAAP prior to the implementation of ASC 842 (whether before or after the issuance of the Notes) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of this Indenture (whether or not such operating lease obligations were in effect on such date) regardless of any change in or application of GAAP following such date pursuant to ASC 842 or otherwise that would require such leases (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations and (b) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to Statement of Financial Accounting Standards 141R or ASC 805 (or any other financial accounting standard having a similar result or effect).

ARTICLE 2
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount.* The Notes shall be designated as the "6.00% Convertible Senior Notes due 2026." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $200,000,000, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02 *Form of Notes.* The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in minimum denominations of $1,000 principal amount and integral multiples in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a30-day month. The Company shall pay cash amounts in money of the United States of that at the time of payment is legal tender for payment of public and private debts.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the contiguous United States, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay, or cause the Paying Agent to pay, interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five (25) days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment, and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder not less than ten (10) days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c). The Trustee shall have no responsibility for the calculation of the Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes*. The Notes shall be signed in the name and on behalf of the Company by the manual, facsimile or other electronic signature of one of its Officers.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.*

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or anyco-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee or Note Registrar and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed on a Holder by the Company, the Trustee, the Note Registrar, anyco-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(d), all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the Applicable Procedures.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the Restrictive Legend (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below) or Section 2.05(d) (including the legend set forth therein), as applicable, unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Each Global Note shall bear a legend in substantially the following form (the "**Restrictive Legend**") (or any similar legend, not inconsistent with this Indenture, required by the Depositary for such Global Note):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE (NOTWITHSTANDING THE FOREGOING, THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES). BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF BIGBEAR.AI HOLDINGS, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT; OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restrictive Legend required by this Section 2.05(c) and shall not be assigned (or deemed assigned) a restricted CUSIP number. The Restrictive Legend set forth above and affixed on any Note will be deemed, in accordance with the terms of the certificate representing such Note, to be removed therefrom upon the Company's delivery to the Trustee of written notice to such effect, without further action by the Company, the Trustee, the Holder(s) thereof or any other Person; at such time, such Note will be deemed to be assigned an unrestricted CUSIP number as provided in the certificate representing such Note; provided, however, if such Note is a Global Note and the Depositary thereof requires a mandatory exchange or other process to cause such Global Note to be identified by an unrestricted CUSIP number in the facilities of such Depositary, then the Company will effect such exchange or procedures as soon as reasonably practicable. Without limiting the generality of any other provision of this Indenture, the Trustee will be entitled to receive an instruction letter from the Company

before taking any action with respect to effecting any such mandatory exchange or other process. The Company and the Trustee reserve the right to require the delivery of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that any proposed transfer of any Note is being made in compliance with the Securities Act and applicable state securities laws.

The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the first sentence of the immediately preceding paragraph have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the Restrictive Legend specified in this Section 2.05(c) and shall not be assigned (or deemed assigned) a restricted CUSIP number.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within ninety (90) days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within ninety (90) days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

None of the Company, the Guarantors, the Trustee and any agent of the Company, the Guarantors or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. None of the Company, the Guarantors and the Trustee shall have any responsibility or liability for any act or omission of the Depositary.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, the Conversion Agent or any other agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Neither the Company nor the Trustee shall have any responsibility or liability for any act or omission of the Depositary. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to, or upon the order of, the registered Holder(s) (which shall be the Depositary or its nominee in the case of a Global Note).

The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the Applicable Procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(d) Any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE (NOTWITHSTANDING THE FOREGOING, THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES). BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF BIGBEAR.AI HOLDINGS, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE OF THE NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

(C) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT; OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(e).

(e) Any Note or Common Stock issued upon conversion or exchange of a Note that is repurchased or owned by the Company or any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months immediately preceding) may not be resold by the Company or such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144).

(f) Notwithstanding anything contained herein to the contrary, neither the Trustee nor the Note Registrar shall be responsible for ascertaining whether any transfer complies with the registration provisions of, or exemptions from, the Securities Act, applicable state securities laws or other applicable law.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for

such temporary Notes an equal aggregate principal amount of Physical Notes upon the written request of the Company. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment at maturity, repurchase upon a Fundamental Change, registration of transfer or exchange or conversion (other than any Notes exchanged pursuant to Section 14.12), if surrendered to any Person that the Company controls other than the Trustee, to be surrendered to the Trustee for cancellation and they will no longer be considered outstanding under this Indenture upon their payment at maturity, registration of transfer or exchange or conversion. All Notes delivered to the Trustee shall be canceled promptly by it. Except for any Notes surrendered for registration of transfer or exchange, or as otherwise expressly permitted by any of the provisions of this Indenture, no Notes shall be authenticated in exchange for any Notes surrendered to the Trustee for cancellation. The Trustee shall dispose of canceled Notes in accordance with its customary procedures. After such cancellation, the Trustee shall deliver a certificate of such cancellation to the Company, at the Company's written request in a Company Order. The Company may not issue new Notes to replace Notes that have been paid or that have been delivered to the Trustee for cancellation.

Section 2.09 *CUSIP and ISIN Numbers*. The Company in issuing the Notes may use CUSIP and ISIN numbers (if then generally in use), and, if so, the Trustee shall use CUSIP and ISIN numbers in all notices issued to Holders as a convenience to such Holders; provided that the Trustee shall have no liability for any defect in the CUSIP and ISIN numbers as they appear on any Note, notice or elsewhere and that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the CUSIP and ISIN numbers.

Section 2.10 *Additional Notes; Repurchases.* The Company may, at any time and from time to time without the consent of the Holders, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (other than differences in the issue date, the issue price and interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities laws purposes or would cause the Notes initially issued hereunder to be subject to an extended time period for restrictions on transfer, such additional Notes shall have one or more separate CUSIP, ISIN or other identifying numbers. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Sections 10.05 and 17.05, as the Trustee shall reasonably request. In addition, the Company may, without the consent of Holders, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements or otherwise, including by cash-settled swaps or other derivatives. The Company may, at its option, reissue, resell, hold or surrender to the Trustee for cancellation in accordance with Section 2.08 any Notes that the Company may repurchase, in the case of a reissuance or resale; *provided* that if any such reissued or resold Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities law purposes, such reissued or resold Notes shall have one or more separate CUSIP numbers. Any Notes that the Company may repurchase shall be considered outstanding for all purposes under this Indenture (other than, at any time when such Notes are held by the

Company or any of its Subsidiaries or its Affiliates, for the purpose of determining whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture) unless and until such time the Company surrenders them to the Trustee for cancellation in accordance with Section 2.08 and, upon receipt of a written order from the Company, the Trustee shall cancel all Notes so surrendered.

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture and the Notes shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture and the Notes, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) after the Notes have (x) become due and payable, whether on the Maturity Date, on any Fundamental Change Repurchase Date or otherwise and/or (y) been converted (and the related consideration due upon conversion has been determined), the Company or any Guarantor has deposited with the Trustee cash and/or has delivered to Holders shares of Common Stock, as applicable, (in the case of Common Stock, solely to satisfy the Company's Conversion Obligation) sufficient, without consideration of reinvestment, to pay all of the outstanding Notes and all other sums due and payable under this Indenture or the Notes by the Company and the Guarantors; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture and the Notes have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company and the Guarantors to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest.* The Company covenants and agrees that it will pay or cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable) and premium, if any, of the Settlement Amounts owed upon conversion of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Notwithstanding anything to the contrary contained in this Indenture, the Company or Paying Agent may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal, premium or Interest or Defaulted Amounts payments hereunder.

Section 4.02 *Maintenance of Office or Agency.* The Company will maintain in the contiguous United States an office or agency (which may be an office of the Trustee or an affiliate of the Trustee) where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made at the Corporate Trust Office.

The Company may also from time to time designate asco-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the contiguous United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as a place where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (if applicable) or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made; *provided* that no office of the Trustee shall be a place for service of legal process on the Company.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Office*. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent.*

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) and premium, if any of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust;

provided, that a Paying Agent appointed as contemplated under Section 15.02(f) shall not be required to deliver any such instrument.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) or such accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be made in immediately available funds and received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest, if any, so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Subject to applicable law, any money deposited with the Trustee, the Conversion Agent or any Paying Agent, or any money and shares of Common Stock then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust and the Trustee shall have no further liability with respect to such funds; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company and the Guarantors for payment thereof, and all liability of the Trustee, the Conversion Agent or such Paying Agent with respect to such trust money, and all liability of the Company as trustee with respect to such trust money and shares of Common Stock, shall thereupon cease.

Section 4.05 *Existence*. Except as otherwise permitted hereunder, the Company will, and the Company will cause each of its Guarantors to, at all times preserve and maintain in full force and effect its legal existence under the laws of the jurisdiction of its organization and take all reasonable action to maintain all rights, franchises, licenses and permits necessary in the normal conduct of its business except, other than with respect to the preservation of the existence of the Company, to the extent (i) that the failure to do so could not reasonably be expected to result in a material adverse effect on the business of the Company and the Guarantors (taken as a whole) or (ii) pursuant to any merger, consolidation, liquidation, dissolution, Disposition or other transaction permitted by Article 11; *provided* that neither the Company nor any of the Guarantors shall be required to preserve any such existence (other than with respect to the preservation of existence of the Company), right, franchise, license or permit if an Officer of such Person or such Person's Board of Directors (or similar governing body) determines that the preservation thereof is no longer desirable in the conduct of the business of such Person or that the loss thereof is not disadvantageous in any material respect to the Company and the Guarantors (taken as a whole).

Section 4.06 *Rule 144A Information Requirement and Annual Reports*. (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide without cost to the Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) The Company shall deliver to the Trustee, within fifteen (15) days after the same are required to be filed with the Commission, copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any grace period, including those provided by Rule 12b-25 under the Exchange Act (or any successor thereto)). Notwithstanding the foregoing, the Company shall in no event be required to deliver to, or otherwise provide or disclose to, the Trustee or any Holder any information for which the Company is requesting (assuming such request has not been denied), or has received, confidential treatment from the Commission, or any correspondence with the Commission. Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be delivered to the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or such successor); *provided* that the Trustee shall have no obligation to determine whether such documents or reports have been filed via the EDGAR system.

(c) Delivery of the reports, information and documents described in subsection (b) above to the Trustee is for informational purposes only, and the information and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's and/or the Guarantors' compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

Section 4.07 *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within one hundred twenty (120) days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2021) an Officer's Certificate stating whether the signers thereof have knowledge of any failure by the Company or its Subsidiaries to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee within thirty (30) days after an Officer of the Company becomes aware of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof; *provided* that the Company is not required to deliver such notice if such Default has been cured.

Section 4.08 *Limitation on Certain Restricted Payments*.

(a) The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any payment or distribution (x) on account of the Company's or any of its Subsidiaries' Capital Stock (including any payment made in connection with any merger or consolidation involving the Company or any of its Subsidiaries) or (y) to the direct or indirect holders of the Company's or any of its Subsidiaries' Capital Stock in their capacity as holders, other than (A) dividends, payments or distributions by the Company payable solely in Capital Stock (other than Disqualified Stock) of the Company or (B) dividends, payments or distributions by a Subsidiary to the Company or another Subsidiary (and in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a Wholly Owned Subsidiary, the Company or a Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Capital Stock in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value (including any payment made in connection with any merger or consolidation involving the Company or any of its Subsidiaries) any Capital Stock of the Company held by Persons other than the Company or any Subsidiary; or

(iii) purchase, repay, prepay, repurchase, redeem, defease, acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness, other than (A) Indebtedness permitted under clauses (v) and (vi) of Section 4.09(b) hereof or (B) the purchase, repurchase or other acquisition of Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase or acquisition;

(all such payments and other actions set forth in clauses (i) through (iii) above being collectively referred to as "**Restricted Payments**").

(b) Notwithstanding anything to the contrary contain herein, so long as no Default shall have occurred and be continuing or would occur as a consequence thereof, the provisions of this Section 4.08 will not prohibit:

(i) the payment of any dividend or distribution or consummation of any redemption within sixty (60) days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with any provision of this Section 4.08; *provided* that the making of such payment will reduce capacity for Restricted Payments pursuant such provisions when so made;

(ii) a Restricted Payment to pay for the prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock of the Company held by any future, present or former employee, director, officer, member of management, operating partner, manager, contractor, service provider, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement (including, for the avoidance of doubt, any principal and interest payable on any Indebtedness issued by the Company in connection with such prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition), including any Capital Stock rolled over, accelerated or paid out by or to any employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries in connection with any transaction; *provided*, *however*, that the aggregate Restricted Payments made under this clause do not exceed $3,760,000 in any fiscal year (with unused amounts in any fiscal year being carried over to succeeding fiscal years subject to a maximum of $7,520,000 in any fiscal year); *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock) of the Company to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Issue Date to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the making of Restricted Payments pursuant to this Section 4.08; plus

(B) the cash proceeds of key man life insurance policies received by the Company or any Subsidiary of the Company after the Issue Date; and in addition, cancellation of Indebtedness owing to the Company or any Subsidiary from any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries (or any permitted transferees thereof) of the Company or any Subsidiary of the Company in connection with a repurchase of Capital Stock of the Company or any Subsidiary of the Company from such Persons will not be deemed to constitute a Restricted Payment for purposes of this Section 4.08 or any other provisions of this Indenture;

(iii) cashless repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represent a portion of the exercise, conversion or exchange price thereof;

(iv) each Subsidiary of the Company may make Restricted Payments to the Company or any Guarantor or to another Subsidiary of the Company which is the immediate parent of the Subsidiary making such Restricted Payment;

(v) payments made or expected to be made by the Company or any Subsidiary in respect of withholding or similar taxes payable in connection with the exercise or vesting of Capital Stock or any other equity award by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any Subsidiary and purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise, conversion or exchange of stock options, warrants, equity-based awards or other rights in respect thereof if such Capital Stock represents payments in respect of withholding or similar taxes payable upon exercise or vesting thereof;

(vi) the making of cash payments in connection with any conversion or redemption of the Notes, in each case, pursuant to the terms of this Indenture;

(vii) any non-Wholly Owned Subsidiary of the Company may make Restricted Payments (which may be in cash) to its shareholders, members or partners generally, so long as the Company or the Subsidiary which owns the Capital Stock in the Subsidiary making such Restricted Payment receives at least its proportionate share thereof (based upon its relative holding of the Capital Stock in the Subsidiary making such Restricted Payment and taking into account the relative preferences, if any, of the various classes of Capital Stock of such Subsidiary);

(viii) the payment of cash in lieu of the issuance of fractional shares of Capital Stock in connection with any dividend or split of, or upon exercise or conversion of warrants, options or other securities exercisable or convertible into, Capital Stock of the Company or in connection with the issuance of any dividend otherwise permitted to be made under this Section 4.08;

(ix) the declaration and payment of cash dividends, or the making of cash distributions, to holders of the Company's Capital Stock (including Common Stock and Preferred Stock) on account of such Capital Stock (including Common Stock and Preferred Stock); *provided* that (A) Consolidated Adjusted EBITDA for the most recent Four Quarter Period for which consolidated financial statements are available was equal to or greater than $50,000,000 and (B) on a Pro Forma Basis after giving effect to such Restricted Payment, the Consolidated Total Indebtedness Ratio would be equal to or less than 4.50 to 1.00; *provided*, *further*, that, in no event shall any distribution, as a dividend or otherwise, by the Company of (A) any Material Intellectual Property or (B) the Capital Stock of any Guarantor, be permitted under this Section 4.08;

(x) any Restricted Payment made in connection with the Transactions;

(xi) (a) any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock, including any accrued and unpaid dividends thereon ("**Treasury Capital Stock**") or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (in each case, other than Disqualified Stock or Designated Preferred Stock) ("**Refunding Capital Stock**"), and (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Company or to an employee stock ownership plan or any trust established by the Company or any of its Subsidiaries) of Refunding Capital Stock;

(xii) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be incurred pursuant to Section 4.09; and

(xiii) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a merger, amalgamation, consolidation or transfer of assets not prohibited by this Indenture.

(c) For purposes of determining compliance with this Section 4.08, if any Restricted Payment (or portion thereof) would be permitted pursuant to one or more provisions described above, the Company may divide such Restricted Payment in any manner that complies with this covenant.

Section 4.09 *Limitations on Incurrence of Indebtedness and Issuance of Preferred Stock or Disqualified Stock*

(a) The Company will not, and will not permit any of its Subsidiaries, in each case, to, directly or indirectly, create, incur, issue, assume, enter into a guarantee of or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**") any Indebtedness (including Acquired Indebtedness), and the Company will not issue any Disqualified Stock and will not permit any of its Subsidiaries to issue any shares of Preferred Stock.

(b) Notwithstanding anything to the contrary therein, Section 4.09(a) will not prohibit the incurrence of any of the following items of Indebtedness or the issuance of any of the following Disqualified Stock or Preferred Stock (collectively, "**Permitted Indebtedness**"):

(i) (A) the incurrence of Indebtedness pursuant to Credit Facilities, other than the Revolving Facility (as defined herein), by the Company or any Guarantor up to an aggregate principal amount of all Indebtedness incurred under this Section 4.09(b)(i)(A) (including any Permitted Refinancing Indebtedness in respect thereof) not to exceed $75,000,000 at any time outstanding; and

(B) the incurrence of Indebtedness pursuant to one or more debt facilities providing for revolving loans by a Bank Lender or group of Bank Lenders (a "**Revolving Facility**") and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) by the Company or any Guarantor up to an aggregate principal amount of all Indebtedness incurred under this Section 4.09(b)(i)(B) (including any Permitted Refinancing Indebtedness in respect thereof) not to exceed $50,000,000 at any time outstanding;

(ii) (A) the incurrence by the Company and any Guarantor of Indebtedness represented by the Notes (including any guarantee thereof) to be issued on the Issue Date (but excluding any Additional Notes) and (B) any Indebtedness outstanding on the Issue Date (other than clause (i) hereof) and, for the purposes of clause (iii) hereof, any Indebtedness incurred pursuant to clauses (v) and (vi) hereof);

(iii) the incurrence by the Company or any Guarantor of purchase money Indebtedness to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capitalize Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets (other than Intellectual Property) or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancing thereof; *provided*, *however*, that the aggregate principal amount of Indebtedness permitted by this clause (iii) shall not exceed, at any one time outstanding, $10,000,000;

(iv) the incurrence by the Company or any of its Subsidiaries of Permitted Refinancing Indebtedness to Refinance any Indebtedness that was permitted to be incurred under Section 4.09(b) (other than clause (i) and (iii) thereof);

(v) Indebtedness of the Company to a Subsidiary; *provided* that any such Indebtedness owing to a Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Notes; *provided further*, that any subsequent transfer of any such Indebtedness (except to the Company or another Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien (but not foreclosure thereon)) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (v);

(vi) Indebtedness of a Subsidiary to the Company or another Subsidiary; *provided* that if a Guarantor incurs such Indebtedness owing to a Subsidiary that is not a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Notes of such Guarantor; *provided further*, that any subsequent transfer of any such Indebtedness (except to the Company or another Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien (but not foreclosure thereon)) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vi);

(vii) the issuance by any of the Company's Subsidiaries to the Company or to any of its Subsidiaries of shares of Preferred Stock; *provided*, *however*, that: (x) any subsequent issuance or transfer of Capital Stock that results in any such Preferred Stock being held by a Person other than the Company or a Subsidiary; and (y) any sale or other transfer of any such Preferred Stock to a Person that is not the Company or a Subsidiary, will be deemed, in each case, to constitute an issuance of such Preferred Stock by such Subsidiary that was not permitted by this clause (vii);

(viii) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business;

(ix) Hedging Obligations that are not incurred for speculative purposes but for the purpose of (x) fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (y) fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (z) fixing or hedging commodity price risk, including the price or cost of raw materials, emission rights, manufactured products or related commodities, with respect to any commodity purchases or sales;

(x) the guarantee by the Company or any of the Guarantors of Indebtedness of the Company or a Guarantor permitted to be incurred under any other provision of Section 4.09(b), and the guarantee by any Subsidiary that is not a Guarantor of Indebtedness of another Subsidiary that is not a Guarantor, in each case, to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this Section 4.09(b); *provided* that if the Indebtedness being guaranteed is subordinated in right of payment to or pari passu with the Notes, then the guarantee must be subordinated or pari passu, as applicable, in right of payment to the same extent as the Indebtedness guaranteed;

(xi) the incurrence by the Company or any of its Subsidiaries of Indebtedness (other than for borrowed money) arising from agreements of the Company or any such Subsidiary providing indemnification, deferred purchase price, non-cash earn-outs, cash earn-outs, purchase price adjustments and other similar obligations, in each case, incurred or assumed in connection with any investment, the acquisition or sale or other disposition of any business, assets or Capital Stock of the Company or any of its Subsidiaries, other than, in the case of any such disposition by the Company or any of its Subsidiaries, guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock;

(xii) the incurrence of contingent liabilities arising out of endorsements of checks, drafts and other similar instruments for deposit or collection in the ordinary course of business;

(xiii) the incurrence of Indebtedness in the ordinary course of business under any agreement between the Company or any of its Subsidiaries and any commercial bank or other financial institution relating to Treasury Management Arrangements, other than any such Indebtedness of the Company or any Guarantor in respect of any such obligations of a Subsidiary that is not a Guarantor;

(xiv) Indebtedness owed to any Person providing property, casualty, liability or other insurance to the Company or any Guarantor, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the premiums with respect to such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only for a period not exceeding twelve months;

(xv) Indebtedness incurred by the Company or any of its Subsidiaries constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; *provided* that any reimbursement obligations in respect thereof are reimbursed within ninety (90) days following the due date thereof; *provided*, *further*, that this clause (xv) shall not include any Indebtedness of the Company or any Guarantor in respect of such obligations of a Subsidiary that is not a Guarantor;

(xvi) Indebtedness representing deferred compensation or similar obligation to employees of the Company or any Guarantor or any of their Subsidiaries or incurred in the ordinary course of business;

(xvii) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xviii) Indebtedness of the Company and its Subsidiaries, to the extent the net proceeds thereof are promptly used to purchase the Notes in connection with a Fundamental Change;

(xix) Subordinated Indebtedness;

(xx) (A) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary incurred or issued to finance an acquisition or (B) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Company or any Subsidiary or merged into, or consolidated, amalgamated or combined with, the Company or a Subsidiary in accordance with the terms of this Indenture; *provided* that in the case of clauses (A) and (B) of this Section 4.09(b)(xx), after giving pro forma effect to such acquisition, merger, amalgamation, consolidation or other business combination, the Consolidated Total Indebtedness Ratio for the Company immediately subsequent to the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued is less than or equal to the Consolidated Total Indebtedness Ratio immediately prior to such acquisition, merger, amalgamation, consolidation or other business combination; and

(xxi) (a) Indebtedness issued by the Company or any of its Subsidiaries to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries, in each case to finance the purchase or redemption of Capital Stock of the Company that is not prohibited by this Indenture and (b) Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in the ordinary course of business, consistent with past practice or in connection with the Transactions, any investment or any acquisition (by merger, consolidation, amalgamation or otherwise).

(c) For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness or Disqualified Stock meets the criteria of more than one of the categories of Permitted Indebtedness described in Section 4.09(b) above, the Company will be permitted to classify all or a portion of such item of Indebtedness or Disqualified Stock on the date of its incurrence in any manner that complies with this covenant; *provided* that any Indebtedness outstanding under the Existing Antares Credit Agreement or the Credit Agreement on the Issue Date will be treated as incurred on the Issue Date under Section 4.09(b)(i)(B) hereof. The accrual of interest, the accrual of dividends, the accretion or amortization of original issue discount, the amortization of debt discount, the payment of interest on any Indebtedness in the form of additional Indebtedness, the payment of interest in the form of additional shares of preferred Capital Stock or Disqualified Stock, the reclassification of Preferred Stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this covenant, provided, in each such case, that the amount of any such accrual, accretion or payment is included in fixed charges of the Company as accrued.

(d) The amount of any Indebtedness outstanding as of any date will be:

(i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(ii) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(iii) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of: (x) the Fair Market Value of such assets at the date of determination; and (y) the amount of the Indebtedness of the other Person.

(e) Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in GAAP, will not be deemed to be an incurrence of Indebtedness for purposes of this Indenture.

(f) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that the Company may incur pursuant to this Section 4.09 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Permitted Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

Section 4.10 *Limitation on Liens.*

The Company will not, and will not permit any Guarantor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (an "**Initial Lien**") of any kind (except Permitted Liens) that secures Obligations under any Indebtedness or any related Guarantee of Indebtedness, on any asset or property of the Company or any Guarantor, unless:

(a) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; and

(b) In all other cases, the Notes or the Guarantees are equally and ratably secured,

in each case of clauses (a) and (b), until such time as such Indebtedness is no longer secured by the Initial Lien. The foregoing provisions of this Section 4.10 shall not apply to (i) Liens securing the Notes and the related Guarantees and (ii) Liens securing Indebtedness and other Obligations permitted to be incurred under (or secured pursuant to) Credit Facilities (including the Revolving Facility), including any letter of credit facility relating thereto, that was incurred pursuant to Section 4.09(b)(i) hereof.

Any Lien created for the benefit of the Holders pursuant to the preceding paragraph of this Section 4.10 shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

Section 4.11 *Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $5,000,000, unless:

(i) the Affiliate Transaction is on terms that are substantially as favorable to the Company or the relevant Subsidiary, taken as a whole, as those that would have been obtained at the time in a comparable arms-length transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company or any of its Subsidiaries;

(ii) the Company delivers to the Trustee, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $10,000,000, a resolution of the Board of Directors of the Company accompanied by an Officer's Certificate certifying that such Affiliate Transaction complies with this Section 4.11 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Company; and

(iii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of $25,000,000, the Company obtains a written opinion from an Independent Financial Advisor to the effect that the consideration to be paid or received in connection with such Affiliate Transaction or Affiliate Transactions is fair, from a financial point of view, to the Company and its Subsidiaries, taken as a whole.

(b) The following items will be deemed not to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a):

(i) any collective bargaining, consulting or employment agreement or compensation plan, stock option, stock ownership plan, management equity plan, phantom equity plan or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), termination or severance agreement, or officer or director indemnification arrangement entered into by the Company or any of its Subsidiaries in the ordinary course of business for the benefit of any future, current or former employee, director, officer, member of management, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries and payments and transactions pursuant thereto, including (A) any issuance, transfer or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Immediate Family Members,) of the Company, any of its Subsidiaries; (B) the payment of compensation, fees, costs and expenses to,

and indemnities (including under insurance policies) and reimbursements, employment and severance arrangements, and employee benefit and pension expenses provided on behalf of, or for the benefit of, future, current or former employees, directors, officers, members of management, managers, contractors, consultants, distributors or advisors (or their respective Immediate Family Members) of the Company or any Subsidiary (whether directly or indirectly and including by their Immediate Family Members); (C) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors; and (D) transactions pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement;

(ii) transactions between or among the Company and/or its Subsidiaries (or a Person that becomes a Subsidiary as a result of such transaction);

(iii) payment of fees and reimbursement of expenses and indemnities provided to any future, current or former employee, director, officer, member of management, manager, contractor, consultant or advisor (or their respective Immediate Family Members) of the Company or any of its Subsidiaries;

(iv) any transaction in which the only consideration paid by the Company or any Subsidiary consists of Capital Stock (other than Disqualified Stock) of the Company or any contribution of capital to the Company;

(v) Restricted Payments that do not violate the provisions of Section 4.09 of this Indenture;

(vi) transactions pursuant to agreements or arrangements as in effect on the Issue Date, or any amendment, modification, or supplement thereto or replacement thereof (so long as such agreement or arrangement, as so amended, modified or supplemented or replaced, is not materially more disadvantageous, taken as a whole, than such agreement or arrangement as in effect on the Issue Date, as determined in good faith by the Company);

(vii) purchases or sales of goods and/or services with customers, clients, suppliers, joint ventures, purchasers, sales agents or sellers of goods and services or providers of employees or other labor entered into in the ordinary course of business on terms that are no less favorable to the Company or the relevant Subsidiary than those that would have been obtained at the time in a comparable transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company;

(viii) (A) if such Affiliate Transaction is with an Affiliate in its capacity as a holder of Indebtedness of the Company or any Subsidiary, a transaction in which such Affiliate is treated no more favorably than the other holders of Indebtedness of the Company or such Subsidiary; (B) any purchases by the Company's Affiliates of Indebtedness or Disqualified Stock of the Company or any of the Subsidiaries, the majority of which Indebtedness or Disqualified Stock is purchased by Persons who are not the Company's Affiliates; *provided* that such purchases by the Company's Affiliates are on the same terms as such purchases by such Persons who are not the Company's Affiliates; and (C) (i) investments by Affiliates in securities or loans of the Company or any of the Subsidiaries so long as the investment is being offered by the Company or such Subsidiary generally to other non-affiliated third party investors on the same or more favorable

terms and (ii) payments to Affiliates in respect of securities or loans of the Company or any of the Subsidiaries contemplated in the foregoing subclause (i) or that were acquired from Persons other than the Company and its Subsidiaries, in each case, in accordance with the terms of such securities or loans;

(ix) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business or transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Company or any Subsidiary and not for the purpose of circumventing any provision of this Indenture;

(x) to the extent permitted under this Indenture, including in compliance with Article 11, any merger, consolidation or reorganization of the Company with an Affiliate of the Company solely for the purpose of (i) forming or collapsing a holding company structure or (ii) reincorporating the Company in a new jurisdiction;

(xi) entering into and the payment of costs and expenses and indemnities pursuant to one or more agreements that provide registration rights to the security holders of the Company or any direct or indirect parent of the Company or amending such agreement with security holders of the Company or any direct or any indirect parent of the Company and the performance of such agreements on terms that are no less favorable to the Company or the relevant Subsidiary than those that would have been obtained at the time in a comparable transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company and that have been approved by the Board of Directors of the Company;

(xii) fees, indemnities and reimbursements may be paid to directors, officers, employees, members of management, managers, consultants independent contractors of the Company and its Subsidiaries;

(xiii) Subsidiaries of the Company may pay management fees, licensing fees and similar fees to the Company or to any Guarantor;

(xiv) advances to employees of the Company or any Subsidiary made in the ordinary course of business, in a manner that is consistent with past practice;

(xv) the Transactions and the payment of all fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related to the Transactions;

(xvi) the existence of, or the performance by the Company or any Subsidiary of its obligations under the terms of, any equityholders, investor rights or similar agreement (including any registration rights agreement or purchase agreements related thereto) to which it is party as of the Issue Date and any similar agreement that it may enter into thereafter; provided that the existence of, or the performance by the Company or any Subsidiary of its obligations under any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date will only be permitted under this clause to the extent that the terms of any such amendment or new agreement are not otherwise, when taken as a whole, more disadvantageous to the Holders in any material respect in the reasonable determination of the Company than those in effect on the Issue Date; and

(xvii) transactions in which the Company or any Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Subsidiary from a financial point of view or meets the requirements of Section 4.11(a)(i).

In addition, if the Company or any of its Subsidiaries (i) purchases or otherwise acquires assets or properties from a Person which is not an Affiliate, the purchase or acquisition by an Affiliate of the Company of an interest in all or a portion of the assets or properties acquired shall not be deemed an Affiliate Transaction (or cause such purchase or acquisition by the Company or a Subsidiary to be deemed an Affiliate Transaction) or (ii) sells or otherwise disposes of assets or other properties to a Person who is not an Affiliate, the sale or other disposition by an Affiliate of the Company of an interest in all or a portion of the assets or properties sold shall not be deemed an Affiliate Transaction (or cause such sale or other disposition by the Company or a Subsidiary to be deemed an Affiliate Transaction).

Section 4.12 *Material Intellectual Property.* Notwithstanding anything to the contrary set forth in this Indenture, interests in the Material Intellectual Property shall be held at all times by the Company or a Guarantor and the Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, (a) sell or transfer its interest, in one or a series of transactions, in any of the Material Intellectual Property to a Person that is not the Company or a Guarantor, (b) exclusively or co-exclusively licenses any Material Intellectual Property to a Person that is not the Company or a Guarantor (other than (i) non-perpetual licenses that are exclusive solely with respect to a customized software or software enhancement entered into in the ordinary course of business and in connection with the provision of services by the Company or any of its Subsidiaries or the provision, directly or together with the Company, of services by any third party with whom the Company or any of its Subsidiaries has a commercial arrangement to provide services or technology to enable the provision of such services to its customers; provided that, (i) at the time such license is entered into, in the judgment of the Company, the granting of such license does not materially and adversely affect the business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole), or (c) sell or transfer any interest in any Guarantor holding interests in Material Intellectual Property to a Person that is not the Company or a Guarantor, provided that, in each case, any Lien permitted by this Indenture shall not be prohibited by this Section 4.12.

Section 4.13 *Registration Rights.* The Company agrees that the Holders from time to time of Registrable Securities are entitled to the benefits of Section 5 of the Amended & Restated Convertible Note Subscription Agreement. By its acceptance thereof, the Holder of Registrable Securities will have agreed to be bound by the terms of the applicable Amended & Restated Convertible Note Subscription Agreement relating to such Registrable Securities.

Section 4.14 *Additional Guarantors; Prohibition on Certain Subsidiaries.* (a) If, after the date of this Indenture, (i) the Company or any direct or indirect Subsidiary of the Company forms or acquires any Subsidiary which guarantees the Obligations of the Company and the Guarantors, as applicable, under the Credit Agreement or any Indebtedness of the Company or any Guarantor, other than an Excluded Entity, then the Company will promptly (and in any event within 60 days) after the date of formation or acquisition cause such Subsidiary to provide a Guarantee hereunder by executing a supplemental indenture substantially in the form of Exhibit B; or (ii) any Subsidiary of the Company that is an Excluded Entity ceases to be an Excluded Entity, then the Company will promptly (and in any event within 60 days) thereafter cause such Subsidiary to provide a Guarantee hereunder by executing a supplemental indenture substantially in the form of Exhibit B.

(b) The Company shall not form or organize any direct or indirect Subsidiary other than direct or indirect Subsidiaries of the Company which, at the time of such formation or organization, become Guarantors pursuant to this Section 4.14 to the extent required hereby.

(c) If any Guarantor becomes an Excluded Entity, the Company shall have the right, by delivery of a supplemental indenture executed by the Company to the Trustee, to cause such Excluded Entity to automatically and unconditionally cease to be a Guarantor, subject to the requirement described in Section 4.14(a) that such Subsidiary shall be required to become a Guarantor if it ceases to be an Excluded Entity; provided that such Excluded Entity shall not be permitted to guarantee the Company's obligations under the Credit Agreement or other Indebtedness of the Company or the other Guarantors, unless it again becomes a Guarantor.

Section 4.15 *Further Instruments and Acts.* Upon request of the Trustee, Paying Agent or Conversion Agent, the Company will execute and deliver such further instruments and do such further acts, at its sole expense, as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders*. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than ten (10) days after each June 15 and December 15 in each year beginning with June 15, 2022, and at such other times as the Trustee may request in writing, within thirty (30) days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than ten (10) days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. Each of the following events shall be an "**Event of Default**" with respect to the Notes:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of thirty (30) days;

(b) default in the payment of principal or premium, if any, of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture, and such failure continues for three (3) Business Days;

(d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(d) when due, and such failure continues for five (5) Business Days;

(e) failure by the Company to comply with its obligations under Article 11;

(f) failure by the Company for sixty (60) days after receipt by the Company of written notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;

(g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of $35,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case, after the expiration of any applicable grace period, if such acceleration shall not have been rescinded or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness shall not have been paid or discharged, as the case may be, within thirty (30) days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of Notes then outstanding in accordance with this Indenture;

(h) a final judgment or judgments for the payment of $35,000,000 (or its foreign currency equivalent) or more (excluding any amounts covered by insurance policies issued by insurers believed by the Company in good faith to be credit-worthy) in the aggregate rendered against the Company or any Significant Subsidiary of the Company, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other similar relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors or shall fail generally to pay its debts as they become due;

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other similar relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive days; or

(k) any Guarantee ceases to be in full force and effect, other than in accordance with the terms of this Indenture, or any Guarantor denies or disaffirms its obligations under its Guarantee or gives notice to such effect.

Section 6.02 *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing, then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of, premium, if any, of and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal or interest of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the uncured nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay and/or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 2.00% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such Event of Default first occurs and ending on the earlier of (x) the date on which such Event of Default is cured or validly waived in accordance with this Article 6 and (y) the three hundred sixtieth (360th) day immediately following, and including, the date on which such Event of Default first occurs. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes and shall accrue on all outstanding Notes from, and including, the date on which the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) first occurs to, and including, the three hundred sixtieth (360th) day thereafter (or such earlier date on which such Event of Default is cured or validly waived in accordance with this Article 6). On the three hundred sixty-first (361st) day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) is not cured or validly waived in accordance with this Article 6 prior to such three hundred sixty-first (361st) day), such Additional Interest shall cease

to accrue and the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company has elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first three hundred sixty (360) days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent in an Officer's Certificate of such election on or before the open of business on the Business Day immediately succeeding the date on which such Event of Default first occurs. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02. The Officer's Certificate under this Section 6.03 shall state (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such Officer's Certificate, the Trustee may assume without inquiry that no such Additional Interest is payable.

Section 6.04 *Payments of Notes on Default; Suit Therefor*. If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred and be continuing, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to

make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Guarantors, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee, including its agents and counsel, under Section 7.06;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of any interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) payable upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Holders based on the aggregate principal amount of Notes held thereby;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders.* Except to enforce (x) the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price), premium or interest when due, or (y) the right to receive payment or delivery of the consideration due upon conversion and/or the conversion mechanics, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered, and, if requested, provided, to the Trustee such security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for sixty (60) days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such sixty (60) day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are prejudicial to any other Holder), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, each Holder shall have the contractual right to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, and the contractual right to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates, shall not be amended without the consent of each Holder.

Section 6.07 *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders. The Trustee may maintain a proceeding even if it does not possess any Notes or does not produce any Notes in the proceeding.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes or the Guarantees; *provided*, *however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability or for which it has not received indemnity or security satisfactory to the Trustee against loss, liability or expense (it being understood that the Trustee does not have an affirmative duty to determine whether any direction is prejudicial to any Holder). The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes (x) waive any past Default or Event of Default hereunder and its consequences except any continuing defaults relating to (i) a default in the payment of the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected; and (y) rescind any

resulting acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default (other than nonpayment of the principal of, and interest on, the Notes that have become due solely by such acceleration) have been cured or waived. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults*. The Trustee shall, after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, deliver to all Holders notice of such Default within ninety (90) days after such Responsible Officer obtains such knowledge, unless such Defaults shall have been cured or waived before the giving of such notice; provided that, except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 14.

ARTICLE 7
CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered, and if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence or willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) The Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, judgment, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company. Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel.

(c) The Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance on such advice or Opinion of Counsel.

(d) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine in its reasonable judgment to make such further inquiry or investigation, it shall be entitled, at a reasonable time on any Business Day after reasonable notice, to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

(e) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder, and the permissive rights of the Trustee enumerated herein shall not be construed as duties.

(f) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture.

(g) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default (except in the case of a Default or Event of Default in payment of scheduled principal of, premium, if any, or interest on, any Note) unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default (and stating the occurrence of a Default or Event of Default) is actually received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture and states that it is a "Notice of Default".

(i) The Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers.

(j) The Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction of the holders of not less than a majority in principal amount of the Notes as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(k) Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall not be responsible for any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness.

(l) In no event shall the Trustee be responsible or liable for punitive, special, indirect, incidental or any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than any such loss or damage caused by the Trustee's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been actually received by the Trustee at the Corporate Trust Office of the Trustee, from the Company or any Holder of the Notes, and such notice references the Notes and this Indenture and states that is a "Notice of Default."

(m) Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes or other transaction documents relating to the Notes and this Indenture. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or any money paid to the Company or upon the Company's direction under any provision of this Indenture.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar (in each case, if other than an Affiliate of the Company), in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 7.05 *Monies and Shares of Common Stock to Be Held in Trust* All monies and shares of Common Stock received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 7.06 *Compensation and Expenses of Trustee.* The Company and the Guarantors, jointly and severally, covenant and agree to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity hereunder (including the compensation and the reasonable expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction. The Company and the Guarantors, jointly and severally, also covenant to indemnify, jointly and severally, the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense (including attorneys' fees) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, as determined by a final order of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder (whether such claims arise by or against the Company, any Guarantor, or a third person), including the reasonable costs and expenses of defending themselves against any claim of liability in the premises or enforcing the Company's or Guarantors' obligations hereunder. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture, the payment or conversion of the Notes and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07 *Officer's Certificate as Evidence*. Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least $50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly notify all Holders and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within sixty (60) days after the giving of such notice of resignation to the Company, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders and at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(a) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(b) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten (10) days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(c) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11 *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided*, *however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company*. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8
CONCERNING THE HOLDERS

Section 8.01 *Action by Holders*. Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee, as applicable, may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen (15) days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Fundamental Change Repurchase Price) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded*. In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Affiliate of the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or an Affiliate of the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9
HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than twenty (20) nor more than ninety (90) days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders.* In case at any time the Company or the Holders of at least twenty-five (25%) of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting promptly and in any event within twenty (20) days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations*. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting*. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes. Nothing contained in this Article 9 shall be deemed or construed to limit any Holder's actions pursuant to the applicable procedures of the Depositary so long as the Notes are Global Notes.

ARTICLE 10
SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders*. Without the consent of any Holder, the Company and the Guarantors, when authorized by the resolutions of their respective Boards of Directors (or similar governing body) and the Trustee, at the Company's sole expense, may from time to time and at any time amend or supplement this Indenture or the Notes in writing for one or more of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency;

(b) to provide for the assumption by a successor Person of the obligations of the Company or a Guarantor under this Indenture or the Notes in accordance with this Indenture or to provide for the release of any Guarantor in accordance with Section 13.10;

(c) to add additional guarantees with respect to the Notes;

(d) to secure the Notes or the Guarantees;

(e) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;

(f) to make any change that, as determined by the Board of Directors of the Company in good faith, does not adversely affect the rights of any Holder;

(g) in connection with any Share Exchange Event, to provide that the notes are convertible into Reference Property, subject to the provisions of Section 14.02, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07;

(h) comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act to the extent this Indenture is qualified thereunder;

(i) [reserved];

(j) provide for the appointment of a successor Trustee, Note Registrar, Paying Agent or Conversion Agent;

(k) comply with the rules of any applicable securities depositary in a manner that does not adversely affect the rights of any Holder;

(l) [reserved];

(m) increase the Conversion Rate as provided in this Indenture; or

(n) to make any change to comply with rules of the Depositary, so long as such change does not adversely affect the rights of any Holder, as certified in good faith by the Company in an Officer's Certificate.

Upon the written request of the Company and subject to Section 10.05, the Trustee is hereby authorized to, and shall, join with the Company and the Guarantors in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company, the Guarantors and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company and the Guarantors, when authorized by the resolutions of their respective Boards of Directors (or similar governing body) and the Trustee, at the Company's sole expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, any supplemental indenture or the Notes or of modifying in any manner the rights of the Holders;

provided, *however*, that, without the consent of (i) in the case of clause (j) below, holders of at least 75% of the aggregate principal amount of the Notes then Outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes) or (y) in all other cases, each Holder of an outstanding Note affected, no such supplemental indenture shall:

(a) reduce the principal amount of Notes whose Holders must consent to an amendment;

(b) reduce the rate of or extend the stated time for payment of interest, including any default interest, on any Note;

(c) reduce the principal amount of any Notes, reduce the premium payable upon the conversion of the Notes, or extend the Maturity Date of any Note;

(d) make any change that adversely affects the conversion rights of any Notes other than as expressly permitted or required by this Indenture;

(e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(f) make any Note payable in a currency, in a form, or at a place of payment, other than that stated in the Note;

(g) change the ranking or priority of the Notes;

(h) impair the right of any Holder to institute suit for the enforcement right to receive payment or delivery, as the case may be, of the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest, if any, on, and the consideration due upon conversion of, its Notes, on or after the respective due dates expressed or provided for in the Notes or this Indenture;

(i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09;

(j) release any Guarantor from any of its obligations under its Guarantee otherwise than in accordance with the terms contained in this Indenture; or

(k) provide for the issuance of additional Notes except as permitted herein.

Upon the written request of the Company, and upon the delivery to the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company and the Guarantors in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall deliver to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company, the Guarantors and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Board of Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated, upon receipt of a Company Order, by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and such Opinion of Counsel shall include a customary legal opinion stating that such supplemental indenture is the valid and binding obligation of the Company and the Guarantors, subject to customary exceptions and qualifications.

ARTICLE 11
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company and Guarantors May Consolidate, Etc. on Certain Terms.*

(a) Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease, all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, to another Person, unless:

(i) the resulting, surviving or transferee Person (the '**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture;

(ii) immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing under this Indenture; and

(iii) if the Company is not the Successor Company, the Successor Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease complies with this Indenture and that such supplemental indenture is authorized or permitted by this Indenture and an Opinion of Counsel stating that the supplemental indenture is the valid and binding obligation of the Successor Company, subject to customary exceptions and qualifications.

For purposes of this Section 11.01(a), the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

(b) Subject to the provisions of Section 13.10, no Guarantor shall consolidate with, merge with or into, or sell, convey, transfer or lease, all or substantially all of its assets to, another Person, unless:

(i) the other Person is the Company or a Guarantor or becomes a Guarantor concurrently with the transaction;

(ii) either (x) the Company or a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all of the obligations of the Guarantor under this Indenture by the execution of a supplemental indenture; or

(iii) the transaction constitutes a sale or other disposition or transfer (including by way of consolidation, merger or amalgamation) of the Guarantor or the sale, conveyance, transfer or lease of all or substantially all the assets of the Guarantor (in each case other than to the Company or a Guarantor) otherwise not prohibited by this Indenture.

Notwithstanding the foregoing, any Guarantor may (a) consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to another Guarantor or the Company, (b) consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Guarantor, reincorporating the Guarantor in another jurisdiction or changing the legal form of the Guarantor, (c) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Guarantor and (d) liquidate or dissolve or change its legal form if the Company determines in good faith that such action is in the best interests of the Company and its Subsidiaries.

Section 11.02 *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company (if other than the Company), by supplemental indenture, executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery and/or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the Company shall be discharged from its obligations under the Notes and this Indenture (except in the case of a lease of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole). Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "**Company**" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03 *Opinion of Counsel to Be Given to Trustee.* The Company shall deliver, or cause to be delivered, to the Trustee an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger, combination, sale, lease or other transfer or disposition complies with the requirements of this Indenture.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture, Notes and Guarantees Solely Corporate Obligations*. No recourse for the payment of the principal of or accrued and unpaid interest on, or the payment or delivery of consideration due upon conversion of, any Note or any Guarantee, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company or any Guarantor in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator,

stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or any Guarantor or of any successor corporation, either directly or through the Company or any Guarantor or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
GUARANTEE

Section 13.01 *Guarantee.* Subject to the provisions of this Article 13, each Guarantor hereby irrevocably and unconditionally guarantees, jointly and severally, on a senior basis, the full and punctual payment (whether at the Maturity Date, by acceleration, upon repurchase or otherwise) of the principal of and interest on the Notes and the Settlement Amounts upon conversion, and all other payment obligations of the Company under this Indenture. Upon failure by the Company to pay punctually any such amount, each Guarantor shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Indenture.

Section 13.02 *Guarantee Unconditional.* The obligations of each Guarantor hereunder are unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under this Indenture or any Note, by operation of law or otherwise;

(b) any modification or amendment of or supplement to this Indenture or any Note;

(c) any change in the existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in this Indenture or any Note;

(d) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, the Trustee or any other Person, whether in connection with this Indenture or any unrelated transactions; *provided* that nothing herein prevents the assertion of any such claim by separate suit or compulsory counterclaim;

(e) any invalidity or unenforceability relating to or against the Company for any reason of this Indenture or any Note, or any provision of applicable law or regulation purporting to prohibit the payment by the Company of the principal of or interest on any Note or any other amount payable by the Company under this Indenture; or

(f) any other act or omission to act or delay of any kind by the Company, the Trustee or any other Person or any other circumstance whatsoever which might, but for the provisions of this Section 13.02, constitute a legal or equitable discharge of or defense to such Guarantor's obligations hereunder.

For the avoidance of doubt, the Guarantees with respect to a Note are not exchangeable and shall automatically terminate when such Note is exchanged in accordance with this Indenture.

Section 13.03 *Discharge; Reinstatement.* Subject to Section 13.10, each Guarantor's obligations hereunder shall remain in full force and effect until the principal of, premium, if any, and interest, if any, on the Notes and all other amounts payable by the Company under this Indenture have been paid in full. If at any time any payment of the principal of, premium, if any, or interest on any Note or any other amount payable by the Company under this Indenture is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise, each Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

Section 13.04 *Waiver by the Guarantors.* Each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Company or any other Person.

Section 13.05 *Subrogation and Contribution.* Upon making any payment with respect to any obligation of the Company under this Article 13, the Guarantor making such payment shall be subrogated to the rights of the payee against the Company with respect to such obligation; *provided* that the Guarantor may not enforce either any right of subrogation, or any right to receive payment in the nature of contribution, or otherwise, from any other Guarantor, with respect to such payment so long as any amount payable by the Company hereunder or under the Notes remains unpaid.

Section 13.06 *Stay of Acceleration.* If acceleration of the time for payment of any amount payable by the Company under this Indenture or the Notes is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of this Indenture are nonetheless payable by the Guarantors hereunder forthwith on demand by the Trustee or the Holders.

Section 13.07 *Limitation on Amount of Guarantee.* Notwithstanding anything to the contrary in this Article 13, each Guarantor and, by its acceptance of Notes, each Holder hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent conveyance under applicable fraudulent conveyance provisions of the Bankruptcy Law or any comparable provision of state law. To effectuate that intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor under its Guarantee are limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the Bankruptcy Law or any comparable provision of state law.

Section 13.08 *Execution and Delivery of Guarantee*. The execution by each Guarantor of this Indenture (or a supplemental indenture) evidences the Guarantee of such Guarantor, whether or not the person signing as an officer of the Guarantor still holds that office at the time of authentication of any Note. The delivery of any Note by the Trustee after authentication constitutes due delivery of the Guarantee set forth in this Indenture on behalf of each Guarantor.

Section 13.09 *Benefits Acknowledged.* Each Guarantor acknowledges that it shall receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 13.10 *Release of Guarantee.* The Guarantee of a Guarantor shall terminate, and the Guarantee shall be automatically and unconditionally released and discharged:

(a) upon a sale, transfer, exchange or other disposition (including by way of consolidation or merger) of Capital Stock of such Guarantor following which the applicable Guarantor ceases to be a Subsidiary or the sale, transfer, exchange or other disposition of all or substantially all the properties and assets of the applicable Guarantor (other than to the other Guarantors) otherwise not prohibited by this Indenture,

(b) upon the release or discharge of such Guarantor's obligations under the Credit Agreement or other Indebtedness that resulted in the creation of such Guarantee other than, in each case, a release or discharge through payment thereon,

(c) upon the merger, amalgamation or consolidation of any Guarantor with and into the Company or another Guarantor or upon the liquidation of such Guarantor, in each case, in compliance with the this Indenture,

(d) upon the discharge of the Notes, as provided in Article 3, or

(e) as provided in Article 10.

ARTICLE 14
CONVERSION OF NOTES

Section 14.01 *Conversion Privilege*. Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, at an initial conversion rate of 86.9565 shares of Common Stock (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per $1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**").

Section 14.02 *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 14.02, Section 14.07(a) and Section 14.14(b), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder no later than two (2) Business Days following the applicable conversion of the Notes, (A) in respect of each $1,000 principal amount of Notes being converted, shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 ("**Physical Settlement**") as set forth in this Section 14.02 and (B) other than in connection with any Mandatory Conversion, the Interest Make-Whole Amount. The Company shall use the Physical Settlement Method for all conversions.

(i) The shares of Common Stock and cash the Company shall pay and/or deliver, as the case may be, in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows in respect of each $1,000 principal amount of Notes being converted: (A) a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date (plus cash in lieu of any fractional share of Common Stock issuable upon conversion); plus (B) other than in connection with any Mandatory Conversion, the Interest Make-Whole Amount, (x) if the arithmetic average of the Daily VWAPs for the ten (10) Trading Days immediately preceding the Conversion Date (the "**Average VWAP**") equals or exceeds $11.50 per share, a number of shares of Common Stock determined by dividing the Interest Make-Whole Amount by the Average VWAP (plus cash in lieu of any fractional shares of Common Stock); or (y) if the Average VWAP is less than $11.50 per share, solely in the form of cash.

(ii) Notwithstanding the foregoing, if in connection with any conversion of a Note (i) the Conversion Rate is eligible for adjustment in accordance with Section 14.14 hereof and (ii) the Holder is entitled to receive the Interest Make-Whole Amount with respect to such Note, then one, but not both, of (A) the Conversion Rate adjustment in accordance with Section 14.14 and (B) the payment by the Company of the Interest Make-Whole Amount, shall apply, in each case according to which of (A) or (B) would result in more consideration being paid and/or delivered to the Holder in respect of such conversion.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the Applicable Procedures of the Depositary in effect at that time and, if required, pay funds equal to the interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and, if required, pay all transfer or similar taxes, if any, pursuant to Section 14.02(e) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents, (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (5) if required, pay all transfer or similar taxes, if any, pursuant to Section 14.02(e). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03. Notwithstanding anything to the contrary contained herein, to the extent that an indirect holder of a Global Note held indirectly through a participant submits irrevocable instructions to convert any portion of such Note, such Holder shall be deemed for purposes of Regulation SHO to have converted the applicable portion of such Note at the time of delivery of such instructions, regardless of when shares of Common Stock are delivered to such Holder or its participant.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in subsection (ii) above. Except as set forth in Section 14.07(a) and Section 14.14(b), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second (2nd) Business Day immediately following the relevant Conversion Date. Notwithstanding the foregoing, with respect to the Company's satisfaction of its Conversion Obligation through Physical Settlement for which the relevant Conversion Date occurs after the Regular Record Date immediately preceding the Maturity Date, the settlement shall occur on the Maturity Date. If any shares of Common Stock are due to a converting Holder, the Company shall issue or cause to be issued, and deliver (if applicable) to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, the full number of shares of Common Stock to which such Holder shall be entitled, in book-entry format through the Depositary or on the Transfer Agent's books if the shares of Common Stock are not then held through the facilities of DTC, in satisfaction of the Company's Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date but prior to the open of business on the immediately following Interest Payment Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on such Interest Payment Date notwithstanding the conversion. However, Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted on the corresponding Interest Payment Date (regardless of whether the converting Holder was the Holder of record on the corresponding Regular Record Date); *provided* that no such payment shall be required (1) for conversions following the close of business on the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (3) if the Company has selected a Mandatory Conversion Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exist at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date and any Fundamental Change Repurchase Date described in clause (2) above shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date in cash regardless of whether their Notes have been converted and/or repurchased, as applicable, following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion. Prior to conversion of a Holder's Note, such Holder (in such capacity) shall not have any rights as a stockholder of the Company.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP for the relevant Conversion Date.

Section 14.03 *Company's Mandatory Conversion Option.*

(a) On or after December 15, 2022 and prior to the close of business on October 7, 2026, the Company may, at its option, elect to convert the original principal amount of the Notes in whole but not in part if (x) the Last Reported Sale Price of the Common Stock for at least twenty (20) Trading Days (whether or not consecutive) during the period of thirty (30) consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter (the "**Mandatory Conversion Determination Date**") is greater than or equal to 130% of the Conversion Price on each applicable Trading Day and (y) the 30-Day ADTV ending on, and including, the Mandatory Conversion Determination Date is greater than or equal to $3,000,000 for the first two (2) years after the initial issuance of the Notes hereunder and $2,000,000 thereafter (the "**Company Mandatory Conversion Condition**").

(b) To exercise the Company Mandatory Conversion Right, the Company will send notice of the Company's election (a '**Mandatory Conversion Notice**") to Holders, the Trustee and the Conversion Agent no later than the fifth (5th) Business Day following the Mandatory Conversion Determination Date.

Such Mandatory Conversion Notice must state:

(i) that the Notes have been called for Mandatory Conversion, briefly describing the Company Mandatory Conversion Right under this Indenture;

(ii) the Mandatory Conversion Date;

(iii) the current Conversion Rate;

(iv) the name and address of the Paying Agent and the Conversion Agent; and

(v) the CUSIP and ISIN numbers, if any, of the Notes.

(c) If the Company exercises the Company Mandatory Conversion Right in accordance with this Section 14.03, then a Conversion Date will automatically, and without the need for any action on the part of any Holder, the Trustee or the Conversion Agent, be deemed to occur, with respect to each Note then outstanding, on the Mandatory Conversion Date. The Mandatory Conversion Date will be a Business Day of the Company's choosing that is no more than thirty (30), nor less than ten (10), Business Days after the Company sends the Mandatory Conversion Notice; provided that the Mandatory Conversion Date shall be no later than the second Scheduled Trading Day prior to the Maturity Date. The Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second (2nd) Business Day immediately following the Mandatory Conversion Date.

(d) Each share of Common Stock delivered upon a Mandatory Conversion of any Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim. If the Common Stock is then listed on any securities exchange and has been registered on an effective registration statement with the Commission, then the Company will cause each share of Common Stock, when delivered upon a Mandatory Conversion of any Note, to be admitted for listing on such exchange. Notwithstanding anything herein to the contrary, the Company (1) shall not be permitted to effect any Company Mandatory Conversion hereunder unless as of such Mandatory Conversion Date no Equity Conditions Failure then exists and (2) shall not be required to pay any Interest Make-Whole Amount in connection with any Mandatory Conversion.

Section 14.04 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Record Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the open of business on such Record Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Record Date or Effective Date, as applicable, before giving effect to such dividend, distribution, share split or share combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as applicable.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, or any share split or combination of the type described in this Section 14.04(a) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors of the Company determines in good faith not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or such share split or combination had not been announced.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to a stockholders rights plan) entitling them, for a period of not more than forty-five (45) calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such issuance;

CR_1 = the Conversion Rate in effect immediately after the open of business on such Record Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Record Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to (i) the aggregate price payable to exercise such rights, options or warrants, *divided by* (ii) the average of the Last Reported Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Record Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Record Date for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders of Common Stock to subscribe for or purchase shares of the Common Stock at a price per share that is less than such average of the Last Reported Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors of the Company in good faith.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances (including share splits) as to which an adjustment was effected pursuant to Section 14.04(a), Section 14.04(b) or Section 14.04(e), (ii) except as otherwise described in Section 14.11, rights issued pursuant to any stockholders rights plan of the Company then in effect, (iii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 14.04(d) shall apply, (iv) dividends or distributions of Reference Property in exchange for or upon conversion of the Common Stock in a Share Exchange Event, and (v) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the "**Distributed Property**"), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the open of business on such Record Date;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Record Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors of the Company in good faith) of the Distributed Property with respect to each outstanding share of the Common Stock on the Record Date for such distribution.

Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. If the Company issues rights, options or warrants to acquire Capital Stock or other securities that are exercisable only upon the occurrence of certain triggering events, the Company shall not adjust the conversion rate pursuant to the clauses above until the earliest of these triggering events occurs. Notwithstanding the foregoing, if "**FMV**" (as defined above) is equal to or greater than "**SP_0**" (as defined above), then, in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the open of business on the Record Date for the distribution. If the Board of Directors of the Company determines in good faith the "**FMV**" (as defined above) of any distribution for purposes of this Section 14.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Record Date for such distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR_1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first ten (10) consecutive Trading Day period after, and including, the Record Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that if the relevant Conversion Date occurs during the Valuation Period, references to "10" in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Record Date of such Spin-Off and the Conversion Date in determining the Conversion Rate. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately decreased, effective as of the date the Board of Directors of the Company determines in good faith not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"):

(i) are deemed to be transferred with such shares of the Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of the Common Stock,

shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made:

(1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and

(2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the "**Clause B Distribution**"),

then, in either case,

(1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and

(2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "**Record Date**" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Record Date or Effective Date" within the meaning of Section 14.04(a) or "outstanding immediately prior to the open of business on such Record Date" within the meaning of Section 14.04(b).

(d) If the Company pays or makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the open of business on the Record Date for such dividend or distribution;

SP_0 = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Record Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the open of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines in good faith not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "**SP_0**" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock that is subject to the then-applicable tender offer rules under the Exchange Act (other than an odd lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires (the date such tender offer or exchange offer expires, the "**Expiration Date**");

CR_1 = the Conversion Rate in effect immediately after the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company in good faith) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Expiration Date (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Date (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The increase to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that if the relevant Conversion Date occurs during the ten (10) Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, references to "ten (10)" or "tenth (10^{th})" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Expiration Date of such tender or exchange offer and the Conversion Date in determining the Conversion Rate. In addition, if the Trading Day next succeeding the date such tender or exchange offer expires is after the tenth (10^{th}) Trading Day immediately preceding, and including, the date immediately preceding the relevant Conversion Date in respect of a conversion of Notes, references to "ten (10)" or "tenth (10^{th})" in the preceding paragraph and this paragraph shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date such tender or exchange offer expires to, and including, the last Trading Day immediately preceding the relevant Conversion Date.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company is, or such Subsidiary is, permanently prevented by applicable law from consummating any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made or had been made only in respect of the purchases that have been consummated.

(f) If the average of the Daily VWAP during the 30 consecutive Trading Days immediately preceding the date that is one hundred eighty (180) days after November 30, 2021 (the "**Reset Date**") is less than $10.00, the Conversion Rate shall be replaced, with effect from the Reset Date, by the lower of (a) $1,000 divided by 115% of the average of the Daily VWAP during the 30 consecutive Trading Days immediately preceding the Reset Date and (b) 102.2495. The Company shall notify the Trustee, the Holders and the Conversion Agent (if other than the Trustee) if the events in this Section 14.04(f) occur and the new resulting Conversion Rate.

(g) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Record Date, and a Holder that has converted its Notes on or after such Record Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Record Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Record Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(h) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(i) In addition to those adjustments required by clauses (a), (b), (c), (d), (e) and (f) of this Section 14.04, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty (20) Business Days if the Board of Directors of the Company determines in good faith that such increase would be in the Company's best interest. In addition, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Note a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) Except as stated in this Indenture, the Company shall not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. For illustrative purposes only and without limiting the generality of the preceding sentence, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open market share repurchase program or other buy-back transaction, including structured or derivative transactions, that is not a tender or exchange offer of the nature described in Section 14.04(e);

(v) solely for a change in the par value (or lack of par value) of the Common Stock; or

(vi) for accrued and unpaid interest, if any.

(k) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearestone-ten thousandth (1/10,000th) of a share.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly deliver to the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a written notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder (with a copy to the Trustee). Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(n) For the avoidance of doubt, the closing of the transactions contemplated by the BCA to occur on the date of this Indenture shall not result in any adjustment of the Conversion Rate, Conversion Price or any other terms of the Notes.

Section 14.05 *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices or the Daily VWAPs over a span of multiple days, the Board of Directors of the Company shall make appropriate adjustments (without duplication in respect of any adjustment made pursuant to Section 14.04) to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Record Date, Effective Date or Expiration Date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices or the Daily VWAPs are to be calculated.

Section 14.06 *Shares to Be Fully Paid.* The Company shall reserve, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming the delivery of the maximum number of Additional Shares pursuant to Section 14.14).

Section 14.07 *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock*

(a) In the case of:

(i) any recapitalization, reclassification or similar change of the Common Stock (other than changes in par value or resulting from a subdivision or combination),

(ii) any consolidation, merger, combination or similar transaction involving the Company,

(iii) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**"), then at and after the effective time of such Share Exchange Event, the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Share Exchange Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Share Exchange Event and, prior to or at the effective time of such Share Exchange Event, the Company or the successor or acquiring Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(g) providing for such change in the right to convert each $1,000 principal amount of Notes; *provided*, *however*, that at and after the effective time of the Share Exchange Event (A) the Company or the successor or acquiring company, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, in respect of the Interest Make-Whole Amount upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Share Exchange Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Share Exchange Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such

Share Exchange Event (A) the consideration due upon conversion of each $1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.14), *multiplied by* the price paid per share of Common Stock in such Share Exchange Event and (B) the Company shall satisfy the Conversion Obligation by paying such cash amount to converting Holders on the second (2nd) Business Day immediately following the relevant Conversion Date. The Company shall notify in writing Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as reasonably practicable after such determination is made.

If the Reference Property in respect of any Share Exchange Event includes, in whole or in part, shares of common equity, such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 14 with respect to the portion of the Reference Property consisting of such common equity. If, in the case of any Share Exchange Event, the Reference Property includes shares of stock, securities or other property or assets (including any combination thereof), other than cash and/or cash equivalents, of a Person other than the Company or the successor or purchasing corporation, as the case may be, in such Share Exchange Event, then such supplemental indenture shall also be executed by such other Person, if such other Person is an affiliate of the Company or the successor or acquiring company, and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Section 15.02.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly deliver to the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder promptly and in any event within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into shares of Common Stock, as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Share Exchange Event.

(d) The above provisions of this Section shall similarly apply to successive Share Exchange Events.

Section 14.08 *Certain Covenants*. (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto.

Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate (which the Company shall be obligated to deliver to the Trustee prior to the execution of any such supplemental indenture) with respect thereto. The Trustee and the Conversion Agent may conclusively rely upon any notice with respect to the commencement or termination of such conversion rights.

Section 14.10 *Notice to Holders Prior to Certain Actions.* In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;

(b) Share Exchange Event; or

(c) voluntary or involuntary dissolution, liquidation orwinding-up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture) and to the extent applicable, the Company shall cause to be delivered to the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Share Exchange Event, dissolution, liquidation or winding-up.

Section 14.11 *Stockholder Rights Plans*. If the Company has a stockholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, under such stockholder rights plan and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12 *Exchange in Lieu of Conversion.* When a Holder surrenders its Notes for conversion, the Company may, at its election (an "**Exchange Election**"), direct the Conversion Agent to deliver, on or prior to the first (1st) Trading Day following the Conversion Date, such Notes to a financial institution designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution must agree to timely pay and/or deliver, in exchange for such Notes, the shares of Common Stock (plus any cash in lieu of fractional shares) plus the Interest Make-Whole Amount due upon conversion as described in Section 14.02. If the Company makes an Exchange Election, the Company shall, by the close of business on the first (1st) Trading Day following the relevant Conversion Date, notify in writing the Trustee, the Conversion Agent and the Holder surrendering its Notes for conversion that it has made the Exchange Election, and the Company shall promptly notify the designated financial institution of the Physical Settlement Method with respect to such conversion and the relevant deadline for payment and/or delivery of shares of Common Stock, any cash in lieu of fractional shares and the Interest Make-Whole Amount due upon conversion.

Any Notes exchanged by the designated financial institution shall remain outstanding. If the designated financial institution agrees to accept any Notes for exchange but does not timely pay and/or deliver the required shares of Common Stock, any cash in lieu of fractional shares and the any cash and/or Common Stock in respect of the Interest Make-Whole Amount due upon conversion, or if such designated financial institution does not accept the Notes for exchange, the Company shall notify in writing the Trustee, the Conversion Agent and the Holder surrendering its Notes for conversion, and pay and/or deliver the required shares of Common Stock, together with cash in lieu of any fractional shares, plus the Interest Make-Whole Amount due upon conversion to the converting Holder at the time and in the manner required under this Indenture as if the Company had not made an Exchange Election.

The Company's designation of a financial institution to which the Notes may be submitted for exchange does not require that financial institution to accept any Notes (unless the financial institution has separately made an agreement with the Company). The Company may, but shall not be obligated to, enter into a separate agreement with any designated financial institution that would compensate it for any such transaction.

Section 14.13 *Limits Upon Issuance of Shares of Common Stock Upon Conversion* The Company shall not effect the conversion of any of the Notes held by a Holder, and such Holder shall not have the right to convert any of the Notes held by such Holder pursuant to the terms and conditions of this Indenture and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the shares of

Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and the other Attribution Parties shall include the number of shares of Common Stock held by such Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Notes with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Notes beneficially owned by such Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes, convertible preferred stock or warrants, including the Notes) beneficially owned by such Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 14.13. For purposes of this Section 14.13, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Notes without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 14.13, to exceed the Maximum Percentage, such Holder must notify the Company of a reduced number of shares of Common Stock to be delivered pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including such Notes, by such Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Notes results in such Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which such Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, any Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage of such Holder to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and the other Attribution Parties and not to any other Holder that is not an Attribution Party of such Holder. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Indenture in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert such Notes pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 14.13 to the

extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 14.13 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of such Notes. Neither the Trustee nor the Conversion Agent shall have any responsibility to determine the Maximum Percentage or whether the issuance of any shares results in a Holder or Attribution Party having Excess Shares or otherwise determine or monitor compliance with the terms of this Section 14.13. Notwithstanding anything to contrary herein, if in connection with any Mandatory Conversion of a Holder's Notes there would be Excess Shares or unconverted Notes with respect to such Holder, all such Holder's Notes (including any unconverted Notes) shall nevertheless be deemed to have been converted, discharged, satisfied and repaid in full on the applicable Conversion Date and thereafter shall not accrue any interest, *provided* that, upon request by such Holder, such Holder shall be entitled to receive a number of shares of Common Stock equal to such Excess Shares subject to the foregoing provisions of this Section 14.13.

Section 14.14 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changesor Mandatory Conversion*.

(a) If (i) the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or (ii) the Company delivers a Mandatory Conversion Notice in connection with such Make-Whole Fundamental Change as provided under Section 14.03, as the case may be, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), to the extent and as described below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change (i) if the relevant Conversion Date occurs during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the thirty-fifth (35th) Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"), or (ii) if it is a Mandatory Conversion. Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or Mandatory Conversion in connection with a Make-Whole Fundamental Change, the Company shall satisfy the related Conversion Obligation by Physical Settlement in accordance with Section 14.02; *provided*, *however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 principal amount of converted Notes equal to the Conversion Rate (including any increase to reflect the Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be determined and paid to Holders in cash on the second (2nd) Business Day following the Conversion Date. The Company shall notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change no later than five (5) Business Days after such Effective Date.

(b) The number of Additional Shares, if any, by which the Conversion Rate shall be increased for conversions in connection with a Make-Whole Fundamental Change or Mandatory Conversion shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective or the date the Company delivers the Mandatory Conversion Notice, as the case may be (in each case, the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or determined with respect to the Mandatory Conversion Notice, as the case may be. If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the applicable Effective Date. The Board of Directors of the Company shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Record Date, Effective Date (as such term is used in Section 14.04) or Expiration Date of the event occurs during such five (5) consecutive Trading Day period. If a Mandatory Conversion would also be deemed to be in connection with a Make-Whole Fundamental Change, a Holder of any such Notes to be converted will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the Effective Date of the Mandatory Conversion Notice or the Make-Whole Fundamental Change, as applicable, and the later event shall be deemed not to have occurred for purposes of this Section 14.14.

(c) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(d) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per $1,000 principal amount of Notes pursuant to this Section 14.14 for each Stock Price and Effective Date set forth below:

	Stock Price									
Effective Date	**$ 10.00**	**$ 12.00**	**$ 14.00**	**$ 16.00**	**$ 18.00**	**$ 20.00**	**$ 25.00**	**$ 30.00**	**$ 40.00**	**$ 50.00**
December 15, 2021	13.0430	10.3742	8.5279	7.1688	6.1244	5.2955	3.8212	2.8560	1.6878	1.0284
December 15, 2022	13.0430	9.5508	7.8307	6.5875	5.6406	4.8920	3.5604	2.6833	1.6085	0.9908
December 15, 2023	13.0430	8.3992	6.8107	5.7119	4.8950	4.2570	3.1300	2.3863	1.4633	0.9192
December 15, 2024	13.0430	6.8975	5.3921	4.4631	3.8133	3.3215	2.4664	1.9057	1.2068	0.7876
December 15, 2025	13.0430	4.8858	3.3421	2.6519	2.2467	1.9590	1.4708	1.1507	0.7513	0.5118
December 15, 2026	13.0430	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Price and Effective Date may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional Shares by which the conversion rate shall be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a three hundred sixty-five (365) day year;

(ii) if the Stock Price is greater than $50.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $10.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per $1,000 principal amount of Notes exceed 100.0005 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

Nothing in this Section 14.14 shall prevent an adjustment to the Conversion Rate that would otherwise be required pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Notwithstanding the foregoing, if in connection with any conversion of a Note (i) the Conversion Rate is eligible for adjustment in accordance with this Section 14.14 and (ii) the Holder is entitled to receive the Interest Make-Whole Amount with respect to such Note, then one, but not both, of (A) the Conversion Rate adjustment in accordance with this Section 14.14 and (B) the payment by the Company of the Interest Make-Whole Amount, shall apply, in each case according to which of (A) or (B) would result in more consideration being paid and/or delivered to the Holder in respect of such conversion.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 *[Intentionally Omitted]*.

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change*

(a) If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof properly surrendered and not validly withdrawn pursuant to Section 15.03 that is equal to $1,000 or an integral multiple of $1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than twenty (20) Business Days or more than thirty-five (35) Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, plus any remaining amounts that would be owed to, but excluding, the Maturity Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest (to, but excluding, such Interest Payment Date) to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15. The Fundamental Change Repurchase Date shall be subject to postponement in order to allow the Company to comply with applicable law. (b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the paying agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Applicable Procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the paying agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the office of the paying agent, or book- entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(iii) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(iv) the portion of the principal amount of Notes to be repurchased, which must be in minimum denominations of $1,000 or an integral multiple thereof; and

(v) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, *however*, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with the Applicable Procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the paying agent the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the paying agent in accordance with Section 15.03.

The paying agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the twentieth (20th) Business Day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes, the Trustee, the Conversion Agent (if other than the Trustee) and the paying agent (in the case of a paying agent other than the Trustee) a written notice (the "**Fundamental Change Company Notice**") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the Applicable Procedures of the Depositary. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the effective date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

(vi) the name and address of the paying agent and the Conversion Agent, if applicable;

(vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;

(viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02. Simultaneously with providing such notice, the Company will publish such information on its website or through such other public medium as the Company may use at that time.

At the Company's written request, given at least (5) five days prior to the date the Fundamental Change Company Notice is to be sent, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders in connection with a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The paying agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the Applicable Procedures shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(e) Notwithstanding anything to the contrary in this Indenture, the Company shall not be required to repurchase, or to make an offer to repurchase, the Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15 (including, without limitation, the requirement to comply with applicable securities laws), and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15 (including the requirement to pay the Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes); *provided* that the Company shall continue to be obligated to (x) deliver the applicable Fundamental Change Repurchase Notice to the Holders (which Fundamental Change Repurchase Notice shall state that such third party shall make such an offer to purchase the Notes) and to simultaneously with such Fundamental Change Repurchase Notice publish a notice containing such information in a newspaper of general circulation in the City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time, (y) comply with applicable securities laws as set forth in this Indenture in connection with any such purchase and (z) pay the applicable Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes in the event such third party fails to make such payment in such amount at such time.

(f) For purposes of this Article 15, the paying agent may be any agent, depositary, tender agent, paying agent or other agent appointed by the Company to accomplish the purposes set forth herein.

Section 15.03 *Withdrawal of Fundamental Change Repurchase Notice*. (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the office of the paying agent in accordance with this Section 15.03 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be $1,000 or an integral multiple thereof,

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000;

provided, *however*, that if the Notes are Global Notes, the notice of withdrawal must comply with appropriate procedures of the Depositary.

Section 15.04 *Deposit of Fundamental Change Repurchase Price*.

(a) The Company will deposit with the Trustee (or other paying agent appointed by the Company), or if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 4.04 on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date (subject to extension in order to allow the Company to comply with applicable law) an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other paying agent appointed by the Company), payment for Notes surrendered for repurchase (and not validly withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (provided the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other paying agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; provided, however, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other paying agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, or, if extended in order to allow the Company to comply with applicable law, such later date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn in accordance with the provisions of this Indenture and the Applicable Procedures of the Depositary, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes on the Fundamental Change Repurchase Date or, if extended in order to allow the Company to comply with applicable law, such later date (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or paying agent) and (iii) all other rights of the Holders of such Notes with respect to the Notes will terminate on the Fundamental Change Repurchase Date or, if extended in order to allow the Company to comply with applicable law, such later date (other than (x) the right to receive the Fundamental Change Repurchase Price and (y) to the extent not included in the Fundamental Change Repurchase Price, accrued and unpaid interest, if applicable).

(c) Upon surrender of a Physical Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Physical Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Physical Note surrendered.

Section 15.05 *Repurchase of Notes.* To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture relating to the Company's obligations to purchase the Notes upon a Fundamental Change, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions of this Indenture by virtue of such conflict.

ARTICLE 16
NO REDEMPTION

Section 16.01 *No Redemption.* The Notes shall not be redeemable by the Company prior to the Maturity Date, and no sinking fund is provided for the Notes.

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01 *Provisions Binding on Company's and the Guarantors' Successors.* All the covenants, stipulations, promises and agreements of each of the Company and the Guarantors contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02 *Official Acts by Successor Entity.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company or a Guarantor shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company or such Guarantor, as the case may be.

Section 17.03 *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company or any Guarantor shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is delivered by the Company or any Guarantor to the Trustee) to BigBear.ai Holdings, Inc., 6811 Benjamin Franklin Drive, Suite 200, Columbia, Maryland 21046, Attention: Secretary, with a copy sent to DLA Piper LLP (US), 555 Mission Street, Suite 2400, San Francisco, California 94105-2933, Attention: Jeffrey C. Selman, Esq. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Trustee at the Corporate Trust Office. In no event shall the Trustee or the Conversion Agent be obligated to monitor any website maintained by the Company or any press releases issued by the Company.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the Applicable Procedures of the Depositary and shall be sufficiently given to it if so delivered within the time prescribed.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event to a Holder of a Global Note (whether by mail or otherwise), such notice shall be properly delivered if delivered to The Depository Trust Company ("**DTC**") (or its designee) in accordance with the applicable procedures of DTC.

Section 17.04 *Governing Law; Jurisdiction*. THIS INDENTURE AND EACH NOTE AND EACH GUARANTEE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE AND EACH GUARANTEE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture (other than, with respect to an Opinion of Counsel, in connection with the issuance and authentication of the Notes on the date of this Indenture), the Company shall furnish to the Trustee an Officer's Certificate and an Opinion of Counsel, stating that such action is permitted by the terms of this Indenture and that all conditions precedent to such action have been complied with. With respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company or any of the Guarantors in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.07) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent to such action have been complied with.

Section 17.06 *Legal Holidays*. In any case where any Interest Payment Date, any Fundamental Change Repurchase Date or the Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue on any such payment in respect of the delay.

Section 17.07 *No Security Interest Created*. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Custodian, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.09 *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.10 *Authenticating Agent*. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 17.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 17.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 17.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

_____,
as Authenticating Agent, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Signatory

Section 17.11 *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic means shall be deemed to be their original signatures for all purposes. Unless otherwise provided in this Indenture or in any Note, the words "execute," "execution," "signed" and "signature" and words of similar import used in or related to any document to be signed in connection with this Indenture, any Note or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and 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 in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest 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 and any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to procedures approved by the Trustee.

Section 17.12 *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13 *Waiver of Jury Trial.* EACH OF THE COMPANY, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, pandemics, epidemics, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or the unavailability of the Federal Reserve Bank wire or telex write or communication facility; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15 *Calculations.* The Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Stock, the Daily VWAPs, accrued interest payable on the Notes, any Additional Interest on the Notes, the Conversion Rate of the Notes, Buy-In Price, Maximum Percentage and Excess Shares. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any registered Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company. Neither the Trustee nor the Conversion Agent will have any responsibility to make calculations under this Indenture, nor will either of them have any responsibility to monitor the Company's stock or trading price, determine whether the conditions to convertibility of the Notes have been met or determine whether the circumstances requiring changes to the Conversion Rate have occurred.

Section 17.16 *USA PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

Section 17.17 *Tax Withholding.* The Company or the Trustee, as the case may be, shall be entitled to make a deduction or withholding from any payment which it makes under this Indenture for or on account of any present or future taxes, duties or charges if and to the extent so required by any applicable law and any current or future regulations or agreements thereunder or official interpretations thereof or any law implementing an intergovernmental approach thereto, in each case, that a Holder is

subject to pursuant to the Indenture ("**Applicable Tax Law**"), or by virtue of the relevant Holder failing to satisfy any certification or other requirements under Applicable Tax Law in respect of the Notes, in which event the Company or the Trustee, as the case may be, shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so withheld or deducted and shall have no obligation to gross up any payment hereunder or pay any additional amount as a result of such withholding tax.

Notwithstanding any other provision of this Indenture, if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder as a result of an adjustment or the nonoccurrence of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, withhold from or set off such payments against payments of cash and shares of Common Stock on the Note (or any payments on the Common Stock) or sales proceeds received by or other funds or assets of the Holder.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

BIGBEAR.AI HOLDINGS, INC., as Issuer

By: /s/ Dr. Louis R. Brothers
Name: Dr. Louis R. Brothers
Title: Chief Executive Officer

[*Signature Page to Indenture*]

BIGBEAR.AI INTERMEDIATE HOLDINGS, LLC,
as a Guarantor

By: /s/ Dr. Louis R. Brothers
Name: Dr. Louis R. Brothers
Title: Chief Executive Officer

BIGBEAR.AI, LLC, as a Guarantor

By: /s/ Joshua Kinley
Name: Joshua Kinley
Title: Chief Financial Officer

NUWAVE SOLUTIONS, L.L.C., as a Guarantor

By: /s/ Joshua Kinley
Name: Joshua Kinley
Title: Chief Financial Officer

PCI STRATEGIC MANAGEMENT, LLC, as a
Guarantor

By: /s/ Joshua Kinley
Name: Joshua Kinley
Title: Chief Financial Officer

PROMODEL GOVERNMENT SOLUTIONS, INC.,
as a Guarantor

By: /s/ Joshua Kinley
Name: Joshua Kinley
Title: Chief Financial Officer

OPEN SOLUTIONS GROUP, LLC, as a Guarantor

By: /s/ Joshua Kinley
Name: Joshua Kinley
Title: Chief Financial Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION, as
Trustee

By: /s/ Quinton M. DePompolo
Name: Quinton M. DePompolo
Title: Banking Officer

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE (NOTWITHSTANDING THE FOREGOING, THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES). BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF BIGBEAR.AI HOLDINGS, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144 UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT; OR

(E) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.]

BigBear.ai Holdings, Inc.

6.00% Convertible Senior Note due 2026

No. [ ]

[Initially][2] $[ ]

CUSIP No. [ ][3]

BigBear.ai Holdings, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][4] [ ][5], or registered assigns, the principal sum [as set forth in the "**Schedule of Exchanges of Notes**" attached hereto][6] [of $[ ]][7], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $200,000,000 in aggregate at any time, in accordance with the rules and procedures of the Depositary, on December 15, 2026, and interest thereon as set forth below.

This Note shall bear interest at the rate of 6.00% per year from December 7, 2021, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until December 15, 2026. Interest is payable semi-annually in arrears on each June 15 and December 15 of each year (or, if such day is not a Business Day, the next succeeding Business Day), commencing on June 15, 2022, to Holders of record at the close of business on the preceding June 1 and December 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and the Corporate Trust Office located in the United States of America as a place where Notes may be presented for payment or for registration of transfer and exchange.

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2 Include if a global note.

3 Subject to the procedures of the Depositary, at such time as the Company notifies the Trustee that the Restrictive Legend is to be removed in accordance with the Indenture, the CUSIP number for this Note shall be deemed to be [ ].

4 Include if a global note.

5 Include if a physical note.

6 Include if a global note.

7 Include if a physical note.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into shares of Common Stock on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

BIGBEAR.AI HOLDINGS, INC., as Issuer

By: _____
Name:
Title:

Dated: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

BigBear.ai Holdings, Inc.

6.00% Convertible Senior Note due 2026

This Note is one of a duly authorized issue of Notes of the Company, designated as its 6.00% Convertible Senior Notes due 2026 (the "**Notes**"), limited to the aggregate principal amount of $200,000,000 all issued or to be issued under and pursuant to an Indenture dated as of December 7, 2021 (the "**Indenture**"), among the Company, the Guarantors party thereto and Wilmington Trust, National Association, as trustee (the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company, the Guarantors and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

Notwithstanding any other provision of the Indenture or any provision of this Note, each Holder shall have the contractual right to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, this Note, on or after the respective due dates expressed or provided for in this Note or in the Indenture, and the contractual right to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates, shall not be amended without the consent of each Holder.

The Notes are issuable in registered form without coupons in minimum denominations of $1,000 principal amount and integral multiples in excess thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into shares of Common Stock at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common Additional abbreviations may also be used though not in the above list.

SCHEDULE A[8]

SCHEDULE OF EXCHANGES OF NOTES

BigBear.ai Holdings, Inc.

6.00% Convertible Senior Notes due 2026

The initial principal amount of this Global Note is TWO HUNDRED MILLION DOLLARS ($200,000,000). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

8 Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: BigBear.ai Notes Administrator

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____ _____

Signature

_____

Signature Guarantee

Signature(s) must be guaranteed by
an eligible Guarantor Institution
(banks, stock brokers, savings and
loan associations and credit unions)
with membership in an approved
signature guarantee medallion program
pursuant to Securities and Exchange
Commission Rule 17Ad-15 if shares of Common Stock are to
be issued, or
Notes are to be delivered, other than
to and in the name of the registered holder.

Fill in for registration of shares if to be issued,
and Notes if to be delivered, other than to and in the name
of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all):
$_____,000
NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: Paying Agent

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from BigBear.ai Holdings, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

_____

Signature(s)

_____

Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all):

$_____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated:_____

_____

_____
Signature(s)

Signature Guarantee Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT B

[ ] SUPPLEMENTAL INDENTURE

BIGBEAR.AI HOLDINGS, INC.

THE GUARANTORS PARTY HERETO

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as Trustee

Dated as of [ ], 202[ ]

6.00% Convertible Senior Notes due 2026

THIS [ ] SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**"), entered into as of [, 202], among BIGBEAR.AI HOLDINGS. INC., a Delaware corporation (the "**Company**"), [*insert each Guarantor executing this Supplemental Indenture and its jurisdiction of incorporation*] (each an "**Undersigned**") and WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (the "**Trustee**").

RECITALS

WHEREAS, the Company, the Guarantors party thereto and the Trustee entered into an Indenture, dated as of December 7, 2021 (the "**Indenture**"), relating to the Company's 6.00% Convertible Senior Notes due 2026 (the "**Notes**");

WHEREAS, the Company agreed pursuant to the Indenture to cause any Subsidiary (with certain exceptions) that guarantees certain Indebtedness of the Company or any Guarantor following the Issue Date to provide a Guarantee;

WHEREAS, pursuant to Section 10.01(c), the Company and the Trustee are authorized to execute and deliver this Supplemental Indenture without the consent of Holders.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and intending to be legally bound, the parties to this Supplemental Indenture hereby agree as follows:

Section 1. Capitalized terms used herein and not otherwise defined herein are used as defined in the Indenture.

Section 2. Each Undersigned, by its execution of this Supplemental Indenture, agrees to be a Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Guarantors, including, but not limited to, Article 13 thereof.

Section 3. This Supplemental Indenture shall be governed by and construed in accordance with the laws of the State of New York.

Section 4. This Supplemental Indenture may be signed in various counterparts which together shall constitute one and the same instrument.

Section 5. This Supplemental Indenture is an amendment supplemental to the Indenture, and the Indenture and this Supplemental Indenture shall henceforth be read together.

Section 6. The recitals and statements herein are deemed to be those of the Company and the Undersigned and not the Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or the Guarantees provided by the Guarantors party to this Supplemental Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

BIGBEAR.AI HOLDINGS, INC., as Issuer

By: _____
Name:
Title:

BIGBEAR.AI INTERMEDIATE HOLDINGS, LLC, as a Guarantor

By: _____
Name:
Title:

BIGBEAR.AI, LLC, as a Guarantor

By: _____
Name:
Title:

NUWAVE SOLUTIONS, L.L.C., as a Guarantor

By: _____
Name:
Title:

PCI STRATEGIC MANAGEMENT, LLC, as a Guarantor

By: _____
Name:
Title:

PROMODEL GOVERNMENT SOLUTIONS, INC., as a Guarantor

By: _____
Name:
Title:

OPEN SOLUTIONS GROUP, LLC, as a Guarantor

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

Exhibit 10.3

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this "Agreement") is made as of December [ ], 2021, by and between BigBear.ai Holdings, Inc., a Delaware corporation (the "Company"), and ("Indemnitee").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the "Charter") and the Bylaws (the "Bylaws") of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("DGCL"). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer, director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be so indemnified[; and

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by AE Industrial Partners, LP ("AE") or affiliates of AE which Indemnitee and AE intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement of and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board].

NOW, **THEREFORE**, in consideration of Indemnitee's agreement to serve as a director or officer of the Company, the Company and the Indemnitee do hereby agree as follows:

TERMS AND CONDITIONS

1. Services to the Company. In consideration of the Company's covenants and obligations hereunder, Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or in any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders his or her resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 18. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. Definitions. As used in this Agreement:

(a) References to "agent" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, advisor, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, employee benefit plan, nonprofit entity, partnership, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company; or was a director, officer, employee, advisor, fiduciary, or other official of a foreign or domestic corporation which was a predecessor corporation of the Company or a subsidiary of the Company, or was a director, officer, employee, advisor, fiduciary, or other official of another enterprise at the request of, for the convenience of, or to represent the interests of such predecessor corporation.

(b) The terms "Beneficial Owner" and "Beneficial Ownership" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Other than [AE][AE Industrial Partners, LP ("AE")][1] and its affiliates, any Person (as defined below), is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election or nomination for election was previously so approved (collectively, the "Continuing Directors"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, recapitalization or similar business combination, involving the Company and one or more businesses (a "Business Combination"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% plus one share of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) other than AE, or a member or an affiliate of AE, no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the

1 NTD: AE will already be defined only in agreements for AE directors.

Business Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "Corporate Status" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, advisor, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "Delaware Court" shall mean the Court of Chancery of the State of Delaware.

(f) "Disinterested Director" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "Enterprise" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, advisor, fiduciary, employee or agent.

(h) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(i) "Expenses" shall include all direct and indirect out-of-pocket costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and

binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "fines" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee, advisor, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, advisor, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

(k) "Independent Counsel" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) The term "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term "Proceeding" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by him or her, or of any action (or failure to act) on his or her part while acting as a director or officer of the Company, or by reason of the fact that he or she is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, advisor, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term "Subsidiary," with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

(o) The phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to: (a) to the fullest extent authorized or permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and (b) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

3. Indemnity in Third-Party Proceedings. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that his or her conduct was unlawful; provided, in no event shall Indemnitee be entitled to be indemnified, held harmless or advanced any amounts hereunder in respect of any Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (if any) that Indemnitee may incur by reason of his or her own actual fraud or intentional misconduct. Indemnitee shall not be found to have committed actual fraud or intentional misconduct for any purpose of this Agreement unless or until a court of competent jurisdiction shall have made a finding to that effect.

4. Indemnity in Proceedings by or in the Right of the Company. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. Indemnification for Expenses of A Party Who Is Wholly or Partly Successful Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by him or her in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. Indemnification for Expenses of A Witness. Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of his or her Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, he or she shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

7. Additional Indemnification, Hold Harmless and Exoneration Rights.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7(a) on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding any limitation in Sections 3, 4, 5 or 7(a), except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

8. Contribution in the Event of Joint Liability.

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. Exclusions. Notwithstanding any provision in this Agreement (except for section 27), the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f) and (g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or advances from the Company only to the extent that such payments or advances are unavailable from any insurance policy of the Company covering Indemnitee.

10. Advances of Expenses; Defense of Claim.

(a) Notwithstanding any provision of this Agreement to the contrary except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company under the provisions of this Agreement, the Charter, the Bylaws of the Company, applicable law or otherwise. If it shall be determined by a final judgment or other final adjudication that Indemnitee was not so entitled to indemnification, any advancement shall be returned to the Company (without interest) by the Indemnitee. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9 but shall apply to any Proceeding referenced in Section 9(b) prior to a final determination that Indemnitee is liable therefor.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

11. Procedure for Notification and Application for Indemnification.

(a) Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.

(b) Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

12. Procedure upon Application for Indemnification.

(a) A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising him or her

of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, advisor, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is

not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement within ten (10) days after receipt by the Company of a written request therefor, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, exonerated to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his or her rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. Security. Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of Disinterested Directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("Indemnification Arrangements") on behalf of Indemnitee against any liability asserted against him or her or incurred by or on behalf of him or her or in such capacity as a director, officer, employee or agent of the Company, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, advisors, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, manager, managing member, advisor, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter use commercially reasonable efforts to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) [The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by AE and certain affiliates that, directly or indirectly, (i) are controlled by, (ii) control or (iii) are under common control with, AE (collectively, the "Fund Indemnitors"). With respect to any amounts that are subject to indemnity under this Agreement and also subject to an indemnity obligation owed by Fund Indemnitors, the Company hereby agrees (i) that, as compared the Fund Indemnitors, it is the indemnitor of first resort with respect to any rights to indemnification provided to Indemnitee herein (i.e., its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee is secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Charter or Bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Section 16(d).]

(e) [Except as provided in Section 16(d) above,] in the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee [(other than against the Fund Indemnitors)], who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights. No such payment by the Company shall be deemed to relieve any insurer of its obligations.

(f) [Except as provided in Section 16(d) above,] the Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, advisor, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

(g) [Except as provided in Section 16(d) above,] the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

17. Non-Disclosure of Payments. Except as expressly required by applicable law, neither party shall disclose any payments under this Agreement unless prior approval of the other party is obtained. If any payment information must be disclosed, the Company shall afford the Indemnitee an opportunity to review all such disclosures and, if requested, to explain in such statement any mitigating circumstances regarding the events to be reported.

18. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, advisor, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan, nonprofit entity, or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of his or her Corporate Status, whether or not he or she is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

19. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

20. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws of the Company as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, advisor, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he or she may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction, and the Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

21. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

22. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

BigBear.ai Holdings, Inc.
6811 Benjamin Franklin Drive
Suite 200
Columbia, Maryland 21046
Attention: Chief Financial Officer

With a copy, which shall not constitute notice, to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Jeremy S. Liss, P.C., Douglas C. Gessner, P.C., Tim Cruickshank, P.C., Matthew S. Arenson, P.C. and Jeffrey P. Swatzell

E-mail: jeremy.liss@kirkland.com,
douglas.gessner@kirkland.com, tim.cruickshank@kirkland.com,
marenson@kirkland.com, and jeffrey.swatzell@kirkland.com

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

23. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 22 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

24. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

26. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

27. Additional Acts. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

28. Waiver of Claims to Trust Account. Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "Claim") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever. Accordingly, Indemnitee acknowledges and agrees that any indemnification provided hereto will only be able to be satisfied by the Company if (i) the Company has sufficient funds outside of the trust account to satisfy its obligations hereunder or (ii) the Company consummates a Business Combination.

29. Maintenance of Insurance. The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

30. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

BIGBEAR.AI HOLDINGS, INC.

By: _____
Name: Joshua Kinley
Title: Chief Financial Officer

INDEMNITEE

By: _____
Name:
Address:

BIGBEAR.AI HOLDINGS, INC.

2021 LONG-TERM INCENTIVE PLAN

ARTICLE I
PURPOSE

The purpose of this BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan is to promote the success of the Company's business for the benefit of its stockholders by enabling the Company to offer Eligible Individuals cash and stock-based incentives in order to attract, retain, and reward such individuals and strengthen the mutuality of interests between such individuals and the Company's stockholders. The Plan is effective as of the date set forth in Article XV.

ARTICLE II
DEFINITIONS

For purposes of the Plan, the following terms shall have the following meanings:

2.1 "Affiliate" means a corporation or other entity controlled by, controlling, or under control with the Company. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such person, whether through the ownership of voting or other securities, by contract or otherwise.

2.2 "Applicable Law" means the requirements relating to the administration of equity-based awards and the related shares under U.S. state corporate law, U.S. federal and state securities laws, the rules of any stock exchange or quotation system on which the shares are listed or quoted, and any other applicable laws, including tax laws, of any U.S. or non-U.S. jurisdictions where Awards are, or will be, granted under the Plan.

2.3 "Award" means any award under the Plan of any Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Units, Performance Award, Other Stock-Based Award, or Cash Award. All Awards shall be granted by, confirmed by, and subject to the terms of a written or electronic agreement executed by the Company and the Participant.

2.4 "Award Agreement" means the written or electronic agreement, contract, certificate, or other instrument or document evidencing the terms and conditions of an individual Award. Each Award Agreement shall be subject to the terms and conditions of the Plan.

2.5 "Board" means the Board of Directors of the Company.

2.6 "Cash Award" means an Award granted pursuant to Section 10.3 of the Plan and payable in cash at such time or times and subject to such terms and conditions as determined by the Committee in its sole discretion.

2.7 "Cause" means, unless otherwise determined by the Committee in the applicable Award Agreement, with respect to a Participant's Termination of Service: (a) in the case where there is no employment agreement, offer letter, consulting agreement, change in control agreement, or similar agreement in effect between the Company or an Affiliate and the Participant at the relevant time of determination (or where there is such agreement in effect but it does not define "cause" (or words of like import)), the Participant's (i) commission of, indictment for, or plea of guilty or no contest to, a felony (or state law equivalent) or a crime involving dishonesty, moral turpitude or fraud or the commission of any other act involving willful malfeasance or breach of fiduciary duty with respect to the Company or an Affiliate; (ii) material non-performance of the Participant's duties or failure to follow any lawful directive from the Company or any Affiliate; (iii) conduct that brings or is reasonably likely to bring the Company or an Affiliate negative publicity or into public disgrace, embarrassment, or disrepute or otherwise materially injures the integrity, character or reputation of the Company or an Affiliate; (iv) fraud, theft, embezzlement, gross negligence or willful misconduct or other act involving dishonesty with respect to the Company or an Affiliate; (v) violation of the Company's or an Affiliate's written policies or codes of conduct, including written policies related to discrimination, harassment, retaliation, performance of illegal or unethical activities, or ethical misconduct; (vi) insubordination or failure to follow the directions of the Participant's reporting supervisor and/or of the Chief Executive Officer of the Company or the Board, as applicable, or (vii) breach of any employment, consulting or similar agreement with the Company or any Affiliate, including, without limitation, any non-competition, non-solicitation, no-hire, or confidentiality covenant between the Participant and the Company or an Affiliate; *provided*, that with respect to the foregoing clauses (ii), (vi) or (vii), to the extent such action or omission is capable of cure, the Company shall provide the Participant with written notice of such action or omission and the Participant shall have fifteen (15) days to cure such action or omission; or (b) in the case where there is an employment agreement, offer letter, consulting agreement, change in control agreement, or similar agreement in effect between the Company or an Affiliate and the Participant at the time of the grant of the Award that defines "cause" (or words of like import), "cause" as defined under such agreement.

2.8 "Change in Control" means and includes each of the following, unless otherwise determined by the Committee in the applicable Award Agreement or other written agreement with a Participant approved by the Committee:

(a) any "person," as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company, or any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the Company), becoming the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities, excluding for purposes herein, acquisitions pursuant to a Business Combination (as defined below) that does not constitute a Change in Control as defined in Section 2.8(b);

(b) a merger, reorganization, or consolidation of the Company or in which equity securities of the Company are issued (each, a "Business Combination"), other than a merger, reorganization, or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its direct or indirect Parent) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity (or, as applicable, a direct or indirect Parent of the Company or such surviving entity) outstanding immediately after such merger or consolidation; *provided, however*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person (other than those covered by the exceptions in Section 2.8(a)) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control; or a merger or consolidation of the Company with any other entity, other than a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its direct or indirect Parent) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity (or, as applicable, a direct or indirect Parent of the Company or such surviving entity) outstanding immediately after such merger or consolidation; *provided, however*, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person (other than those covered by the exceptions in Section 2.8(a)) acquires more than 50% of the combined voting power of the Company's then outstanding securities shall not constitute a Change in Control;

(c) during the period of two (2) consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2.8(a) or 2.8(b)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two (2) year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(d) a complete liquidation or dissolution of the Company or the consummation of a sale or disposition by the Company of all or substantially all of the Company's assets other than the sale or disposition of all or substantially all of the assets of the Company to a person or persons who beneficially own, directly or indirectly, 50% or more of the combined voting power of the outstanding voting securities of the Company at the time of the sale.

For purposes of this Section 2.8, acquisitions or dispositions of securities of the Company by AE Industrial Partners, LP, any of its respective Affiliates, or any investment vehicle or fund controlled by or managed by, or otherwise affiliated with AE Industrial Partners, LP shall not constitute a Change in Control. Notwithstanding the foregoing, with respect to any Award that is characterized as "nonqualified deferred compensation" within the meaning of Section 409A of the Code, an event shall not be considered to be a Change in Control under the Plan for purposes of payment of such Award unless such event is also a "change in ownership," a "change in effective control," or a "change in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A of the Code.

2.9 "Change in Control Price" means the highest price per Share paid in any transaction related to a Change in Control.

2.10 "Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to any section of the Code shall also be a reference to any successor provision and any guidance and treasury regulation promulgated thereunder.

2.11 "Committee" means any committee of the Board duly authorized by the Board to administer the Plan;*provided*, *however*, that unless otherwise determined by the Board, the Committee shall consist solely of two or more Qualified Members. If no committee is duly authorized by the Board to administer the Plan, the term "Committee" shall be deemed to refer to the Board for all purposes under the Plan. The Board may abolish any Committee or re-vest in itself any previously delegated authority from time to time, and will retain the right to exercise the authority of the Committee to the extent consistent with Applicable Law.

2.12 "Common Stock" means the common stock, $0.0001 par value per share, of the Company.

2.13 "Company" means BigBear.ai Holdings, Inc. a Delaware corporation, and its successors by operation of law.

2.14 "Consultant" means any natural person who is an advisor or consultant to the Company or any of its Affiliates.

2.15 "Disability" means, unless otherwise determined by the Committee in the applicable Award Agreement, with respect to a Participant's Termination of Service, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, *provided, however*, for purposes of an Incentive Stock Option, the term Disability shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether an individual has a Disability shall be determined by the Committee, and the Committee may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan in which a Participant participates that is maintained by the Company or any Affiliate.

2.16 "**Dividend Equivalents**" means a right granted to a Participant under the Plan to receive the equivalent value (in cash or Shares) of dividends paid on Shares.

2.17 "Effective Date" means the effective date of the Plan as defined in Article XV.

2.18 "Eligible Employees" means each employee of the Company or any of its Affiliates. An employee on a leave of absence may be an Eligible Employee.

2.19 "Eligible Individual" means an Eligible Employee, Non-Employee Director, or Consultant who is designated by the Committee in its discretion as eligible to receive Awards subject to the conditions set forth herein.

2.20 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time. Reference to a specific section of the Exchange Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.21 "Fair Market Value" means, for purposes of the Plan, unless otherwise required by any applicable provision of the Code or any regulations issued thereunder, as of any date and except as provided below, the last sales price reported for the Common Stock on the applicable date: (a) as reported on the principal national securities exchange in the United States on which it is then traded or (b) if the Common Stock is not traded, listed, or otherwise reported or quoted, the Committee shall determine in good faith the Fair Market Value in whatever manner it considers appropriate taking into account the requirements of Section 409A of the Code. For purposes of the grant of any Award, the applicable date shall be the trading day immediately prior to the date on which the Award is granted. For purposes of the exercise of any Award, the applicable date shall be the date a notice of exercise is received by the Committee or, if not a date on which the applicable market is open, the next day that it is open.

2.22 "Family Member" means "family member" as defined in Section A.1.(a)(5) of the general instructions of FormS-8.

2.23 "Incentive Stock Option" means any Stock Option that is awarded to an Eligible Employee who is an employee of the Company, its Subsidiaries, or its Parents (if any) under the Plan and that is intended to be, and designated as, an "Incentive Stock Option" within the meaning of Section 422 of the Code.

2.24 "Non-Employee Director" means a director or a member of the Board of the Company who is not an employee of the Company.

2.25 "Non-Qualified Stock Option" means any Stock Option awarded under the Plan that is not an Incentive Stock Option.

2.26 "Other Stock-Based Award" means an Award under Article X of the Plan that is valued in whole or in part by reference to, or is payable in or otherwise based on, Shares.

2.27 "Parent" means any parent corporation of the Company within the meaning of Section 424(e) of the Code.

2.28 "Participant" means an Eligible Individual to whom an Award has been granted pursuant to the Plan.

2.29 "Performance Award" means an Award granted to a Participant pursuant to Article IX hereof contingent upon achieving certain Performance Goals.

2.30 "Performance Goals" means goals established by the Committee as contingencies for Awards to vest and/or become exercisable or distributable.

2.31 "Performance Period" means the designated period during which the Performance Goals must be satisfied with respect to the Award to which the Performance Goals relate.

2.32 "Plan" means this BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan, as amended from time to time.

2.33 "Qualified Member" means a member of the Board who is (a) a"non-employee director" within the meaning of Rule 16b-3(b)(3), and (b) "independent" under the listing standards or rules of the securities exchange upon which the Common Stock is traded, but only to the extent such independence is required to take the action at issue pursuant to such standards or rules.

2.34 "Restricted Stock" means an Award of Shares under the Plan that is subject to restrictions under Article VIII.

2.35 "**Restricted Stock Units**" means an unfunded, unsecured right to receive, on the applicable settlement date, one Share or an amount in cash or other consideration determined by the Committee to be of equal value as of such settlement date, subject to certain vesting conditions and other restrictions.

2.36 "Restriction Period" has the meaning set forth in Section 8.3(a) with respect to Restricted Stock.

2.37 "Rule 16b-3" means Rule 16b-3 under Section 16(b) of the Exchange Act as then in effect or any successor provision.

2.38 "Section 409A of the Code" means the nonqualified deferred compensation rules under Section 409A of the Code and any applicable treasury regulations and other official guidance thereunder.

2.39 "Securities Act" means the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder. Reference to a specific section of the Securities Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.40 "**Shares"** means shares of Common Stock.

2.41 "Stock Appreciation Right" shall mean a stock appreciation right granted pursuant to Article VII.

2.42 "Stock Option" or **"Option"** means any option to purchase Shares granted pursuant to Article VI.

2.43 "Subsidiary" means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.44 "Ten Percent Stockholder" means a person owning stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company, its Subsidiaries or its Parent.

2.45 "Termination of Service" means the termination of the applicable Participant's employment with, or performance of services for, the Company and its Affiliates. Unless otherwise determined by the Committee, (a) if a Participant's employment or services with the Company and its Affiliates terminates but such Participant continues to provide services to the Company and its Affiliates in a non-employee capacity, such change in status shall not be deemed a Termination of Service with the Company and its Affiliates and (b) a Participant employed by, or performing services for, an Affiliate that ceases to be an Affiliate shall also be deemed to have incurred a Termination of Service provided the Participant does not immediately thereafter become an employee of the Company or another Affiliate. Notwithstanding the foregoing provisions of this definition, with respect to any Award that constitutes a "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code, a Participant shall not be considered to have experienced a "Termination of Service" unless the Participant has experienced a "separation from service" within the meaning of Section 409A of the Code.

ARTICLE III
ADMINISTRATION

3.1 Authority of the Committee. The Plan shall be administered by the Committee. Subject to the terms of the Plan and Applicable Law, the Committee shall have full authority to grant Awards to Eligible Individuals under the Plan. In particular, the Committee shall have the authority to:

(a) determine whether and to what extent Awards, or any combination thereof, are to be granted hereunder to one or more Eligible Individuals;

(b) determine the number of Shares to be covered by each Award granted hereunder;

(c) determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder (including, but not limited to, the exercise or purchase price (if any), any restriction or limitation, any vesting schedule or acceleration thereof, or any forfeiture restrictions or waiver thereof, regarding any Award and the Shares relating thereto, based on such factors, if any, as the Committee shall determine, in its sole discretion);

(d) determine the amount of cash to be covered by each Award granted hereunder;

(e) determine whether, to what extent, and under what circumstances grants of Options and other Awards under the Plan are to operate on a tandem basis and/or in conjunction with or apart from other awards made by the Company outside of the Plan;

(f) determine whether and under what circumstances an Award may be settled in cash, Shares, other property, or a combination of the foregoing;

(g) determine whether, to what extent, and under what circumstances cash, Shares, or other property and other amounts payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the Participant;

(h) modify, waive, amend, or adjust the terms and conditions of any Award, at any time or from time to time, including, but not limited to, Performance Goals;

(i) determine whether a Stock Option is an Incentive Stock Option orNon-Qualified Stock Option;

(j) determine whether to require a Participant, as a condition of the granting of any Award, to not sell or otherwise dispose of Shares acquired pursuant to the exercise or vesting of an Award for a period of time as determined by the Committee, in its sole discretion, following the date of the acquisition of such Award or Shares; and

(k) modify, extend, or renew an Award, subject to Article XII and Section 6.3(l).

3.2 Guidelines. Subject to Article XII hereof, the Committee shall have the authority to adopt, alter, and repeal such administrative rules, guidelines, and practices governing the Plan and perform all acts, including the delegation of its responsibilities (to the extent permitted by Applicable Law and applicable stock exchange rules), as it shall, from time to time, deem advisable; to construe and interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreements or sub-plans relating thereto); and to otherwise supervise the administration of the Plan. The Committee may correct any defect, supply any omission, or reconcile any inconsistency in the Plan or in any agreement relating thereto in the manner and to the extent it shall deem necessary to effectuate the purpose and intent of the Plan. The Committee may adopt special rules, sub-plans, guidelines, and provisions for persons who are residing in or employed in, or subject to, the taxes of any domestic or foreign jurisdictions to satisfy or accommodate applicable foreign laws or to qualify for preferred tax treatment of such domestic or foreign jurisdictions.

3.3 Decisions Final. Any decision, interpretation, or other action made or taken in good faith by or at the direction of the Company, the Board, or the Committee (or any of its members) arising out of or in connection with the Plan shall be within the absolute discretion of all and each of them, as the case may be, and shall be final, binding, and conclusive on the Company and all employees and Participants and their respective heirs, executors, administrators, successors, and assigns.

3.4 Procedures. If the Committee is appointed, the Board shall designate one of the members of the Committee as chairman and the Committee shall hold meetings, subject to the by-laws of the Company, at such times and places as it shall deem advisable, including, without limitation, by telephone conference or by written consent to the extent permitted by Applicable Law. A majority of the Committee members shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members. Any decision or determination reduced to writing and signed by all of the Committee members in accordance with the by-laws of the Company, shall be fully effective as if it had been made by a vote at a meeting duly called and held. The Committee shall make such rules and regulations for the conduct of its business as it shall deem advisable.

3.5 Designation of Consultants/Liability; Delegation of Authority.

(a) The Committee may designate employees of the Company and professional advisors to assist the Committee in the administration of the Plan and (to the extent permitted by Applicable Law) may grant authority to officers of the Company to grant Awards and/or execute agreements or other documents on behalf of the Committee.

(b) The Committee may employ such legal counsel, consultants, and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultant and any computation received from any such consultant or agent. Expenses incurred by the Committee or the Board in the engagement of any such counsel, consultant, or agent shall be paid by the Company. The Committee, its members, and any person designated pursuant to subsection (a) above shall not be liable for any action or determination made in good faith with respect to the Plan. To the maximum extent permitted by Applicable Law, no officer of the Company or member or former member of the Committee or of the Board shall be liable for any action or determination made in good faith with respect to the Plan or any Award granted under it.

(c) The Committee may delegate any or all of its powers and duties under the Plan to a subcommittee of directors or to any officer of the Company, including the power to perform administrative functions and grant Awards; *provided* that such delegation does not (i) violate Applicable Law, or (ii) result in the loss of an exemption under Rule 16b-3(d)(1) for Awards granted to Participants subject to Section 16 of the Exchange Act in respect of the Company. Upon any such delegation, all references in the Plan to the "Committee," shall be deemed to include any subcommittee or officer of the Company to whom such powers have been delegated by the Committee. Any such delegation shall not limit the right of such subcommittee members or such an officer to receive Awards; *provided*, *however*, that such subcommittee members and any such officer may not grant Awards to himself or herself, a member of the Board, or any executive officer of the Company or an Affiliate, or take any action with respect to any Award previously granted to himself or herself, a member of the Board, or any executive officer of the Company or an Affiliate. The Committee may also appoint agents who are not executive officers of the Company or members of the Board to assist in administering the Plan, *provided*, *however*, that such individuals may not be delegated the authority to grant or modify any Awards that will, or may, be settled in Shares.

3.6 Indemnification. To the maximum extent permitted by Applicable Law and to the extent not covered by insurance directly insuring such person, each officer or employee of the Company or any of its Affiliates and member or former member of the Committee or the Board shall be indemnified and held harmless by the Company against any cost or expense (including reasonable fees of counsel acceptable to the Committee) or liability (including any sum paid in settlement of a claim with the approval of the Committee), and advanced amounts necessary to pay the foregoing at the earliest time and to the fullest extent permitted, arising out of any act or omission to act in connection with the administration of the Plan, except to the extent arising out of such officer's, employee's, member's, or former member's own fraud or bad faith. Such indemnification shall be in addition to any right of indemnification the employees, officers, directors, or members or former officers, directors, or members may have under Applicable Law or under the by-laws of the Company or any of its Affiliates. Notwithstanding anything else herein, this indemnification will not apply to the actions or determinations made by an individual with regard to Awards granted to such individual under the Plan.

ARTICLE IV
SHARE LIMITATION

4.1 Shares. The aggregate number of Shares that may be issued or used for reference purposes or with respect to which Awards may be granted under the Plan shall not exceed 18,571,240 Shares (subject to any increase or decrease pursuant to this Article IV), which may be either authorized and unissued Shares or Shares held in or acquired for the treasury of the Company or both. The number of Shares that may be issued or used for reference purposes or with respect to which Awards may be granted under the Plan shall be subject to an annual increase on the first day of each calendar year beginning January 1, 2022 and ending and including January 1, 2031, equal to the lesser of (a) 5 % of the aggregate number of Shares outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of Shares as is determined by the Board. The aggregate number of Shares that may be issued or used with respect to any Incentive Stock Option shall not exceed 18,571,240 Shares (subject to any increase or decrease pursuant to Section 4.3). Any Award under the Plan settled in cash shall not be counted against the foregoing maximum share limitations. Notwithstanding anything to the contrary contained herein, Shares subject to an Award under the Plan shall again be made available for issuance or delivery under the Plan if such Shares are (A) Shares tendered in payment of an Option, (B) Shares delivered or withheld by the Company to satisfy any tax withholding obligation, (C) Shares covered by a stock-settled Stock Appreciation Right or other Awards that were not issued upon the settlement of the Award, or (D) Shares subject to an Award that expires or is canceled, forfeited, or terminated without issuance of the full number of Shares to which the Award related.

4.2 Substitute Awards. In connection with an entity's merger or consolidation with the Company or the Company's acquisition of an entity's property or stock, the Committee may grant Awards in substitution for any options or other stock or stock-based awards granted before such merger or consolidation by such entity or its Affiliate ("Substitute Awards"). Substitute Awards may be granted on such terms as the Committee deems appropriate, notwithstanding limitations on Awards in the Plan. Substitute Awards will not count against the overall share limit (nor shall Shares subject to a Substitute Award be added to the Shares available for Awards under the Plan as provided above), except that Shares acquired by exercise of substitute Incentive Stock Options will count against the maximum number of Shares that may be issued pursuant to the exercise of Incentive Stock Options under the Plan. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grants pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under the Plan as provided above); provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Eligible Employees or Non-Employee Directors prior to such acquisition or combination.

4.3 Adjustments.

(a) The existence of the Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or the stockholders of the Company to make or authorize (i) any adjustment, recapitalization, reorganization, or other change in the Company's capital structure or its business, (ii) any merger or consolidation of the Company or any Affiliate, (iii) any issuance of bonds, debentures, or preferred or prior preference stock ahead of or affecting the Shares, (iv) the dissolution or liquidation of the Company or any Affiliate, (v) any sale or transfer of all or part of the assets or business of the Company or any Affiliate, or (vi) any other corporate act or proceeding.

(b) Subject to the provisions of Section 11.1:

(i) If the Company at any time subdivides (by any split, recapitalization, or otherwise) the outstanding Shares into a greater number of Shares, or combines (by reverse split, combination, or otherwise) its outstanding Shares into a lesser number of Shares, then the respective exercise prices for outstanding Awards that provide for a Participant-elected exercise and the number of Shares covered by outstanding Awards shall be appropriately adjusted by the Committee to prevent dilution or enlargement of the rights granted to, or available for, Participants under the Plan.

(ii) Excepting transactions covered by Section 1.1(a)(i), if the Company effects any merger, consolidation, statutory exchange, spin-off, reorganization, sale or transfer of all or substantially all the Company's assets or business, or other corporate transaction or event in such a manner that the Company's outstanding Shares are converted into the right to receive (or the holders of Common Stock are entitled to receive in exchange therefor), either immediately or upon liquidation of the Company, securities or other property of the Company or other entity, then, subject to the provisions of Section 11.1, (A) the aggregate number or kind of securities that thereafter may be issued under the Plan, (B) the number or kind of securities or other property (including cash) to be issued pursuant to Awards granted under the Plan (including as a result of the assumption of the Plan and the obligations hereunder by a successor entity, as applicable), or (C) the exercise or purchase price thereof, shall be appropriately adjusted by the Committee to prevent dilution or enlargement of the rights granted to, or available for, Participants under the Plan.

(iii) If there shall occur any change in the capital structure of the Company other than those covered by Section 1.1(a)(i) or 1.1(a)(ii), any conversion, any adjustment, or any issuance of any class of securities convertible or exercisable into, or exercisable for, any class of equity securities of the Company, then the Committee shall adjust any Award and make such other adjustments to the Plan to prevent dilution or enlargement of the rights granted to, or available for, Participants under the Plan.

(iv) The Committee may adjust the Performance Goals applicable to any Awards to reflect any unusual ornon-recurring events and other extraordinary items, impact of charges for restructurings, discontinued operations, and the cumulative effects of accounting or tax changes, each as defined by generally accepted accounting principles or as identified in the Company's financial statements, notes to the financial statements, management's discussion and analysis, or other Company public filing.

(v) Any such adjustment determined by the Committee pursuant to this Section 4.3(b) shall be final, binding, and conclusive on the Company and all Participants and their respective heirs, executors, administrators, successors, and permitted assigns. Any adjustment to, or assumption or substitution of, an Award under this Section 4.3(b) shall be intended to comply with the requirements of Section 409A of the Code and Treasury Regulation §1.424-1 (and any amendments thereto), to the extent applicable. Except as expressly provided in this Section 4.3 or in the applicable Award Agreement, a Participant shall have no additional rights under the Plan by reason of any transaction or event described in this Section 4.3.

4.4 Annual Limit on Non-Employee Director Compensation. In each calendar year during any part of which the Plan is in effect, aNon-Employee Director may not receive Awards for such individual's service on the Board that, taken together with any cash fees paid to such Non-Employee Director during such calendar year for such individual's service on the Board, have a value in excess of $750,000 (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); provided, that (a) the Committee may make exceptions to this limit, except that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation and (b) for any calendar year in which a Non-Employee Director (i) first commences service on the Board, (ii) serves on a special committee of the Board, or (iii) serves as lead director or non-executive chair of the Board, additional compensation may be provided to suchNon-Employee Director in excess of such limit; provided, further, that the limit set forth in this Section 4.4 shall be applied without regard to Awards or other compensation, if any, provided to a Non-Employee Director during any period in which such individual was an employee of the Company or any Affiliate or was otherwise providing services to the Company or to any Affiliate other than in the capacity as a Non-Employee Director.

ARTICLE V
ELIGIBILITY

5.1 General Eligibility. All current and prospective Eligible Individuals are eligible to be granted Awards. Eligibility for the grant of Awards and actual participation in the Plan shall be determined by the Committee in its sole discretion.

5.2 Incentive Stock Options. Notwithstanding the foregoing, only Eligible Employees who are employees of the Company, its Subsidiaries, or its Parents (if any) are eligible to be granted Incentive Stock Options under the Plan. Eligibility for the grant of an Incentive Stock Option and actual participation in the Plan shall be determined by the Committee in its sole discretion.

5.3 General Requirement. The vesting and exercise of Awards granted to a prospective Eligible Individual are conditioned upon such individual actually becoming an Eligible Employee, Consultant, or Non-Employee Director, as applicable.

ARTICLE VI
STOCK OPTIONS

6.1 Options. Stock Options may be granted alone or in addition to other Awards granted under the Plan. Each Stock Option granted under the Plan shall be of one of two types: (a) an Incentive Stock Option or (b) a Non-Qualified Stock Option.

6.2 Grants. The Committee shall have the authority to grant to any Eligible Employee one or more Incentive Stock Options,Non-Qualified Stock Options, or both types of Stock Options; provided, however, that Incentive Stock Options may only be granted to an Eligible Employee who is an employee of the Company, its Subsidiaries, or its Parents (if any). The Committee shall have the authority to grant any Consultant or Non-Employee Director one or more Non-Qualified Stock Options. To the extent that any Stock Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of its exercise or otherwise), such Stock Option or the portion thereof which does not so qualify shall constitute a separate Non-Qualified Stock Option.

6.3 Terms of Options. Options granted under the Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Exercise Price. The exercise price per Share subject to a Stock Option shall be determined by the Committee at the time of grant, *provided* that the per share exercise price of a Stock Option shall not be less than 100% (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, 110%) of the Fair Market Value at the time of grant.

(b) Stock Option Term. The term of each Stock Option shall be fixed by the Committee,*provided* that no Stock Option shall be exercisable more than ten (10) years (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder, five (5) years) after the date the Option is granted.

(c) Exercisability. Unless otherwise provided by the Committee in accordance with the provisions of this Section 6.3, Stock Options granted under the Plan shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. The Committee may, but shall not be required to, provide for an acceleration of vesting and exercisability in the terms of any Award Agreement upon the occurrence of a specified event.

(d) Method of Exercise. Subject to whatever installment exercise and waiting period provisions apply under Section 6.3(c), to the extent vested, Stock Options may be exercised in whole or in part at any time during the Option term, by giving written notice of exercise (which may be electronic) to the Company specifying the number of Shares to be purchased. Such notice shall be accompanied by payment in full of the exercise price (which shall equal the product of such number of Shares to be purchased multiplied by the applicable exercise price). The exercise price for the Stock Options may be paid upon such terms and conditions as shall be established by the Committee and set forth in the applicable Award Agreement. Without limiting the foregoing, the Committee may establish payment terms for the exercise of Stock Options pursuant to which the

Company may withhold a number of Shares that otherwise would be issued to the Participant in connection with the exercise of the Stock Option having a Fair Market Value on the date of exercise equal to the exercise price, or that permit the Participant to deliver cash or Shares with a Fair Market Value equal to the exercise price on the date of payment, or through a simultaneous sale through a broker of Shares acquired on exercise, all as permitted by Applicable Law. No Shares shall be issued until payment therefor, as provided herein, has been made or provided for. The Committee may provide that a Stock Option include a provision whereby the Participant may elect at any time before the Participant's Termination of Service to exercise the Stock Option as to any part or all of the shares of Common Stock subject to the Stock Option prior to the full vesting of the Stock Option and such shares shall be subject to the provisions of the Plan and be treated as Restricted Stock. Unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Committee determines to be appropriate.

(e) Non-Transferability of Options. No Stock Option shall be transferable by the Participant other than by will or by the laws of descent and distribution, and all Stock Options shall be exercisable, during the Participant's lifetime, only by the Participant. Notwithstanding the foregoing, the Committee may determine, in its sole discretion, at the time of grant or thereafter that a Non-Qualified Stock Option that is otherwise not transferable pursuant to this Section 6.3(e) is transferable to a Family Member in whole or in part and in such circumstances, and under such conditions, as specified by the Committee. A Non-Qualified Stock Option that is transferred to a Family Member pursuant to the preceding sentence (i) may not be subsequently transferred other than by will or by the laws of descent and distribution and (ii) remains subject to the terms of the Plan and the applicable Award Agreement. Any Shares acquired upon the exercise of a Non-Qualified Stock Option by a permissible transferee of a Non-Qualified Stock Option or a permissible transferee pursuant to a transfer after the exercise of the Non-Qualified Stock Option shall be subject to the terms of the Plan and the applicable Award Agreement.

(f) Termination by Death or Disability. Unless otherwise provided in the applicable Award Agreement, or otherwise determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is by reason of death or Disability, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant (or in the case of the Participant's death, by the legal representative of the Participant's estate) at any time within a period of one (1) year from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options; *provided, however*, that, in the event of a Participant's Termination of Service by reason of Disability, if the Participant dies within such exercise period, all unexercised Stock Options held by such Participant shall thereafter be exercisable, to the extent to which they were exercisable at the time of death, for a period of one (1) year from the date of such death, but in no event beyond the expiration of the stated term of such Stock Options.

(g) Involuntary Termination Without Cause. Unless otherwise provided in the applicable Award Agreement or otherwise determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is by involuntary termination by the Company without Cause, all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of ninety (90) days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options.

(h) Voluntary Resignation. Unless otherwise provided in the applicable Award Agreement or otherwise determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service is voluntary (other than a voluntary termination described in Section 6.3(i) hereof), all Stock Options that are held by such Participant that are vested and exercisable at the time of the Participant's Termination of Service may be exercised by the Participant at any time within a period of thirty (30) days from the date of such Termination of Service, but in no event beyond the expiration of the stated term of such Stock Options.

(i) Termination for Cause. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, if a Participant's Termination of Service (x) is for Cause or (y) is a voluntary Termination of Service (as provided in Section 6.3(h)) after the occurrence of an event that would be grounds for a Termination of Service for Cause, all Stock Options, whether vested or not vested, that are held by such Participant shall thereupon immediately terminate and expire as of the date of such Termination of Service.

(j) Unvested Stock Options. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at the time of grant or, if no rights of the Participant are reduced, thereafter, Stock Options that are not vested as of the date of a Participant's Termination of Service for any reason shall terminate and expire as of the date of such Termination of Service.

(k) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined as of the time of grant) of the Shares with respect to which Incentive Stock Options are exercisable for the first time by an Eligible Employee during any calendar year under the Plan and/or any other stock option plan of the Company, any Subsidiary, or any Parent exceeds $100,000, such Options shall be treated as Non-Qualified Stock Options. In addition, if an Eligible Employee does not remain employed by the Company, any Subsidiary, or any Parent at all times from the time an Incentive Stock Option is granted until three (3) months prior to the date of exercise thereof (or such other period as required by Applicable Law), such Stock Option shall be treated as a Non-Qualified Stock Option. Should any provision of the Plan not be necessary in order for the Stock Options to qualify as Incentive Stock Options, or should any additional provisions be required, the Committee may amend the Plan accordingly, without the necessity of obtaining the approval of the stockholders of the Company.

(l) Modification, Extension, and Renewal of Stock Options. The Committee may (i) modify, extend, or renew outstanding Stock Options granted under the Plan (provided that the rights of a Participant are not reduced without such Participant's consent and *provided*, *further*, that such action does not subject the Stock Options to Section 409A of the Code without the consent of the Participant), and (ii) accept the surrender of outstanding Stock Options (to the extent not theretofore exercised) and authorize the granting of new Stock Options in substitution therefor (to the extent not theretofore exercised). Notwithstanding the foregoing, an outstanding Option may not be modified to reduce the exercise price thereof nor may a new Option at a lower price be substituted for a surrendered Option (other than adjustments or substitutions in accordance with Article IV), unless such action is approved by the stockholders of the Company.

(m) Other Terms and Conditions. The Committee may include a provision in an Award Agreement providing for the automatic exercise of a Non-Qualified Stock Option on a cashless basis on the last day of the term of such Option if the Participant has failed to exercise theNon-Qualified Stock Option as of such date, with respect to which the Fair Market Value of the Shares underlying the Non-Qualified Stock Option exceeds the exercise price of such Non-Qualified Stock Option on the date of expiration of such Option, subject to Section 14.4. Stock Options may contain such other provisions, which shall not be inconsistent with any of the terms of the Plan, as the Committee shall deem appropriate.

ARTICLE VII
STOCK APPRECIATION RIGHTS

7.1 Stock Appreciation Rights. Stock Appreciation Rights shall be subject to the terms and conditions, not inconsistent with the Plan, determined by the Committee, and the following:

(a) Exercise Price. The exercise price per Share subject to a Stock Appreciation Right shall be determined by the Committee at the time of grant, *provided* that the per share exercise price of a Stock Appreciation Right shall not be less than 100% of the Fair Market Value at the time of grant.

(b) Term. The term of each Stock Appreciation Right shall be fixed by the Committee, but shall not be greater than ten (10) years after the date the right is granted.

(c) Exercisability. Unless otherwise provided by the Committee, Stock Appreciation Rights granted under the Plan shall be exercised at such time or times and subject to such terms and conditions as shall be determined by the Committee at the time of grant. If the Committee provides that any such right is exercisable subject to certain terms and conditions, the Committee may waive those terms and conditions on the exercisability at any time at or after grant in whole or in part.

(d) Method of Exercise. Subject to whatever installment and waiting period provisions applied under Section 7.1(c), Stock Appreciation Rights may be exercised in whole or in part at any time in accordance with the applicable Award Agreement, by given written notice of exercise (which may be electronic) to the Company specifying the number of Stock Appreciation Rights being exercised.

(e) Payment. Upon the exercise of a Stock Appreciation Right a Participant shall be entitled to receive, for each right exercised, up to, but no more than, an amount in cash and/or Shares (as chosen by the Committee in its sole discretion) equal in value to the excess of the Fair Market Value of one (1) Share on the date that the right is exercised over the Fair Market Value of one (1) Share on the date that the right was awarded to the Participant.

(f) Termination. Unless otherwise determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, subject to the provisions of the applicable Award Agreement and the Plan, upon a Participant's Termination of Service for any reason, Stock Appreciation Rights may remain exercisable following a Participant's Termination of Service on the same basis as Stock Options would be exercisable following a Participant's Termination of Service in accordance with the provisions of Sections 6.3(f) through 6.3(j).

(g) Non-Transferability. No Stock Appreciation Rights shall be transferable by the Participant other than by will or by the laws of descent and distribution, and all such rights shall be exercisable, during the Participant's lifetime, only by the Participant.

7.2 Automatic Exercise. The Committee may include a term or condition in an Award Agreement providing for the automatic exercise of a Stock Appreciation Right on a cashless basis on the last day of the term of the Stock Appreciation Right if the Participant has failed to exercise the Stock Appreciation Right as of such date, with respect to which the Fair Market Value of the Shares underlying the Stock Appreciation Right exceeds the exercise price of such Stock Appreciation Right on the date of expiration of such Stock Appreciation Right, subject to Section 14.4.

ARTICLE VIII
RESTRICTED STOCK; RESTRICTED STOCK UNITS

8.1 Awards of Restricted Stock and Restricted Stock Units. Shares of Restricted Stock and Restricted Stock Units may be granted alone or in addition to other Awards granted under the Plan. The Committee shall determine the Eligible Individuals to whom, and the time or times at which, grants of Restricted Stock and/or Restricted Stock Units shall be made, the number of shares of Restricted Stock or Restricted Stock Units to be awarded, the price (if any) to be paid by the Participant (subject to Section 8.2), the time or times within which such Awards may be subject to forfeiture, the vesting schedule and rights to acceleration thereof, and all other terms and conditions of the Awards. The Committee shall determine and set forth in the Award Agreement the terms and conditions for each Restricted Stock and Restricted Stock Unit Award, subject to the conditions and limitations contained in the Plan, including any vesting or forfeiture conditions during the applicable restriction period. The Committee may condition the grant or vesting of Restricted Stock and Restricted Stock Units upon the attainment of specified performance targets (including the Performance Goals) or such other factor as the Committee may determine in its sole discretion.

8.2 Awards and Certificates. Restricted Stock and Restricted Stock Units granted under the Plan shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Restricted Stock:

(i) Purchase Price. The purchase price of Restricted Stock shall be fixed by the Committee. The purchase price for shares of Restricted Stock may be zero to the extent permitted by Applicable Law, and, to the extent not so permitted, such purchase price may not be less than par value.

(ii) Legend. Each Participant receiving Restricted Stock shall be issued a stock certificate in respect of such shares of Restricted Stock, unless the Committee elects to use another system, such as book entries by the transfer agent, as evidencing ownership of shares of Restricted Stock. Such certificate shall be registered in the name of such Participant, and shall, in addition to such legends required by Applicable Law, bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

(iii) Custody. If stock certificates are issued in respect of shares of Restricted Stock, the Committee may require that any stock certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed, and that, as a condition of any grant of Restricted Stock, the Participant shall have delivered a duly signed stock power or other instruments of assignment (including a power of attorney), each endorsed in blank with a guarantee of signature if deemed necessary or appropriate by the Company, which would permit transfer to the Company of all or a portion of the shares subject to the Restricted Stock Award in the event that such Award is forfeited in whole or part.

(iv) Rights as a Stockholder. Except as provided in Section 8.3(a) and this Section 8.2(a) or as otherwise determined by the Committee in an Award Agreement, the Participant shall have, with respect to the shares of Restricted Stock, all of the rights of a holder of Shares, including, without limitation, the right to receive dividends, the right to vote such Shares, and, subject to and conditioned upon the full vesting of shares of Restricted Stock, the right to tender such shares; *provided* that the Award Agreement shall specify on what terms and conditions the applicable Participant shall be entitled to dividends payable on the Shares.

(v) Lapse of Restrictions. If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock, the certificates for such Shares shall be delivered to the Participant. All legends shall be removed from said certificates at the time of delivery to the Participant, except as otherwise required by Applicable Law or other limitations imposed by the Committee.

(b) Restricted Stock Units:

(i) Settlement. The Committee may provide that settlement of Restricted Stock Units will occur upon or as soon as reasonably practical after the Restricted Stock Units vest or will instead be deferred, on a mandatory basis or at the Participant's election, in a manner intended to comply with Section 409A of the Code.

(ii) Right as a Stockholder. A Participant will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until Shares are delivered in settlement of the Restricted Stock Units.

(iii) Dividend Equivalents. If the Committee so provides, a grant of Restricted Stock Units may provide a Participant with the right to receive Dividend Equivalents. Dividend Equivalents may be paid currently or credited to an account for the Participant, settled in cash or Shares, and subject to the same restrictions on transferability and forfeitability as the Restricted Stock Units with respect to which the Dividend Equivalents are granted and subject to other terms and conditions as set forth in the Award Agreement.

8.3 Restrictions and Conditions.

(a) Restriction Period.

(i) The Participant shall not be permitted to transfer shares of Restricted Stock awarded under the Plan or vest in Restricted Stock Units during the period or periods set by the Committee (the "Restriction Period") commencing on the date of such Award, as set forth in the applicable Award Agreement and such agreement shall set forth a vesting schedule and any event that would accelerate vesting of the Restricted Stock and/or Restricted Stock Units. Within these limits, based on service, attainment of Performance Goals pursuant to Section 8.3(a)(ii), and/or such other factors or criteria as the Committee may determine in its sole discretion, the Committee may condition the grant or provide for the lapse of such restrictions in installments in whole or in part, or may accelerate the vesting of all or any part of any Restricted Stock Award or Restricted Stock Unit and/or waive the deferral limitations for all or any part of any Award.

(ii) If the grant of shares of Restricted Stock or Restricted Stock Units or the lapse of restrictions or vesting schedule is based on the attainment of Performance Goals, the Committee shall establish the objective Performance Goals and the applicable vesting percentage applicable to each Participant or class of Participants in the applicable Award Agreement prior to the beginning of the applicable fiscal year or at such later date as otherwise determined by the Committee and while the outcome of the Performance Goals are substantially uncertain. Such Performance Goals may incorporate provisions for disregarding (or adjusting for) changes in accounting methods, corporate transactions (including, without limitation, dispositions and acquisitions), and other similar types of events or circumstances.

(b) Termination. Unless otherwise provided in the applicable Award Agreement or determined by the Committee at grant or, if no rights of the Participant are reduced, thereafter, upon a Participant's Termination of Service for any reason during the relevant Restriction Period, all Restricted Stock or Restricted Stock Units still subject to restriction will be forfeited in accordance with the terms and conditions established by the Committee at grant or thereafter.

ARTICLE IX
PERFORMANCE AWARDS

9.1 Performance Awards. The Committee may grant a Performance Award to a Participant payable upon the attainment of specific Performance Goals either alone or in addition to other Awards granted under the Plan. The Performance Goals to be achieved during the Performance Period and the length of the Performance Period shall be determined by the Committee upon the grant of each Performance Award. The conditions for grant or vesting and the other provisions of Performance Awards (including, without limitation, any applicable Performance Goals) need not be the same with respect to each Participant. Performance Awards may be paid in cash, Shares, other property, or any combination thereof, in the sole discretion of the Committee as set forth in the applicable Award Agreement.

ARTICLE X
OTHER STOCK-BASED AND CASH AWARDS

10.1 Other Stock-Based Awards. The Committee is authorized to grant to Eligible Individuals OtherStock-Based Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, including but not limited to, Shares awarded purely as a bonus and not subject to restrictions or conditions, Shares in payment of the amounts due under an incentive or performance plan sponsored or maintained by the Company, stock equivalent units, and Awards valued by reference to book value of Shares. Other Stock-Based Awards may be granted either alone or in addition to or in tandem with other Awards granted under the Plan.

Subject to the provisions of the Plan, the Committee shall have authority to determine the Eligible Individuals to whom, and the time or times at which, such Awards shall be made, the number of Shares to be awarded pursuant to such Awards, and all other conditions of the Awards. The Committee may also provide for the grant of Shares under such Awards upon the completion of a specified Performance Period. The Committee may condition the grant or vesting of Other Stock-Based Awards upon the attainment of specified Performance Goals as the Committee may determine, in its sole discretion.

10.2 Terms and Conditions. Other Stock-Based Awards made pursuant to this Article X shall be evidenced by an Award Agreement and subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions not inconsistent with the terms of the Plan, as the Committee shall deem desirable:

(a) Non-Transferability. Subject to the applicable provisions of the Award Agreement and the Plan, Shares subject to Awards made under this Article X may not be transferred prior to the date on which the Shares are issued or, if later, the date on which any applicable restriction, performance, or deferral period lapses.

(b) Dividends. Unless otherwise determined by the Committee at the time of the grant of an Award, subject to the provisions of the Award Agreement and the Plan, the recipient of an Award under this Article X shall not be entitled to receive, currently or on a deferred basis, dividends or Dividend Equivalents in respect of the number of Shares covered by the Award.

(c) Vesting. Any Award under this Article X and any Shares covered by any such Award shall vest or be forfeited to the extent so provided in the Award Agreement, as determined by the Committee, in its sole discretion.

(d) Price. Shares under this Article X may be issued for no cash consideration. Shares purchased pursuant to a purchase right awarded under this Article X shall be priced as determined by the Committee in its sole discretion.

10.3 Cash Awards. The Committee may from time to time grant Cash Awards to Eligible Individuals in such amounts, on such terms and conditions, and for such consideration, including no consideration or such minimum consideration as may be required by Applicable Law, as it shall determine in its sole discretion. Cash Awards may be granted subject to the satisfaction of vesting conditions or may be awarded purely as a bonus and not subject to restrictions or conditions, and if subject to vesting conditions, the Committee may accelerate the vesting of such Awards at any time in its sole discretion. The grant of a Cash Award shall not require a segregation of any of the Company's assets for satisfaction of the Company's payment obligation thereunder.

ARTICLE XI
CHANGE IN CONTROL PROVISIONS

11.1 Benefits. In the event of a Change in Control, and except as otherwise provided by the Committee in an Award Agreement, a Participant's unvested Awards shall not vest automatically and a Participant's Awards shall be treated in accordance with one or more of the following methods as determined by the Committee:

(a) Awards, whether or not then vested, shall be continued, be assumed, or have new rights substituted therefor, as determined by the Committee in a manner consistent with the requirements of Section 409A of the Code, and restrictions to which shares of Restricted Stock or any other Award granted prior to the Change in Control are subject shall not lapse upon a Change in Control and the Restricted Stock or other Award shall, where appropriate in the sole discretion of the Committee, receive the same distribution as other Shares on such terms as determined by the Committee; *provided* that the Committee may decide to award additional Restricted Stock or other Awards in lieu of any cash distribution. Notwithstanding anything to the contrary herein, for purposes of Incentive Stock Options, any assumed or substituted Stock Option shall comply with the requirements of Treasury Regulation Section 1.424-1 (and any amendment thereto).

(b) The Committee, in its sole discretion, may provide for the purchase of any Awards by the Company for an amount of cash equal to the excess (if any) of the Change in Control Price of the Shares covered by such Awards, over the aggregate exercise price of such Awards; *provided, however*, that if the exercise price of an Option or Stock Appreciation Right exceeds the Change in Control Price, such Award may be cancelled for no consideration.

(c) The Committee may, in its sole discretion, terminate all outstanding and unexercised Stock Options, Stock Appreciation Rights, or any Other Stock-Based Award that provides for a Participant-elected exercise, effective as of the date of the Change in Control, by delivering notice of termination to each Participant at least twenty (20) days prior to the date of consummation of the Change in Control, in which case during the period from the date on which such notice of termination is delivered to the consummation of the Change in Control, each such Participant shall have the right to exercise in full all of such Participant's Awards that are then outstanding (without regard to any limitations on exercisability otherwise contained in the Award Agreements), but any such exercise shall be contingent on the occurrence of the Change in Control, and, *provided* that, if the Change in Control does not take place within a specified period after giving such notice for any reason whatsoever, the notice and exercise pursuant thereto shall be null and void.

(d) Notwithstanding any other provision herein to the contrary, the Committee may, in its sole discretion, provide for accelerated vesting or lapse of restrictions of an Award at any time.

ARTICLE XII
TERMINATION OR AMENDMENT OF PLAN

Notwithstanding any other provision of the Plan, the Board or the Committee may at any time, and from time to time, amend, in whole or in part, any or all of the provisions of the Plan (including any amendment deemed necessary to ensure that the Company may comply with any Applicable Law), or suspend or terminate it entirely, retroactively or otherwise; *provided, however*, that, unless otherwise required by Applicable Law or specifically provided herein, the rights of a Participant with respect to Awards granted prior to such amendment, suspension, or termination may not be impaired without the consent of such Participant and, *provided*, *further*, that without the approval of the holders of the Shares entitled to vote in accordance with Applicable Law, no amendment may be made that would (i) increase the aggregate number of Shares that may be issued under the Plan (except by operation of Section 4.1); (ii) change the classification of individuals eligible to receive Awards under the Plan; (iii) reduce the exercise price of any Stock Option or Stock Appreciation Right; (iv) grant a new Stock Option, Stock Appreciation Right, or other Award in substitution for, or upon the cancellation of, any previously granted Stock Option or Stock Appreciation Right that has the effect of reducing the exercise price thereof; (v) exchange any Stock Option or Stock Appreciation Right for Common Stock, cash, or other consideration when the exercise price per Share under such Stock Option or Stock Appreciation Right exceeds the Fair Market Value of a Share; or (vi) take any other action that would be considered a "repricing" of a Stock Option or Stock Appreciation Right under the applicable listing standards of the national exchange on which the Common Stock is listed (if any). Notwithstanding anything herein to the contrary, the Board or the Committee may amend the Plan or any Award Agreement at any time without a Participant's consent to comply with Applicable Law, including Section 409A of the Code. The Committee may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to Article IV or as otherwise specifically provided herein, no such amendment or other action by the Committee shall impair the rights of any holder without the holder's consent.

ARTICLE XIII
UNFUNDED STATUS OF PLAN

The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payment as to which a Participant has a fixed and vested interest but which is not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any right that is greater than those of a general unsecured creditor of the Company.

ARTICLE XIV
GENERAL PROVISIONS

14.1 Legend. The Committee may require each person receiving Shares pursuant to a Stock Option or other Award under the Plan to represent to and agree with the Company in writing that the Participant is acquiring the Shares without a view to distribution thereof. In addition to any legend required by the Plan, the certificates for such Shares may include any legend that the Committee deems appropriate to reflect any restrictions on transfer. All certificates for Shares delivered under the Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Common Stock is then listed or any national securities exchange system upon whose system the Common Stock is then quoted, and any Applicable Law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If the Shares are held in book-entry form, then the book-entry will indicate any restrictions on such Shares.

14.2 Other Plans. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required, and such arrangements may be either generally applicable or applicable only in specific cases.

14.3 No Right to Employment/Directorship/Consultancy. Neither the Plan nor the grant of any Award hereunder shall give any Participant or other employee, Consultant, or Non-Employee Director any right with respect to continuance of employment, consultancy, or directorship by the Company or any Affiliate, nor shall there be a limitation in any way on the right of the Company or any Affiliate by which an employee is employed or a Consultant or Non-Employee Director is retained to terminate such employment, consultancy, or directorship at any time.

14.4 Withholding of Taxes. A Participant shall be required to pay to the Company or one of its Affiliates, as applicable, or make arrangements satisfactory to the Company regarding the payment of, any income tax, social insurance contribution or other applicable taxes that are required to be withheld in respect of an Award. The Committee may (but is not obligated to), in its sole discretion, permit or require a Participant to satisfy all or any portion of the applicable taxes that are required to be withheld with respect to an Award by (a) the delivery of Shares (which are not subject to any pledge or other security interest) that have been both held by the Participant and vested for at least six (6) months (or such other period as established from time to time by the Committee in order to avoid adverse accounting treatment under applicable accounting standards) having an aggregate Fair Market Value equal to such withholding liability (or portion thereof); (b) having the Company withhold from the Shares otherwise issuable or deliverable to, or that would otherwise be retained by, the Participant upon the grant, exercise, vesting, or settlement of the Award, as applicable, a number of Shares with an aggregate Fair Market Value equal to the amount of such withholding liability; or (c) by any other means specified in the applicable Award Agreement or otherwise determined by the Committee.

14.5 Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan. The Committee shall determine whether cash, additional Awards, or other securities or property shall be used or paid in lieu of fractional Shares or whether any fractional shares should be rounded, forfeited, or otherwise eliminated.

14.6 No Assignment of Benefits. No Award or other benefit payable under the Plan shall, except as otherwise specifically provided by law or permitted by the Committee, be transferable in any manner, and any attempt to transfer any such benefit shall be void, and any such benefit shall not in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person who shall be entitled to such benefit, nor shall it be subject to attachment or legal process for or against such person.

14.7 Clawback Provisions. All Awards (including any proceeds, gains, or other economic benefit the Participant actually or constructively receives upon receipt or exercise of any Award or the receipt or resale of any Shares underlying the Award) will be subject to any Company clawback policy, including any clawback policy adopted to comply with Applicable Law (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder) as set forth in such clawback policy or the Award Agreement.

14.8 Listing and Other Conditions.

(a) Unless otherwise determined by the Committee, as long as the Common Stock is listed on a national securities exchange or system sponsored by a national securities association, the issuance of Shares pursuant to an Award shall be conditioned upon such Shares being listed on such exchange or system. The Company shall have no obligation to issue such Shares unless and until such Shares are so listed, and the right to exercise any Option or other Award with respect to such Shares shall be suspended until such listing has been effected.

(b) If at any time counsel to the Company shall be of the opinion that any sale or delivery of Shares pursuant to an Award is or may in the circumstances be unlawful or result in the imposition of excise taxes on the Company under Applicable Law, the Company shall have no obligation to make such sale or delivery, or to make any application or to effect or to maintain any qualification or registration under the Securities Act or otherwise, with respect to Shares or Awards, and the right to exercise any Option or other Award shall be suspended until, in the opinion of said counsel, such sale or delivery shall be lawful or will not result in the imposition of excise taxes on the Company.

(c) Upon termination of any period of suspension under this Section 14.8, any Award affected by such suspension that shall not then have expired or terminated shall be reinstated as to all Shares available before such suspension and as to Shares that would otherwise have become available during the period of such suspension, but no such suspension shall extend the term of any Award.

(d) A Participant shall be required to supply the Company with certificates, representations, and information that the Company requests and otherwise cooperate with the Company in obtaining any listing, registration, qualification, exemption, consent, or approval the Company deems necessary or appropriate.

14.9 Governing Law. The Plan and actions taken in connection herewith shall be governed and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws.

14.10 Construction. Wherever any words are used in the Plan in the masculine gender they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and wherever words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

14.11 Other Benefits. No Award granted or paid out under the Plan shall be deemed compensation for purposes of computing benefits under any retirement plan of the Company or its Affiliates or affect any benefit or compensation under any other plan now or subsequently in effect under which the availability or amount of benefits is related to the level of compensation.

14.12 Costs. The Company shall bear all expenses associated with administering the Plan, including expenses of issuing Shares pursuant to Awards hereunder.

14.13 No Right to Same Benefits. The provisions of Awards need not be the same with respect to each Participant, and such Awards to individual Participants need not be the same in subsequent years.

14.14 Death/Disability. The Committee may in its discretion require the transferee of a Participant to supply it with written notice of the Participant's death or Disability and to supply it with a copy of the will (in the case of the Participant's death) or such other evidence as the Committee deems necessary to establish the validity of the transfer of an Award. The Committee may also require the agreement of the transferee to be bound by all of the terms and conditions of the Plan.

14.15 Section 16(b) of the Exchange Act It is the intent of the Company that the Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 as promulgated under Section 16 of the Exchange Act so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act. Accordingly, if the operation of any provision of the Plan would conflict with the intent expressed in this Section 14.15, such provision to the extent possible shall be interpreted and/or deemed amended so as to avoid such conflict.

14.16 Deferral of Awards. The Committee may establish one or more programs under the Plan to permit selected Participants the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Participant to payment or receipt of Shares or other consideration under an Award. The Committee may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares, or other consideration so deferred, and such other terms, conditions, rules, and procedures that the Committee deems advisable for the administration of any such deferral program.

14.17 Section 409A of the Code. The Plan and Awards are intended to comply with or be exempt from the applicable requirements of Section 409A of the Code and shall be limited, construed, and interpreted in accordance with such intent. To the extent that any Award is subject to Section 409A of the Code, it shall be paid in a manner that will comply with Section 409A of the Code, including proposed, temporary, or final regulations or any other guidance issued by the Secretary of the Treasury and the Internal Revenue Service with respect thereto. Notwithstanding anything herein to the contrary, any provision in the Plan that is inconsistent with Section 409A of the Code shall be deemed to be amended to comply with or be exempt from Section 409A of the Code and, to the extent such provision cannot be amended to comply therewith or be exempt therefrom, such provision shall be null and void. The Company shall have no liability to a Participant, or any other party, if an Award that is intended to be exempt from, or compliant with, Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee or the Company and, in the event that any amount or benefit under the Plan becomes subject to penalties under Section 409A of the Code, responsibility for payment of such penalties shall rest solely with the affected Participants and not with the Company. Notwithstanding any contrary provision in the Plan or Award Agreement, any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code) that are otherwise required to be made under the Plan to a "specified employee" (as defined under Section 409A of the Code) as a result of such employee's separation from service (other than a payment that is not subject to Section 409A of the Code) shall be delayed for the first six (6) months following such separation from service (or, if earlier, until the date of death of the specified employee) and shall instead be paid (in a manner set forth in the Award Agreement) upon expiration of such delay period.

14.18 Successor and Assigns. The Plan shall be binding on all successors and permitted assigns of a Participant, including, without limitation, the estate of such Participant and the executor, administrator, or trustee of such estate.

14.19 Severability of Provisions. If any provision of the Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions had not been included.

14.20 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

ARTICLE XV
EFFECTIVE DATE OF PLAN

The Plan shall become effective on , 2021, which is the date of its adoption by the Board, subject to the approval of the Plan by the stockholders of the Company in accordance with the requirements of the laws of the State of Delaware.

ARTICLE XVI
TERM OF PLAN

No Award shall be granted pursuant to the Plan on or after the tenth (10th) anniversary of the earlier of the date that the Plan is adopted or the date of stockholder approval, but Awards granted prior to such tenth (10th) anniversary may extend beyond that date.

BIGBEAR.AI HOLDINGS, INC.

2021 EMPLOYEE STOCK PURCHASE PLAN

ARTICLE I
PURPOSE

The Plan's purpose is to assist employees of the Company and its Designated Companies in acquiring a share ownership interest in the Company, and to help such employees provide for their future security and to encourage them to remain in the employment of the Company and its Subsidiaries and Affiliates.

The Plan consists of two components: the Section 423 Component andthe Non-Section 423 Component. The Section 423 Component is intended to qualify as an "employee stock purchase plan" under Section 423 of the Code and shall be administered, interpreted and construed in a manner consistent with the requirements of Section 423 of the Code. In addition, this Plan authorizes the grant of Options under the Non-Section 423 Component, which need not qualify as Options granted pursuant to an "employee stock purchase plan" under Section 423 of the Code; such Options granted under the Non-Section 423 Component shall be granted pursuant to separate Offerings containing such sub-plans, appendices, rules or procedures as may be adopted by the Administrator and designed to achieve tax, securities laws or other objectives for Eligible Employees and the Designated Companies in locations outside of the United States. Except as otherwise provided herein or determined by the Administrator, the Non-Section 423 Component will operate and be administered in the same manner as the Section 423 Component. Offerings intended to be made under the Non-Section 423 Component will be designated as such by the Administrator at or prior to the time of such Offering.

For purposes of this Plan, the Administrator may designate separate Offerings under the Plan, the terms of which need not be identical, in which Eligible Employees will participate, even if the dates of the applicable Offering Period(s) in each such Offering is identical, provided that the terms of participation are the same within each separate Offering under the Section 423 Component as determined under Section 423 of the Code. Solely by way of example and without limiting the foregoing, the Company could, but shall not be required to, provide for simultaneous Offerings under the Section 423 Component and the Non-Section 423 Component of the Plan.

ARTICLE II
DEFINITIONS

As used in the Plan, the following words and phrases have the meanings specified below, unless the context clearly indicates otherwise:

2.1 "**Administrator**" means the Committee, or such individuals to which authority to administer the Plan has been delegated under Section 7.1 hereof.

2.2 "**Affiliate**" means a corporation or other entity controlled by, controlling, or under control with the Company. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such person, whether through the ownership of voting or other securities, by contract or otherwise.

2.3 "**Agent**" means the brokerage firm, bank or other financial institution, entity or person(s), if any, engaged, retained, appointed or authorized to act as the agent of the Company or an Employee with regard to the Plan.

2.4 "**Board**" means the Board of Directors of the Company.

2.5 "**Code**" means the U.S. Internal Revenue Code of 1986, as amended from time to time. Any reference to any section of the Code shall also be a reference to any successor provision and any guidance and treasury regulation promulgated thereunder.

2.6 "**Committee**" means the Compensation Committee of the Board.

2.7 "**Common Stock**" means the common stock, $0.0001 par value per share, of the Company.

2.8 "**Company**" means BigBear.ai Holdings, Inc., a Delaware corporation, and its successors by operation of law.

2.9 "**Compensation**" of an Employee means the gross base compensation received by such Employee as compensation for services to the Company or any Designated Company, including base salary, wages, prior week adjustment and overtime payments, commissions, annual incentive compensation or other payments made under any annual bonus program, vacation pay, holiday pay, jury duty pay, funeral leave pay, and military leave pay but excluding payments made under any special or one-time bonus programs (e.g., retention or sign-on bonuses), education or tuition reimbursements, travel expenses, business and moving reimbursements (including tax gross ups and taxable mileage allowance), imputed income arising under any group insurance or benefit program, income received in connection with any share options, share appreciation rights, restricted shares, restricted share units or other equity awards, fringe benefits, other special payments and all contributions made by the Company or any Designated Company for the Employee's benefit under any employee benefit plan now or hereafter established. The Administrator, in its discretion, may establish a different definition of Compensation for an Offering, which for the Section 423 Component shall apply on a uniform and nondiscriminatory basis. Further, the Administrator will have discretion to determine the application of this definition to Eligible Employees outside the United States.

2.10 "**Designated Company**" means each Affiliate and Subsidiary, including any Affiliate and Subsidiary in existence on the Effective Date and any Affiliate and Subsidiary formed or acquired following the Effective Date, that has been designated by the Administrator from time to time in its sole discretion as eligible to participate in the Plan, in accordance with Section 7.2 hereof, such designation to specify whether such participation is in the Section 423 Component or Non-Section 423 Component. A Designated Company may participate in either the Section 423

Component or Non-Section 423 Component, but not both. Notwithstanding the foregoing, if any Affiliate or Subsidiary is disregarded for U.S. federal income tax purposes in respect of the Company or any Designated Company participating in the Section 423 Component, then such disregarded Affiliate or Subsidiary shall automatically be a Designated Company participating in the Section 423 Component. If any Affiliate or Subsidiary is disregarded for U.S. federal income tax purposes in respect of any Designated Company participating in the Non-Section 423 Component, the Administrator may exclude such Affiliate or Subsidiary from participating in the Plan, notwithstanding that the Designated Company in respect of which such Affiliate or Subsidiary is disregarded may participate in the Plan.

2.11 "**Effective Date**" means the date the Plan is adopted by the Board, subject to approval of the Company's shareholders.

2.12 "**Eligible Employee**" means any Employee of the Company or a Designated Company, except that the Administrator may exclude any or all of the following, unless prohibited by applicable law, Employees:

(a) who are customarily scheduled to work 20 hours or less per week;

(b) whose customary employment is not more than five months in a calendar year;

(c) who have been employed less than two years;

(d) who are not employed by the Company or a Designated Company prior to the applicable Enrollment Date; and

(e) any Employee who is a "highly compensated employee" of the Company or any Designated Company (within the meaning of Section 414(q) of the Code), or that is such a "highly compensated employee" (A) with compensation above a specified level, (B) who is an officer or (C) who is subject to the disclosure requirements of Section 16(a) of the Exchange Act; or

(f) any Employee who is a citizen or resident of a jurisdiction outside the United States (without regard to whether they are also a citizen of the United States or a resident alien (within the meaning of Section 7701(b)(1)(A) of the Code)) if either (A) the grant of the Option is prohibited under the laws of the jurisdiction governing such Employee, or (B) compliance with the laws of the jurisdiction would cause the Section 423 Component, any Offering thereunder or an Option granted thereunder to violate the requirements of Section 423 of the Code; *provided* that any exclusion shall be applied in an identical manner under each Offering to all Employees in accordance with Treas. Reg. § 1.423-2(e).

Notwithstanding the foregoing, any Employee who, after the granting of the Option, would be deemed for purposes of Section 423(b)(3) of the Code to possess 5% or more of the total combined voting power or value of all classes of shares of the Company or any Subsidiary shall not be an Eligible Employee. For purposes of the preceding sentence, the rules of Section 424(d) of the Code with regard to the attribution of share ownership shall apply in determining the share ownership of an individual, and shares which an Employee may purchase under outstanding options shall be treated as shares owned by the Employee.

Further, with respect to the Non-Section 423 Component, (a) the Administrator may limit eligibility further within a Designated Company so as to only designate some Employees of a Designated Company as Eligible Employees, and (b) to the extent any restrictions in this definition are not consistent with applicable local laws, the applicable local laws shall control.

2.13 "**Employee**" means any person who renders services to the Company or a Designated Company in the status of an employee within the meaning of Section 3401(c) of the Code. "Employee" shall not include any director of the Company or a Designated Company who does not render services to the Company or a Designated Company in the status of an employee within the meaning of Section 3401(c) of the Code. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on military leave, sick leave or other leave of absence approved by the Company or a Designated Company and meeting the requirements of Treas. Reg. § 1.421-1(h)(2). Where the period of leave exceeds three months, or such other period specified in Treas. Reg. § 1.421-1(h)(2), and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three (3)-month period, or such other period specified in Treas. Reg. § 1.421-1(h)(2).

2.14 "**Enrollment Date**" means the first date of each Offering Period.

2.15 "**Exercise Date**" means the last day of each Purchase Period, except as provided in Section 5.2 hereof.

2.16 "**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended from time to time. Reference to a specific section of the Exchange Act or regulation thereunder shall include such section or regulation, any valid regulation or interpretation promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing, or superseding such section or regulation.

2.17 "**Fair Market Value**" means, as of any date, the value of the Common Stock determined as follows:

(a) If the Common Stock is (i) listed on any established securities exchange (such as the New York Stock Exchange or Nasdaq Stock Market), (ii) listed on any national market system or (iii) listed, quoted or traded on any automated quotation system, the Fair Market Value of a Share shall be the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, the Fair Market Value of a Share shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a Share on such date, the high bid and low asked prices for a Share on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, the Fair Market Value of a Share shall be established by the Administrator in good faith.

2.18 "**Grant Date**" means the first day of an Offering Period.

2.19 "**New Exercise Date**" has the meaning set forth in Section 5.2(b) hereof.

2.20 "**Non-Section 423 Component**" means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which Options may be granted to Eligible Employees that need not satisfy the requirements for Options granted pursuant to an "employee stock purchase plan" that are set forth under Section 423 of the Code.

2.21 "**Offering**" means an offer under the Plan of an Option that may be exercised during an Offering Period as further described in Article IV hereof. Unless otherwise specified by the Administrator, each Offering to the Eligible Employees shall be deemed a separate Offering, even if the dates and other terms of the applicable Purchase Periods of each such Offering are identical and the provisions of the Plan will separately apply to each Offering. To the extent permitted by Treas. Reg. § 1.423-2(a)(1), the terms of each separate Offering under the Section 423 Component need not be identical, provided that the terms of the Section 423 Component and an Offering thereunder together satisfy Treas. Reg. § 1.423-2(a)(2) and (a)(3).

2.22 "**Offering Period**" means one or more periods to be selected by the Administrator in its sole discretion with respect to which Options shall be granted to Participants. The duration and timing of Offering Periods may be established or changed by the Administrator at any time, in its sole discretion and may consist of one or more Purchase Periods. Notwithstanding the foregoing, in no event may an Offering Period exceed 27 months.

2.23 "**Option**" means the right to purchase Shares pursuant to the Plan during each Offering Period.

2.24 "**Option Price**" means the purchase price of a Share hereunder as provided in Section 4.2 hereof.

2.25 "**Parent**" means any entity that is a parent corporation of the Company within the meaning of Section 424 of the Code.

2.26 "**Participant**" means any Eligible Employee who elects to participate in the Plan.

2.27 "**Payday**" means the regular and recurring established day for payment of Compensation to an Employee.

2.28 "**Plan**" means this Employee Stock Purchase Plan, including both the Section 423 Component and Non-Section 423 Component and any other sub-plans or appendices hereto, as amended from time to time.

2.29 "**Plan Account**" means a bookkeeping account established and maintained by the Company in the name of each Participant.

2.30 "**Purchase Period**" means one or more periods within an Offering Period, as determined by the Administrator in its sole discretion. The duration and timing of Purchase Periods may be established or changed by the Administrator at any time, in its sole discretion. Notwithstanding the foregoing, in no event may a Purchase Period exceed the duration of the Offering Period under which it is established.

2.31 "**Section 409A**" means the nonqualified deferred compensation rules under Section 409A of the Code and any applicable treasury regulations and other official guidance thereunder.

2.32 "**Section 423 Component**" means those Offerings under the Plan that are intended to meet the requirements under Section 423(b) of the Code.

2.33 "**Shares**" means shares of Common Stock.

2.34 "**Subsidiary**" means any subsidiary corporation of the Company within the meaning of Section 424(f) of the Code.

2.35 "**Tax-Related Items**" means any U.S. and non-U.S. federal, provincial, state and/or local taxes (including, without limitation, income tax, social insurance contributions, fringe benefit tax, employment tax, stamp tax and any employer tax liability which has been transferred to a Participant) for which a Participant is liable in connection with his or her participation in the Plan.

2.36 "**Treas. Reg.**" means U.S. Department of the Treasury regulations.

2.37 "**Withdrawal Election**" has the meaning set forth in Section 6.1(a) hereof.

ARTICLE III
PARTICIPATION

3.1 Eligibility.

(a) Any Eligible Employee who is employed by the Company or a Designated Company on a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the requirements of Articles IV and V hereof, and, for the Section 423 Component, the limitations imposed by Section 423(b) of the Code.

(b) No Eligible Employee shall be granted an Option under the Section 423 Component which permits the Participant's rights to purchase Shares under the Plan, and to purchase shares under all other employee stock purchase plans of the Company, any Parent or any Subsidiary subject to Section 423 of the Code, to accrue at a rate which exceeds $25,000 of fair market value of such shares (determined at the time such Option is granted) for each calendar year in which such Option is outstanding at any time. The limitation under this Section 3.1(b) shall be applied in accordance with Section 423(b)(8) of the Code.

3.2 Election to Participate; Payroll Deductions.

(a) Each individual who is an Eligible Employee as of an Offering Period's Enrollment Date may elect to participate in such Offering Period and the Plan by delivering to the Company or an Agent designated by the Company an enrollment form including a payroll deduction authorization (which may be in an electronic format or such other method as determined by the Company in accordance with the Company's practices) (a "**Participation Election**") no later than the period of time prior to the applicable Enrollment Date determined by the Administrator, in its sole discretion. Except as provided in Section 3.2(e) hereof, an Eligible Employee may participate in the Plan only by means of payroll deduction.

(b) Subject to Section 3.1(b) hereof and except as may otherwise be determined by the Administrator, payroll deductions (i) shall equal at least 1% of the Participant's Compensation as of each Payday of the Offering Period following the Enrollment Date, but not more than 10% of the Participant's Compensation as of each Payday of the Offering Period following the Enrollment Date; and (ii) shall be expressed as a whole number percentage. Subject to Section 3.2(e) hereof, amounts deducted from a Participant's Compensation with respect to an Offering Period pursuant to this Section 3.2 shall be deducted each Payday through payroll deduction and credited to the Participant's Plan Account.

(c) Unless otherwise determined by the Administrator, following at least one payroll deduction, a Participant may increase or decrease the percentage of Compensation or the fixed dollar amount designated in his or her Participation Election, subject to the limits of this Section 3.2, or may suspend his or her payroll deductions, at any time during an Offering Period; *provided*, *however*, that the Administrator may limit the number of changes a Participant may make to his or her payroll deduction elections during each Offering Period in the applicable Offering (and in the absence of any specific designation by the Administrator, a Participant shall be allowed one change to his or her payroll deduction elections during each Offering Period). Any such change or suspension of payroll deductions shall be effective with the first full payroll period following ten business days after the Company's receipt of the new Participation Election (or such shorter or longer period as may be specified by the Administrator in the applicable Offering). In the event a Participant suspends his or her payroll deductions, such Participant's cumulative payroll deductions prior to the suspension shall remain in his or her account and shall be applied to the purchase of Shares on the next occurring Exercise Date and shall not be paid to such Participant unless he or she withdraws from participation in the Plan pursuant to Section 6.1.

(d) Upon the completion of an Offering Period, each Participant in such Offering Period shall automatically participate in the immediately following Offering Period at the same payroll deduction percentage as in effect at the termination of such Offering Period, unless such Participant delivers to the Company or an Agent designated by the Company a different Participation Election with respect to the successive Offering Period in accordance with Section 3.2(a) hereof, or unless such Participant becomes ineligible for participation in the Plan.

(e) Notwithstanding any other provisions of the Plan to the contrary, in non-U.S. jurisdictions where participation in the Plan through payroll deductions is prohibited or otherwise problematic under applicable local laws (as determined by the Administrator in its sole discretion), the Administrator may provide that an Eligible Employee may elect to participate through contributions to the Participant's Plan Account in a form acceptable to the Administrator in lieu of or in addition to payroll deductions; provided, however, that, for any Offering under the Section 423 Component, the Administrator must determine that any alternative method of contribution is applied on an equal and uniform basis to all Eligible Employees in the Offering. Any reference to "payroll deductions" in this Section 3.2 (or in any other section of the Plan) will similarly cover contributions by other means made pursuant to this Section 3.2(e).

ARTICLE IV
PURCHASE OF SHARES

4.1 Grant of Option. The Company may make one or more Offerings under the Plan, which may be successive or overlapping with one another, until the earlier of: (i) the date on which all Shares available under the Plan have been purchased or (ii) the date on which the Plan is suspended or terminates. No Offering shall commence prior to the date on which the Company's registration statement on Form S-8 is filed with the U.S. Securities and Exchange Commission in respect of the Plan. The Administrator shall designate the terms and conditions of each Offering in writing, including without limitation, the Offering Period and the Purchase Periods. Each Participant shall be granted an Option with respect to an Offering Period on the applicable Grant Date. Subject to the limitations of Section 3.1(b) hereof, the number of Shares subject to a Participant's Option shall be determined by dividing (a) such Participant's payroll deductions accumulated prior to an Exercise Date and retained in the Participant's Plan Account on such Exercise Date by (b) the applicable Option Price; *provided* that in no event shall a Participant be permitted to purchase during each Offering Period more than 5,000 shares of Common Stock (subject to any adjustment pursuant to Section 5.2 hereof). The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of Shares that a Participant may purchase during any Purchase Periods under such future Offering Periods. Each Option shall expire on the last Exercise Date for the applicable Offering Period immediately after the automatic exercise of the Option in accordance with Section 4.3 hereof, unless such Option terminates earlier in accordance with Article VI hereof.

4.2 Option Price. The Option Price shall equal 85% of the lesser of the Fair Market Value of a Share on (a) the applicable Grant Date and (b) the applicable Exercise Date, or such other price designated by the Administrator.

4.3 Purchase of Shares.

(a) On each Exercise Date for an Offering Period, each Participant shall automatically and without any action on such Participant's part be deemed to have exercised the Participant's Option to purchase at the applicable Option Price the largest number of whole Shares which can be purchased with the amount in the Participant's Plan Account, subject to the limitations set forth in the Plan. Unless otherwise determined by the Administrator in advance of an Offering or in accordance with applicable law, any balance that is remaining in the Participant's Plan Account (after exercise of such Participant's Option) as of the Exercise Date shall be carried

forward into the next Offering Period, unless the Participant has properly elected to withdraw from the Plan, has ceased to be an Eligible Employee or with respect to the maximum limitations set forth in Section 3.1(b) and Section 4.1. Any balance not carried forward to the next Offering Period in accordance with the prior sentence shall promptly be refunded as soon as administratively practicable to the applicable Participant.

(b) As soon as practicable following each Exercise Date, the number of Shares purchased by such Participant pursuant to Section 4.3(a) hereof shall be delivered (either in share certificate or book entry form), in the Company's sole discretion, to either (i) the Participant or (ii) an account established in the Participant's name at a stock brokerage or other financial services firm designated by the Company. The Company may require that shares be retained with such brokerage or firm for a designated period of time and/or may establish procedures to permit tracking of disqualifying dispositions of such shares.

4.4 Transferability of Rights. An Option granted under the Plan shall not be transferable, other than by will or the applicable laws of descent and distribution, and is exercisable during the Participant's lifetime only by the Participant. No option or interest or right to the Option shall be available to pay off any debts, contracts or engagements of the Participant or the Participant's successors in interest or shall be subject to disposition by pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempt at disposition of the Option shall have no effect.

ARTICLE V
PROVISIONS RELATING TO COMMON STOCK

5.1 Shares Reserved. Subject to adjustment as provided in Section 5.2 hereof, the aggregate number of Shares that may be issued pursuant to rights granted under the Plan shall be the sum of (a) 1,857,124 shares and (b) an annual increase on the first day of each year beginning on January 1, 2022 and annually thereafter ending in 2031 equal to the lesser of (i) 1% of all classes of the Company's shares outstanding on the last day of the immediately preceding calendar year and (ii) such smaller number of shares as may be determined by the Board; *provided, however*, no more than 20,000,000 shares may be issued in total under the Plan. Shares made available for sale under the Plan may be authorized but unissued shares or treasury Shares. If any right granted under the Plan shall for any reason terminate without having been exercised, the Shares not purchased under such right shall again become available for issuance under the Plan.

5.2 Adjustments Upon Changes in Capitalization, Dissolution, Liquidation, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of Shares which have been authorized for issuance under the Plan but not yet placed under Option, as well as the price per share and the number of Shares covered by each Option under the Plan which has not yet been exercised shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a share split, reverse share split, share dividend, combination, amalgamation, consolidation, reorganization, arrangement or reclassification of the Shares, or any other increase or decrease in the number Shares effected without receipt of consideration by the Company; *provided*, *however*, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of any class, or securities convertible into shares of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Shares subject to an Option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Periods then in progress shall be shortened by setting a new Exercise Date (the "**New Exercise Date**"), and shall terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Administrator. The New Exercise Date shall be before the date of the Company's proposed dissolution or liquidation. The Administrator shall notify each Participant in writing, at least ten business days prior to the New Exercise Date, that the Exercise Date for the Participant's Option has been changed to the New Exercise Date and that the Participant's Option shall be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 6.1 hereof or the Participant has ceased to be an Eligible Employee as provided in Section 6.2 hereof.

(c) Merger or Asset Sale. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each outstanding Option shall be assumed or an equivalent Option substituted by the successor corporation or a parent or subsidiary of the successor corporation. If the successor corporation refuses to assume or substitute for the Option, any Offering Periods then in progress shall be shortened by setting a New Exercise Date and any Offering Periods then in progress shall end on the New Exercise Date. The New Exercise Date shall be before the date of the Company's proposed sale or merger. The Administrator shall notify each Participant in writing, at least ten business days prior to the New Exercise Date, that the Exercise Date for the Participant's Option has been changed to the New Exercise Date and that the Participant's Option shall be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 6.1 hereof or the Participant has ceased to be an Eligible Employee as provided in Section 6.2 hereof.

5.3 Insufficient Shares. If the Administrator determines that, on a given Exercise Date, the number of Shares with respect to which Options are to be exercised may exceed the number of Shares remaining available for sale under the Plan on such Exercise Date, the Administrator shall make a pro rata allocation of the Shares available for issuance on such Exercise Date in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants exercising Options to purchase Shares on such Exercise Date, and unless additional shares are authorized for issuance under the Plan, no further Offering Periods shall take place and the Plan shall terminate pursuant to Section 7.5 hereof. If an Offering Period is so

terminated, then the balance of the amount credited to the Participant's Plan Account which has not been applied to the purchase of Shares shall be paid to such Participant in one lump sum in cash within 30 days after such Exercise Date, without any interest thereon (except as may be required by applicable local laws).

5.4 Rights as Shareholders. With respect to Shares subject to an Option, a Participant shall not be deemed to be a shareholder of the Company and shall not have any of the rights or privileges of a shareholder. A Participant shall have the rights and privileges of a shareholder of the Company when, but not until, the Shares have been deposited in the designated brokerage account following exercise of the Participant's Option.

ARTICLE VI
TERMINATION OF PARTICIPATION

6.1 Cessation of Contributions; Voluntary Withdrawal

(a) A Participant may cease payroll deductions during an Offering Period and elect to withdraw from the Plan by delivering written notice of such election to the Company or an Agent designated by the Company in such form and at such time prior to the Exercise Date for such Offering Period as may be established by the Administrator (a "**Withdrawal Election**"). In the event a Participant elects to withdraw from the Plan, amounts then credited to such Participant's Plan Account shall be returned to the Participant in one lump-sum payment in cash within 30 days after such election is received by the Company, without any interest thereon (except as may be required by applicable local laws), and the Participant shall cease to participate in the Plan and the Participant's Option for such Offering Period shall terminate upon receipt of the Withdrawal Election.

(b) A Participant's withdrawal from the Plan shall not have any effect upon the Participant's eligibility to participate in any similar plan which may hereafter be adopted by the Company or in succeeding Offering Periods which commence after the termination of the Offering Period from which the Participant withdraws.

(c) A Participant who ceases contributions to the Plan during any Offering Period shall not be permitted to resume contributions to the Plan during that Offering Period.

6.2 Termination of Eligibility. Upon a Participant's ceasing to be an Eligible Employee, for any reason, such Participant's Option for the applicable Offering Period shall automatically terminate, the Participant shall be deemed to have elected to withdraw from the Plan, and any balance on such Participant's Plan Account shall be paid to such Participant or, in the case of the Participant's death, to the person or persons entitled thereto pursuant to applicable law, within 30 days after such cessation of being an Eligible Employee, without any interest thereon (except as may be required by applicable local laws). If a Participant transfers employment from the Company or any Designated Company participating in the Section 423 Component to any Designated Company participating in the Non-Section 423 Component, such transfer shall not be treated as a termination of employment, but the Participant shall immediately cease to participate in the Section 423 Component; however, any contributions made for the Offering Period in which such transfer occurs shall be transferred to the Non-Section 423 Component, and such Participant

shall immediately join the then-current Offering under the Non-Section 423 Component upon the same terms and conditions in effect for the Participant's participation in the Section 423 Component, except for such modifications otherwise applicable for Participants in such Offering. A Participant who transfers employment from any Designated Company participating in the Non-Section 423 Component to the Company or any Designated Company participating in the Section 423 Component shall not be treated as terminating the Participant's employment and shall remain a Participant in the Non-Section 423 Component until the earlier of (i) the end of the current Offering Period under the Non-Section 423 Component, or (ii) the Enrollment Date of the first Offering Period in which the Participant is eligible to participate following such transfer. Notwithstanding the foregoing, the Administrator may establish different rules to govern transfers of employment between companies participating in the Section 423 Component and the Non-Section 423 Component, consistent with the applicable requirements of Section 423 of the Code.

ARTICLE VII
GENERAL PROVISIONS

7.1 Administration.

(a) The Plan shall be administered by the Committee, which shall be composed of members of the Board. The Committee may delegate administrative tasks under the Plan to the services of an Agent or Employees to assist in the administration of the Plan, including without limitation, determining the Designated Companies participating in the Plan, establishing and maintaining an individual securities account under the Plan for each Participant, determining enrollment and withdrawal deadlines and determining exchange rates. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Administrator under the Plan.

(b) It shall be the duty of the Administrator to conduct the general administration of the Plan in accordance with the provisions of the Plan. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To establish and terminate Offerings;

(ii) To determine when and how Options shall be granted and the provisions and terms of each Offering (which need not be identical);

(iii) To select Designated Companies in accordance with Section 7.2 hereof; and

(iv) To construe and interpret the Plan, the terms of any Offering and the terms of the Options and to adopt such rules for the administration, interpretation, and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, any Offering or any Option, in a manner and to the extent it shall deem necessary or expedient to administer the Plan, subject to Section 423 of the Code for the Section 423 Component.

(c) The Administrator may adopt rules or procedures relating to the operation and administration of the Plan to accommodate the specific requirements of local laws and procedures, *provided* that the adoption and implementation of any such rules and/or procedures would not cause the Section 423 Component to be in noncompliance with Section 423 of the Code. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures regarding handling of participation elections, payroll deductions, payment of interest, conversion of local currency, payroll tax, withholding procedures and handling of share certificates which vary with local requirements.

(d) The Administrator may adopt sub-plans applicable to particular Designated Companies or locations, which sub-plans may be designed to be outside the scope of Section 423 of the Code. The rules of such sub-plans may take precedence over other provisions of this Plan, with the exception of Section 5.1 hereof, but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan.

(e) All expenses and liabilities incurred by the Administrator in connection with the administration of the Plan shall be borne by the Company. The Administrator may employ attorneys, consultants, accountants, appraisers, brokers or other persons. The Administrator, the Company and its officers and directors shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken and all interpretations and determinations made by the Administrator in good faith shall be final and binding upon all Participants, the Company and all other interested persons. No member of the Board or Administrator shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or the Options, and all members of the Board or Administrator shall be fully protected by the Company in respect to any such action, determination, or interpretation. Any and all risks resulting from any market fluctuations or conditions of any nature and affecting the price of Shares are assumed by the Participant.

7.2 Designation of Affiliates and Subsidiaries. The Administrator shall designate from time to time the Affiliates and Subsidiaries that shall constitute Designated Companies, and determine whether such Designated Companies shall participate in the Section 423 Component or Non-Section 423 Component; *provided, however*, that an Affiliate that does not also qualify as a Subsidiary may be designated only as participating in the Non-Section 423 Component. The Administrator may designate an Affiliate or Subsidiary, or terminate the designation of an Affiliate or Subsidiary, without the approval of the shareholders of the Company.

7.3 Reports. Individual accounts shall be maintained for each Participant in the Plan. Statements of Plan Accounts shall be given to Participants at least annually, which statements shall set forth the amounts of payroll deductions, the Option Price, the number of Shares purchased and the remaining cash balance, if any.

7.4 No Right to Employment. Nothing in the Plan shall be construed to give any person (including any Participant) the right to remain in the employ of the Company, a Parent, a Subsidiary or an Affiliate or to affect the right of the Company, any Parent, any Subsidiary or any Affiliate to terminate the employment of any person (including any Participant) at any time, with or without cause, which right is expressly reserved.

7.5 Amendment and Termination of the Plan.

(a) The Board may, in its sole discretion, amend, suspend or terminate the Plan at any time and from time to time. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision), with respect to the Section 423 Component, or any other applicable law, regulation or stock exchange rule, the Company shall obtain shareholder approval of any such amendment to the Plan in such a manner and to such a degree as required by Section 423 of the Code or such other law, regulation or rule.

(b) If the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may in its discretion modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) altering the Option Price for any Offering Period including an Offering Period underway at the time of the change in Option Price;

(ii) shortening any Offering Period so that the Offering Period ends on a new Exercise Date, including an Offering Period underway at the time of the Administrator action; and

(iii) allocating Shares.

Such modifications or amendments shall not require shareholder approval or the consent of any Participant.

(c) Upon termination of the Plan, the balance in each Participant's Plan Account shall be refunded as soon as practicable after such termination, without any interest thereon (except as may be required by applicable local laws).

7.6 Use of Funds; No Interest Paid. All funds received by the Company by reason of purchase of shares of Shares under the Plan shall be included in the general funds of the Company free of any trust or other restriction and may be used for any corporate purpose (except as may be required by applicable local laws). No interest shall be paid to any Participant or credited under the Plan (except as may be required by applicable local laws).

7.7 Term; Approval by Shareholders. No Option may be granted during any period of suspension of the Plan or after termination of the Plan. The Plan shall be submitted for the approval of the Company's shareholders within 12 months after the date of the Board's initial adoption of the Plan. Options may be granted prior to such shareholder approval; *provided*, *however*, that such Options shall not be exercisable prior to the time when the Plan is approved by the shareholders; *provided*, *further* that if such approval has not been obtained by the end of the 12-month period, all Options previously granted under the Plan shall thereupon terminate and be canceled and become null and void without being exercised.

7.8 Effect Upon Other Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company, any Parent, any Subsidiary or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company, any Parent, any Subsidiary or any Affiliate (a) to establish any other forms of incentives or compensation for employees of the Company or any Parent, any Subsidiary or any Affiliate, or (b) to grant or assume Options otherwise than under the Plan in connection with any proper corporate purpose, including, but not by way of limitation, the grant or assumption of options in connection with the acquisition, by purchase, lease, merger, amalgamation, combination, arrangement, consolidation or otherwise, of the business, shares or assets of any corporation, firm or association.

7.9 Conformity to Securities Laws. Notwithstanding any other provision of the Plan, the Plan and the participation in the Plan by any individual who is then subject to Section 16 of the Exchange Act shall be subject to any additional limitations set forth in any applicable exemption rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

7.10 Notice of Disposition of Shares. Each Participant shall give the Company prompt notice of any disposition or other transfer of any Shares, acquired pursuant to the exercise of an Option granted under the Section 423 Component, if such disposition or transfer is made (a) within two years after the applicable Grant Date or (b) within one year after the transfer of such Shares to such Participant upon exercise of such Option. The Company may direct that any certificates evidencing shares acquired pursuant to the Plan refer to such requirement.

7.11 Tax Withholding. At the time of any taxable event that creates a withholding obligation for the Company or any Parent, Affiliate or Subsidiary, the Participant will make adequate provision for any Tax-Related Items. In their sole discretion, and except as otherwise determined by the Administrator, the Company or the Designated Company that employs or employed the Participant may satisfy their obligations to withhold Tax-Related Items by (a) withholding from the Participant's wages or other compensation, (b) withholding a sufficient whole number of Shares otherwise issuable following exercise of the Option having an aggregate value sufficient to pay the Tax-Related Items required to be withheld with respect to the Option and/or Shares, (c) withholding from proceeds from the sale of Shares issued upon exercise of the Option, either through a voluntary sale or a mandatory sale arranged by the Company, or (d) any other method determined by the Administrator to be in compliance with applicable laws.

7.12 Governing Law. The Plan and all rights, agreements and obligations hereunder shall be administered, interpreted and enforced under the laws of the State of Delaware, without regard to the conflict of law rules thereof or of any other jurisdiction.

7.13 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

7.14 Conditions to Issuance of Shares.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of an Option by a Participant, unless and until the Administrator has determined, with advice of counsel, that the issuance of such Shares is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any securities exchange or automated quotation system on which the Shares are listed or traded, and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Administrator may require that a Participant make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements.

(b) All certificates for Shares delivered pursuant to the Plan and all Shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with U.S. and non-U.S. federal, provincial, state or local securities or other laws, rules and regulations and the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Administrator may place legends on any certificate or book entry evidencing Shares to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Option, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by any applicable law, rule or regulation, the Company may, in lieu of delivering to any Participant certificates evidencing Shares issued in connection with any Option, record the issuance of Shares in the books of the Company (or, as applicable, its transfer agent or share plan administrator).

If, pursuant to this Section 7.14, the Administrator determines that Shares will not be issued to any Participant, the Company is relieved from liability to any Participant except to refund to the Participant such Participant's Plan Account balance, without interest thereon (except as may be required by applicable local laws).

7.15 Equal Rights and Privileges. All Eligible Employees granted Options pursuant to an Offering under the Section 423 Component shall have equal rights and privileges under this Plan to the extent required under Section 423 of the Code so that the Section 423 Component qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code. Any provision of the Section 423 Component that is inconsistent with Section 423 of the Code shall, without further act or amendment by the Company or the Board, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code. Eligible Employees participating in the Non-Section 423 Component need not have the same rights and privileges as each other, or as Eligible Employees participating in the Section 423 Component.

7.16 Rules Particular to Specific Countries. Notwithstanding anything herein to the contrary, the terms and conditions of the Plan with respect to Participants who are residents of a particular non-U.S. country or who are non-U.S. nationals or employed in non-U.S. jurisdictions may be subject to an addendum to the Plan in the form of an appendix or sub-plan (which appendix or sub-plan may be designed to govern Offerings under the Section 423 Component or the Non-Section 423 Component, as determined by the Administrator). To the extent that the terms and conditions set forth in an appendix or sub-plan conflict with any provisions of the Plan, the provisions of the appendix or sub-plan shall govern. The adoption of any such appendix or sub-plan shall be pursuant to Section 7.1 above. Without limiting the foregoing, the Administrator is specifically authorized to adopt rules and procedures, with respect to Participants who are non-U.S. nationals or employed in non-U.S. jurisdictions, regarding the exclusion of particular Affiliates or Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, establishment of bank or trust accounts to hold payroll deductions or contributions, *provided* that the adoption and implementation of any such rules and/or procedures would not cause the Section 423 Component to be in noncompliance with Section 423 of the Code.

7.17 Section 409A. The Section 423 Component of the Plan and the Options granted pursuant to Offerings thereunder are intended to be exempt from the application of Section 409A. Neither the Non-Section 423 Component nor any Option granted pursuant to an Offering thereunder is intended to constitute or provide for "nonqualified deferred compensation" within the meaning of Section 409A. Notwithstanding any provision of the Plan to the contrary, if the Administrator determines that any Option granted under the Plan may be or become subject to Section 409A or that any provision of the Plan may cause an Option granted under the Plan to be or become subject to Section 409A, the Administrator may adopt such amendments to the Plan and/or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions as the Administrator determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, either through compliance with the requirements of Section 409A or with an available exemption therefrom.

* * * * *

I hereby certify that the foregoing Plan was adopted by the Board of Directors of BigBear.ai Holdings, Inc. on .

I hereby certify that the foregoing Plan was approved by the shareholders of BigBear.ai Holdings, Inc. on .

Executed on .

Corporate Secretary

Exhibit 10.6

BIGBEAR.AI HOLDINGS, INC.
2021 LONG-TERM INCENTIVE PLAN
RESTRICTED STOCK UNIT GRANT NOTICE (EMPLOYEES)

Pursuant to the terms and conditions of the BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan, as amended, restated or otherwise modified from time to time (the "Plan"), BigBear.ai Holdings, Inc., a Delaware corporation (the "Company"), hereby grants to the individual listed below ("Participant") the number of restricted stock units (the "RSUs") set forth below. This award of RSUs (this "Award") is subject to the terms and conditions set forth herein and in the Restricted Stock Unit Agreement attached hereto as Exhibit A (the "Agreement"), which is incorporated herein by reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Plan.

Participant: _____

Grant Date: _____

Number of RSUs: _____

Vesting Commencement Date: _____

Vesting Schedule: Subject to the Agreement, the Plan and other terms and conditions set forth herein, the RSUs will vest according to the following schedule, so long as Participant has not incurred a Termination of Service prior to the applicable vesting date:

Vesting Date	Percentage of RSUs That Vest
First anniversary of the Vesting Commencement Date	25%
Second anniversary of the Vesting Commencement Date	25%
Third anniversary of the Vesting Commencement Date	25%
Fourth anniversary of the Vesting Commencement Date	25%

By Participant's signature below, Participant agrees to be bound by the terms of this Grant Notice, the Plan and the Agreement. Participant has reviewed the Plan, this Grant Notice and the Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, this Grant Notice and the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Agreement. This Grant Notice may be executed in one or more counterparts (including portable document format (.pdf) and facsimile counterparts), each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

[*Signature Page Follows*]

Notwithstanding any provision of this Grant Notice or the Agreement, if Participant has not executed this Grant Notice within 90 days following the Grant Date set forth above, Participant will be deemed to have accepted this Award, subject to all of the terms and conditions of this Grant Notice, the Agreement and the Plan.

BIGBEAR.AI HOLDINGS, INC.

By: _____

Name: _____

Title: _____

PARTICIPANT

_____

SIGNATURE PAGE
TO
RESTRICTED STOCK UNIT GRANT NOTICE

Exhibit A

RESTRICTED STOCK UNIT AGREEMENT

Capitalized terms not specifically defined in this Agreement have the meanings specified in the Grant Notice or, if not defined in the Grant Notice, in the Plan.

ARTICLE I.
DEFINITIONS

1.1 "Employment Agreement" means any employment agreement, offer letter, consulting agreement, or similar agreement between Participant and the Company or an Affiliate.

1.2 "Good Reason" means:

(a) If Participant has an Employment Agreement that defines "good reason" (or words of like import), the meaning set forth in Participant's Employment Agreement; or

(b) If Participant does not have an Employment Agreement, or if Participant's Employment Agreement does not define "good reason" (or words of like import), the occurrence of any of the following events without the written consent of Participant, unless such events are fully corrected in all material respects by the Company within thirty (30) days following written notification by Participant to the Company of the occurrence of one of the conditions set forth below: (i) a material reduction in Participant's base salary or target annual bonus opportunity other than a general reduction in base salary or target annual bonus opportunity that affects all similarly situated employees in substantially the same proportions; (ii) a material diminution in Participant's duties, authorities or responsibilities (other than temporarily while Participant is physically or mentally incapacitated or as required by applicable law and excluding duties, authorities or responsibilities that have been assigned to Participant on a temporary or interim basis); or (iii) a relocation of Participant's primary work location by more than fifty (50) miles from Participant's primary work location immediately prior to such relocation. Participant must provide the Company with a written notice detailing the specific circumstances alleged to constitute Good Reason within thirty (30) days after the first occurrence of such circumstances and actually resign from employment within thirty (30) days following the expiration of the Company's thirty (30)-day cure period described above if the applicable condition has not been cured. Otherwise, any claim of such circumstances as Good Reason will be deemed irrevocably waived by Participant.

ARTICLE II.
GENERAL

2.1 Award of RSUs. The Company has granted the RSUs to Participant effective as of the grant date set forth in the Grant Notice (the "Grant Date"). Each RSU represents the right to receive one Share as set forth in this Agreement. Participant will have no right to the distribution of any Shares or payment of any cash until the time (if ever) the RSUs have vested.

2.2 Incorporation of Terms of Plan. The RSUs are subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan will control.

2.3 Unsecured Promise. The RSUs will at all times prior to settlement represent an unsecured Company obligation payable only from the Company's general assets.

ARTICLE III.
VESTING; FORFEITURE AND SETTLEMENT

3.1 Vesting. The RSUs will vest according to the vesting schedule in the Grant Notice; provided that, notwithstanding anything to the contrary set forth in the Grant Notice:

(a) In the event Participant incurs a Termination of Service due to Participant's death or Disability, any unvested RSUs outstanding as of immediately prior to Participant's Termination of Service will automatically vest upon Participant's Termination of Service;

(b) In the event a Change in Control is consummated and the RSUs are not assumed or substituted, any unvested RSUs outstanding as of immediately prior to the consummation of such Change in Control will automatically vest immediately prior to the consummation of such Change in Control; and

(c) In the event Participant incurs a Termination of Service due to an involuntary termination without Cause or resignation for Good Reason, in each case, within two (2) years following the consummation of a Change in Control, any unvested RSUs outstanding as of immediately prior to Participant's Termination of Service will automatically vest upon Participant's Termination of Service.

3.2 Forfeiture. Except as explicitly provided in Section 3.1, in the event of Participant's Termination of Service for any reason, any RSUs that are not vested will immediately and automatically be cancelled and forfeited as of the date of such Termination of Service at no cost to the Company.

3.3 Dividend Equivalents. In the event that the Company declares and pays a cash dividend in respect of its outstanding Shares and, on the record date for such dividend, Participant holds RSUs granted pursuant to this Agreement, the Company shall record the amount of such dividend in a bookkeeping account and pay to Participant an amount in cash equal to the cash dividends Participant would have received if Participant was the holder of record, as of such record date, of a number of Shares equal to the number of RSUs held by Participant that have not been

settled as of such record date, such payment to be made on the date on which such RSUs are settled in accordance with Section 3.4 (the "Dividend Equivalents"). For purposes of clarity, if any of the RSUs are forfeited by Participant pursuant to the terms of this Agreement, then Participant shall also forfeit the Dividend Equivalents, if any, accrued with respect to such forfeited RSUs. No interest will accrue on the Dividend Equivalents between the declaration and payment of the applicable dividends and the settlement of the Dividend Equivalents.

3.4 Settlement. As soon as administratively practicable following the vesting of RSUs pursuant to Section 3.1, but in no event later than 60 days after such vesting date, the Company shall deliver to Participant a number of Shares equal to the number of RSUs subject to this Award. All Shares issued hereunder shall be delivered either by delivering one or more certificates for such shares to Participant or by entering such shares in book-entry form, as determined by the Committee in its sole discretion. The value of Shares shall not bear any interest owing to the passage of time.

ARTICLE IV.
TAXATION AND TAX WITHHOLDING

4.1 Representation. Participant represents to the Company that Participant has reviewed with Participant's own tax advisors the tax consequences of this Award and the transactions contemplated by the Grant Notice and this Agreement. Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents.

4.2 Tax Withholding. To the extent that the receipt, vesting or settlement of this Award results in compensation income or wages to Participant for federal, state, local and/or foreign tax purposes, Participant shall make arrangements satisfactory to the Company regarding the payment of, any income tax, social insurance contribution or other applicable taxes that are required to be withheld in respect of this Award, which arrangements include the delivery of cash or cash equivalents, Shares (including previously owned Shares (which is not subject to any pledge or other security interest), net settlement, a broker-assisted sale, or other cashless withholding or reduction of the amount of shares otherwise issuable or delivered pursuant to this Award), other property, or any other legal consideration the Committee deems appropriate. If such tax obligations are satisfied through net settlement or the surrender of previously owned Shares, the maximum number of Shares that may be so withheld (or surrendered) shall be the number of Shares that have an aggregate Fair Market Value on the date of withholding or surrender equal to the aggregate amount of such tax liabilities determined based on the greatest withholding rates for federal, state, local and/or foreign tax purposes, including payroll taxes, that may be utilized without creating adverse accounting treatment for the Company with respect to this Award, as determined by the Committee. Any fraction of a Share required to satisfy such tax obligations shall be disregarded and the amount due shall be paid instead in cash to Participant. Participant acknowledges that there may be adverse tax consequences upon the receipt, vesting or settlement of this Award or disposition of the underlying shares and that Participant has been advised, and hereby is advised, to consult a tax advisor. Participant represents that Participant is in no manner relying on the Board, the Committee, the Company or an Affiliate or any of their respective managers, directors, officers, employees or authorized representatives (including attorneys, accountants, consultants, bankers, lenders, prospective lenders and financial representatives) for tax advice or an assessment of such tax consequences.

ARTICLE V.
OTHER PROVISIONS

5.1 Adjustments. Participant acknowledges that the RSUs and the Shares subject to the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan.

5.2 Notices. All notices and other communications under this Agreement shall be in writing and shall be delivered to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company, unless otherwise designated by the Company in a written notice to Participant (or other holder):

BigBear.ai Holdings, Inc.
Attn: General Counsel
6811 Benjamin Franklin Drive
Columbia, MD 21046

If to Participant, at Participant's last known address on file with the Company. Any notice that is delivered personally or by overnight courier or telecopier in the manner provided herein shall be deemed to have been duly given to Participant when it is mailed by the Company or, if such notice is not mailed to Participant, upon receipt by Participant. Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the fourth day after the day it is so placed in the mail.

5.3 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.4 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws and, to the extent Applicable Laws permit, will be deemed amended as necessary to conform to Applicable Laws.

5.5 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement will inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in the Plan, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

5.6 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Grant Notice, this Agreement, the RSUs will be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3) that are requirements for the application of such exemptive rule. To the extent Applicable Laws permit, this Agreement will be deemed amended as necessary to conform to such applicable exemptive rule.

5.7 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof; provided, however, that the terms of this Agreement shall not modify and shall be subject to the terms and conditions of any employment, consulting and/or severance agreement between the Company or an Affiliate and Participant in effect as of the date a determination is to be made under this Agreement.

5.8 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held illegal or invalid, the provision will be severable from, and the illegality or invalidity of the provision will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

5.9 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and may not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant will have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the RSUs, and rights no greater than the right to receive cash or the Shares as a general unsecured creditor with respect to the RSUs, as and when settled pursuant to the terms of this Agreement.

5.10 Non-Transferability. During the lifetime of Participant, the RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the RSUs have been issued, and all restrictions applicable to such Shares have lapsed. Neither the RSUs not any interest or right therein shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

5.11 Legends. If a stock certificate is issued with respect to the Shares delivered hereunder, such certificate shall bear such legend or legends as the Committee deems appropriate in order to reflect the restrictions set forth in this Agreement and to ensure compliance with the terms and provisions of this Agreement, the rules, regulations and other requirements of the Securities and Exchange Commission and any other Applicable Laws. If the Shares issued hereunder are held in book-entry form, then such entry will reflect that the Shares are subject to the restrictions set forth in this Agreement.

5.12 No Right to Continued Service or Awards. Nothing in the Plan, the Grant Notice or this Agreement confers upon Participant any right to continue in the service of the Company or any Affiliate or interferes with or restricts in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and Participant. The grant of the RSUs is a one-time benefit and does not create any contractual or other right to receive a grant of Awards or benefits in lieu of Awards in the future. Any future Awards will be granted at the sole discretion of the Company.

5.13 Satisfaction of Claims. Any issuance or transfer of Shares or other property to Participant or Participant's legal representative, heir, legatee or distribute, in accordance with the Plan, the Grant Notice and this Agreement shall be in full satisfaction of all claims of such person hereunder.

5.14 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which will be deemed an original and all of which together will constitute one instrument.

5.15 Consent to Electronic Delivery; Electronic Signature. In lieu of receiving documents in paper format, Participant agrees, to the fullest extent permitted by law, to accept electronic delivery of any documents that the Company may be required to deliver (including, without limitation, prospectuses, prospectus supplements, grant or award notifications and agreements, account statements, annual and quarterly reports and all other forms of communications) in connection with this and any other Award made or offered by the Company. Electronic delivery may be via a Company electronic mail system or by reference to a location on a Company intranet or third party website to which Participant has access. Participant hereby consents to any and all procedures the Company has established or may establish for an electronic signature system for delivery and acceptance of any such documents that the Company may be required to deliver, and agrees that Participant's electronic signature is the same as, and shall have the same force and effect as, Participant's manual signature.

5.16 Company Recoupment of Awards. Participant's rights with respect to this Award shall in all events be subject to (a) any right that the Company may have under any Company recoupment policy or other agreement or arrangement with Participant, or (b) any right or obligation that the Company may have regarding the clawback of "incentive-based compensation" under Section 10D of the Exchange Act and any applicable rules and regulations promulgated thereunder from time to time by the U.S. Securities and Exchange Commission.

Exhibit 10.7

BIGBEAR.AI HOLDINGS, INC.
2021 LONG-TERM INCENTIVE PLAN
RESTRICTED STOCK UNIT GRANT NOTICE(NON-EMPLOYEE DIRECTOR)

Pursuant to the terms and conditions of the BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan, as amended, restated or otherwise modified from time to time (the "Plan"), BigBear.ai Holdings, Inc., a Delaware corporation (the "Company"), hereby grants to the individual listed below ("Participant") the number of restricted stock units (the "RSUs") set forth below. This award of RSUs (this "Award") is subject to the terms and conditions set forth herein and in the Restricted Stock Unit Agreement attached hereto as Exhibit A (the "Agreement"), which is incorporated herein by reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Plan.

Participant: _____

Grant Date: _____

Number of RSUs: _____

Vesting Commencement Date: _____

Vesting Schedule: Subject to the Agreement, the Plan and other terms and conditions set forth herein, the RSUs will vest according to the following schedule, so long as Participant has not incurred a Termination of Service prior to the applicable vesting date:

Vesting Date	Percentage of RSUs That Vest
First anniversary of the Vesting Commencement Date	100%

By Participant's signature below, Participant agrees to be bound by the terms of this Grant Notice, the Plan and the Agreement. Participant has reviewed the Plan, this Grant Notice and the Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, this Grant Notice and the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Agreement. This Grant Notice may be executed in one or more counterparts (including portable document format (.pdf) and facsimile counterparts), each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Notwithstanding any provision of this Grant Notice or the Agreement, if Participant has not executed this Grant Notice within 90 days following the Grant Date set forth above, Participant will be deemed to have accepted this Award, subject to all of the terms and conditions of this Grant Notice, the Agreement and the Plan.

[*Signature Page Follows*]

BIGBEAR.AI HOLDINGS, INC.	**PARTICIPANT**
By: _____	_____
Name: _____	
Title: _____	

SIGNATURE PAGE

TO

RESTRICTED STOCK UNIT GRANT NOTICE

Exhibit A

RESTRICTED STOCK UNIT AGREEMENT

Capitalized terms not specifically defined in this Agreement have the meanings specified in the Grant Notice or, if not defined in the Grant Notice, in the Plan.

ARTICLE I.
GENERAL

1.1 Award of RSUs. The Company has granted the RSUs to Participant effective as of the grant date set forth in the Grant Notice (the "Grant Date"). Each RSU represents the right to receive one Share as set forth in this Agreement. Participant will have no right to the distribution of any Shares or payment of any cash until the time (if ever) the RSUs have vested.

1.2 Incorporation of Terms of Plan. The RSUs are subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan will control.

1.3 Unsecured Promise. The RSUs will at all times prior to settlement represent an unsecured Company obligation payable only from the Company's general assets.

ARTICLE II.
VESTING; FORFEITURE AND SETTLEMENT

2.1 Vesting; Forfeiture.

(a) The RSUs will vest according to the vesting schedule in the Grant Notice. In the event of Participant's Termination of Service for Cause, all unvested RSUs will immediately and automatically be cancelled and forfeited, except as otherwise determined by the Committee or provided in a binding written agreement between Participant and the Company.

(b) In the event of Participant's Termination of Service due to resignation or Participant's decision not to stand for reelection as a member of the Board (if applicable), , a number of RSUs equal to the Applicable Pro Rata Portion (as defined below) shall immediately vest as of the date of such Termination of Service. As used herein, "Applicable Pro Rata Portion" means (i) if, as of the date of the Participant's Termination of Service, the Participant has served as a member of the Board for at least three years during any period after December 7, 2021, the total number of RSUs subject to this Award or (ii) in any other case, an amount equal to the total number of RSUs subject to this Award multiplied by a fraction (A) the numerator of which is the number of days from the Vesting Commencement Date through the date on which such Termination of Service occurs and (B) the denominator of which is 365.

(c) In the event of Participant's Termination of Service for any reason other than as set forth in Section 2.1(a) or (b), any unvested RSUs will vest in their entirety as of the date of such Termination of Service.

(d) Notwithstanding anything in the Grant Notice, this Agreement or the Plan to the contrary, the RSUs will vest in their entirety upon the consummation of a Change in Control so long as Participant has not incurred a Termination of Service prior to the consummation of such Change in Control.

2.2 Dividend Equivalents. In the event that the Company declares and pays a cash dividend in respect of its outstanding Shares and, on the record date for such dividend, Participant holds RSUs granted pursuant to this Agreement, the Company shall record the amount of such dividend in a bookkeeping account and pay to Participant an amount in cash equal to the cash dividends Participant would have received if Participant was the holder of record, as of such record date, of a number of Shares equal to the number of RSUs held by Participant that have not been settled as of such record date, such payment to be made on the Settlement Date (the "Dividend Equivalents"). For purposes of clarity, if the RSUs (or any portion thereof) are forfeited by Participant pursuant to the terms of this Agreement, then Participant shall also forfeit the Dividend Equivalents, if any, accrued with respect to such forfeited RSUs. No interest will accrue on the Dividend Equivalents between the declaration and payment of the applicable dividends and the settlement of the Dividend Equivalents.

2.3 Settlement. As soon as administratively practicable following the vesting of RSUs pursuant to Section 2.1 but in no event later than 60 days following the earlier of (a) the vesting date set forth in the Grant Notice and (b) the date of Participant's Termination of Service that qualifies as a "separation from service" within the meaning of Section 409A of the Code, the Company shall deliver to Participant a number of Shares equal to the number of RSUs subject to this Award, if any, that have become vested as of such date. All Shares issued hereunder shall be delivered either by delivering one or more certificates for such shares to Participant or by entering such shares in book-entry form, as determined by the Committee in its sole discretion. The value of Shares shall not bear any interest owing to the passage of time.

ARTICLE III.
TAXATION AND TAX WITHHOLDING

3.1 Representation. Participant represents to the Company that Participant has reviewed with Participant's own tax advisors the tax consequences of this Award and the transactions contemplated by the Grant Notice and this Agreement. Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents.

3.2 Tax Withholding. To the extent that the receipt, vesting or settlement of this Award results in compensation income or wages to Participant for federal, state, local and/or foreign tax purposes, Participant shall make arrangements satisfactory to the Company regarding the payment of, any income tax, social insurance contribution or other applicable taxes that are required to be withheld in respect of this Award, which arrangements include the delivery of cash or cash equivalents, Shares (including previously owned Shares (which is not subject to any pledge or other security interest), net settlement, a broker-assisted sale, or other cashless withholding or reduction of the amount of shares otherwise issuable or delivered pursuant to this Award), other property, or any other legal consideration the Committee deems appropriate. If such tax obligations are satisfied through net settlement or the surrender of previously owned Shares, the maximum number of Shares that may be so withheld (or surrendered) shall be the number of Shares that have an aggregate Fair Market Value on the date of withholding or surrender equal to the aggregate amount of such tax liabilities determined based on the greatest withholding rates for federal, state,

local and/or foreign tax purposes, including payroll taxes, that may be utilized without creating adverse accounting treatment for the Company with respect to this Award, as determined by the Committee. Any fraction of a Share required to satisfy such tax obligations shall be disregarded and the amount due shall be paid instead in cash to Participant. Participant acknowledges that there may be adverse tax consequences upon the receipt, vesting or settlement of this Award or disposition of the underlying shares and that Participant has been advised, and hereby is advised, to consult a tax advisor. Participant represents that Participant is in no manner relying on the Board, the Committee, the Company or an Affiliate or any of their respective managers, directors, officers, employees or authorized representatives (including attorneys, accountants, consultants, bankers, lenders, prospective lenders and financial representatives) for tax advice or an assessment of such tax consequences.

ARTICLE IV.
OTHER PROVISIONS

4.1 Adjustments. Participant acknowledges that the RSUs and the Shares subject to the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan.

4.2 Notices. All notices and other communications under this Agreement shall be in writing and shall be delivered to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company, unless otherwise designated by the Company in a written notice to Participant (or other holder):

BigBear.ai Holdings, Inc.
Attn: General Counsel
6811 Benjamin Franklin Drive
Columbia, MD 21046

If to Participant, at Participant's last known address on file with the Company. Any notice that is delivered personally or by overnight courier or telecopier in the manner provided herein shall be deemed to have been duly given to Participant when it is mailed by the Company or, if such notice is not mailed to Participant, upon receipt by Participant. Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the fourth day after the day it is so placed in the mail.

4.3 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

4.4 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws and, to the extent Applicable Laws permit, will be deemed amended as necessary to conform to Applicable Laws.

4.5 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement will inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in the Plan, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

4.6 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Grant Notice, this Agreement, the RSUs will be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3) that are requirements for the application of such exemptive rule. To the extent Applicable Laws permit, this Agreement will be deemed amended as necessary to conform to such applicable exemptive rule.

4.7 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

4.8 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held illegal or invalid, the provision will be severable from, and the illegality or invalidity of the provision will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

4.9 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and may not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant will have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the RSUs, and rights no greater than the right to receive cash or the Shares as a general unsecured creditor with respect to the RSUs, as and when settled pursuant to the terms of this Agreement.

4.10 Non-Transferability. During the lifetime of Participant, the RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the RSUs have been issued, and all restrictions applicable to such Shares have lapsed. Neither the RSUs not any interest or right therein shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

4.11 Legends. If a stock certificate is issued with respect to the Shares delivered hereunder, such certificate shall bear such legend or legends as the Committee deems appropriate in order to reflect the restrictions set forth in this Agreement and to ensure compliance with the terms and provisions of this Agreement, the rules, regulations and other requirements of the Securities and Exchange Commission and any other Applicable Laws. If the Shares issued hereunder are held in book-entry form, then such entry will reflect that the Shares are subject to the restrictions set forth in this Agreement.

4.12 No Right to Continued Service or Awards. Nothing in the Plan, the Grant Notice or this Agreement confers upon Participant any right to continue in the service of the Company or any Affiliate or interferes with or restricts in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and Participant. The grant of the RSUs is a one-time benefit and does not create any contractual or other right to receive a grant of Awards or benefits in lieu of Awards in the future. Any future Awards will be granted at the sole discretion of the Company.

4.13 Satisfaction of Claims. Any issuance or transfer of Shares or other property to Participant or Participant's legal representative, heir, legatee or distribute, in accordance with the Plan, the Grant Notice and this Agreement shall be in full satisfaction of all claims of such person hereunder.

4.14 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which will be deemed an original and all of which together will constitute one instrument.

4.15 Consent to Electronic Delivery; Electronic Signature. In lieu of receiving documents in paper format, Participant agrees, to the fullest extent permitted by law, to accept electronic delivery of any documents that the Company may be required to deliver (including, without limitation, prospectuses, prospectus supplements, grant or award notifications and agreements, account statements, annual and quarterly reports and all other forms of communications) in connection with this and any other Award made or offered by the Company. Electronic delivery may be via a Company electronic mail system or by reference to a location on a Company intranet or third party website to which Participant has access. Participant hereby consents to any and all procedures the Company has established or may establish for an electronic signature system for delivery and acceptance of any such documents that the Company may be required to deliver, and agrees that Participant's electronic signature is the same as, and shall have the same force and effect as, Participant's manual signature.

4.16 Company Recoupment of Awards. Participant's rights with respect to this Award shall in all events be subject to (a) any right that the Company may have under any Company recoupment policy or other agreement or arrangement with Participant, or (b) any right or obligation that the Company may have regarding the clawback of "incentive-based compensation" under Section 10D of the Exchange Act and any applicable rules and regulations promulgated thereunder from time to time by the U.S. Securities and Exchange Commission.

4.17 Code Section 409A. Notwithstanding anything herein or in the Plan to the contrary, the RSUs granted pursuant to this Agreement are intended to be exempt from or compliant with the applicable requirements of Section 409A of the Code and shall be limited, construed and interpreted in accordance with such intent. If Participant is deemed to be a "specified employee" within the meaning of Section 409A of the Code, as determined by the Committee, at a time when Participant becomes eligible for settlement of the RSUs upon his or her "separation from service" within the meaning of Section 409A of the Code, then to the extent necessary to prevent any accelerated or additional tax under Section 409A of the Code, such settlement will be delayed until the earlier of: (a) the date that is six months following Participant's separation from service and (b) Participant's death. Notwithstanding the foregoing, the Company and its Affiliates make no representations that the RSUs provided under this Agreement are exempt from or compliant with Section 409A of the Code and in no event shall the Company or any Affiliate be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by the Participant on account of non-compliance with Section 409A of the Code.

* * * * *

Exhibit 10.8

BIGBEAR.AI HOLDINGS, INC.
2021 LONG-TERM INCENTIVE PLAN

STOCK OPTION GRANT NOTICE

Pursuant to the terms and conditions of the BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan, as amended, restated or otherwise modified from time to time (the "Plan"), BigBear.ai Holdings, Inc., a Delaware corporation (the "Company"), hereby grants to the individual listed below ("Participant") the stock option (the "Option") set forth below. This award of the Option (this "Award") is subject to the terms and conditions set forth herein and in the Stock Option Agreement attached hereto as Exhibit A (the "Agreement"), which is incorporated herein by reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Plan.

Participant: _____

Grant Date: _____

Exercise Price per Share: **$** _____ per share

Shares Subject to the Option: _____ shares

Type of Option: Non-Qualified Stock Option

Vesting Commencement Date: _____

Vesting Schedule: Subject to the Agreement, the Plan and other terms and conditions set forth herein, the Option will vest and become exercisable according to the following schedule, so long as Participant has not incurred a Termination of Service prior to the applicable vesting date:

Vesting Date	Percentage of the Option That Vests
First anniversary of the Vesting Commencement Date	25%
Second anniversary of the Vesting Commencement Date	25%
Third anniversary of the Vesting Commencement Date	25%
Fourth anniversary of the Vesting Commencement Date	25%

By Participant's signature below, Participant agrees to be bound by the terms of this Grant Notice, the Plan and the Agreement. Participant has reviewed the Plan, this Grant Notice and the Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, this Grant Notice and

the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Agreement. This Grant Notice may be executed in one or more counterparts (including portable document format (.pdf) and facsimile counterparts), each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Notwithstanding any provision of this Grant Notice or the Agreement, if Participant has not executed this Grant Notice within 90 days following the Grant Date set forth above, Participant will be deemed to have accepted this Award, subject to all of the terms and conditions of this Grant Notice, the Agreement and the Plan.

[*Signature Page Follows*]

BIGBEAR.AI HOLDINGS, INC.

By: _____
Name: _____
Title: _____

PARTICIPANT

_____

SIGNATURE PAGE

TO

STOCK OPTION GRANT NOTICE

Exhibit A

STOCK OPTION AGREEMENT

Capitalized terms not specifically defined in this Agreement have the meanings specified in the Grant Notice or, if not defined in the Grant Notice, in the Plan.

ARTICLE I.
DEFINITIONS

For purposes of this Agreement, the following terms will have the following meanings:

1.1 "Employment Agreement" means any employment agreement, offer letter, consulting agreement, or similar agreement between Participant and the Company or an Affiliate.

1.2 "Good Reason" means:

(a) If Participant has an Employment Agreement that defines "good reason" (or words of like import), the meaning set forth in Participant's Employment Agreement; or

(b) If Participant does not have an Employment Agreement, or if Participant's Employment Agreement does not define "good reason" (or words of like import), the occurrence of any of the following events without the written consent of Participant, unless such events are fully corrected in all material respects by the Company within thirty (30) days following written notification by Participant to the Company of the occurrence of one of the conditions set forth below: (i) a material reduction in Participant's base salary or target annual bonus opportunity other than a general reduction in base salary or target annual bonus opportunity that affects all similarly situated employees in substantially the same proportions; (ii) a material diminution in Participant's duties, authorities or responsibilities (other than temporarily while Participant is physically or mentally incapacitated or as required by applicable law and excluding duties, authorities or responsibilities that have been assigned to Participant on a temporary or interim basis); or (iii) a relocation of Participant's primary work location by more than fifty (50) miles from Participant's primary work location immediately prior to such relocation. Participant must provide the Company with a written notice detailing the specific circumstances alleged to constitute Good Reason within thirty (30) days after the first occurrence of such circumstances and actually resign from employment within thirty (30) days following the expiration of the Company's thirty (30)-day cure period described above if the applicable condition has not been cured. Otherwise, any claim of such circumstances as Good Reason will be deemed irrevocably waived by Participant.

ARTICLE II.
GENERAL

2.1 Grant of Option. The Company has granted to Participant the Option effective as of the grant date set forth in the Grant Notice (the "Grant Date").

2.2 Exercise Price. The exercise price of each Share subject to the Option shall be the exercise price set forth in the Grant Notice (the "Exercise Price"), which has been determined to be not less than the Fair Market Value of a Share on the Grant Date. For all purposes of this Agreement, the Fair Market Value of a Share shall be determined in accordance with the provisions of the Plan.

2.3 Vesting. The Option will vest according to the vesting schedule in the Grant Notice (the "Vesting Schedule"); provided that, notwithstanding anything to the contrary set forth in the Grant Notice:

(a) In the event Participant incurs a Termination of Service due to Participant's death or Disability, any unvested portion of the Option outstanding as of immediately prior to Participant's Termination of Service will automatically vest upon Participant's Termination of Service;

(b) In the event a Change in Control is consummated and the Option is not assumed or substituted, any unvested portion of the Option outstanding as of immediately prior to the consummation of such Change in Control will automatically vest immediately prior to the consummation of such Change in Control, and the Committee may in its sole discretion, extend the duration of exercisability of the Option (or applicable portion thereof) through any date prior to the Final Expiration Date (as defined below); and

(c) In the event Participant incurs a Termination of Service due to an involuntary termination without Cause or resignation for Good Reason, in each case, within two (2) years following the consummation of a Change in Control, any unvested portion of the Option outstanding as of immediately prior to Participant's Termination of Service will automatically vest upon Participant's Termination of Service.

2.4 Forfeiture. Except as explicitly provided in Section 2.3, in the event of Participant's Termination of Service for any reason, any portion of the Option that is not vested will immediately and automatically be cancelled and forfeited as of the date of such Termination of Service at no cost to the Company.

2.5 Incorporation of Terms of Plan. The Option is subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan will control.

ARTICLE III.
PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability. The Option will vest and become exercisable according to Section 2.3. Notwithstanding anything in the Grant Notice, the Plan or this Agreement to the contrary, unless the Committee otherwise determines, the Option will immediately expire and be forfeited as to any portion that is not vested and exercisable as of Participant's Termination of Service for any reason except as provided in Section 3.3.

3.2 Duration of Exercisability. The Vesting Schedule is cumulative. Any portion of the Option which vests and becomes exercisable will remain vested and exercisable until the Option expires. The Option will be forfeited immediately upon its expiration.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after, and will expire on, the first of the following to occur:

(a) The tenth anniversary of the Grant Date (the "Final Expiration Date");

(b) Except as the Committee may otherwise approve, the expiration of thirty (30) days from the date of Participant's Termination of Service, unless Participant's Termination of Service is (i) for Cause, (ii) a termination without Cause or resignation by Participant for Good Reason, in each case, within two (2) years following a Change in Control or (iii) by reason of Participant's death or Disability;

(c) Except as the Committee may otherwise approve, the expiration of ninety (90) days from the date of Participant's Termination of Service for Cause or as a result of Participant's resignation for Good Reason, in each case, within two (2) years following a Change in Control;

(d) Except as the Committee may otherwise approve, the expiration of one (1) year from the date of Participant's Termination of Service by reason of Participant's death or Disability; and

(e) Except as the Committee may otherwise approve, Participant's Termination of Service for Cause.

ARTICLE IV.
EXERCISE OF OPTION

4.1 Person Eligible to Exercise. During Participant's lifetime, only Participant may exercise the Option. After Participant's death, any exercisable portion of the Option may, prior to the time the Option expires, be exercised by the legal representative of the Participant's estate as provided in the Plan.

4.2 Exercise Procedures. Subject to the earlier expiration of the Option as provided herein, the Option may be exercised, by (a) providing written notice to the Company in the form prescribed by the Committee from time to time at any time and from time to time after the Grant Date, which notice shall be delivered to the Company in the form, and in the manner, designated

by the Committee from time to time, and (b) paying the Exercise Price in full in a manner permitted by Section 4.3; *provided, however*, that the Option shall not be exercisable for more than the number of Shares subject to the Option with respect to which the Option has become vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice or as provided in Section 2.3.

4.3 Payment of Exercise Price. The Exercise Price for the Shares as to which the Option is exercised shall be paid in full at the time of exercise (a) in cash (including check, bank draft or money order payable to the order of the Company or wire transfer of immediately available funds), (b) if permitted by the Committee in its sole discretion, by delivering, or constructively tendering, to the Company a number of Shares having a Fair Market Value equal to the Exercise Price (provided, that, any such Shares used for this purpose must have been held by Participant for such minimum period of time as may be established from time to time by the Committee to avoid adverse accounting consequences), (c) through a simultaneous broker-assisted sale in accordance with a Company-established policy or program for the same, (d) if permitted by the Committee in its sole discretion, by "net settlement exercise" pursuant to which the Company reduces the number of Shares otherwise deliverable upon exercise of the Option by a number of Shares with an aggregate Fair Market Value equal to the aggregate Exercise Price at the time of exercise or (e) any combination of the foregoing.

4.4 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised, in whole or in part, according to the procedures in the Plan at any time prior to the time the Option or portion thereof expires, except that the Option may only be exercised for whole Shares. Without limiting the foregoing, no fraction of a Share shall be issued by the Company upon exercise of the Option or accepted by the Company in payment of the Exercise Price; rather, Participant shall provide a cash payment for such amount as is necessary to effect the issuance and acceptance of only whole Shares.

4.5 Tax Withholding. To the extent that the receipt, vesting or exercise of this Award results in compensation income or wages to Participant for federal, state, local and/or foreign tax purposes, Participant shall make arrangements satisfactory to the Company for the satisfaction of obligations for the payment of withholding taxes and other tax obligations relating to this Award, which arrangements include the delivery of cash or cash equivalents, Common Stock (including previously owned Common Stock, net exercise, a broker-assisted sale, or, if permitted by the Committee, other cashless withholding or reduction of the amount of shares otherwise issuable or delivered pursuant to this Award), other property, or any other legal consideration the Committee deems appropriate. If such tax obligations are satisfied through net exercise or the surrender of previously owned Common Stock, the maximum number of shares of Common Stock that may be so withheld (or surrendered) shall be the number of shares of Common Stock that have an aggregate Fair Market Value on the date of withholding or surrender equal to the aggregate amount of such tax liabilities determined based on the greatest withholding rates for federal, state, local and/or foreign tax purposes, including payroll taxes, that may be used without creating adverse accounting treatment for the Company with respect to this Award, as determined by the Committee. Any fraction of a share of Common Stock required to satisfy such tax obligations shall be disregarded and the amount due shall be paid instead in cash to Participant. Participant acknowledges that there may be adverse tax consequences upon the receipt, vesting or exercise of this Award or disposition of the underlying shares and that Participant has been advised, and

hereby is advised, to consult a tax advisor. Participant represents that Participant is in no manner relying on the Board, the Committee, the Company or an Affiliate or any of their respective managers, directors, officers, employees or authorized representatives (including attorneys, accountants, consultants, bankers, lenders, prospective lenders and financial representatives) for tax advice or an assessment of such tax consequences.

ARTICLE V.
OTHER PROVISIONS

5.1 Adjustments. Participant acknowledges that the Option is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan.

5.2 Notices. All notices and other communications under this Agreement shall be in writing and shall be delivered to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company, unless otherwise designated by the Company in a written notice to the Participant (or other holder):

BigBear.ai Holdings, Inc.
Attn: General Counsel
6811 Benjamin Franklin Drive
Columbia, MD 21046

If to Participant, at Participant's last known address on file with the Company. Any notice that is delivered personally or by overnight courier or telecopier in the manner provided herein shall be deemed to have been duly given to Participant when it is mailed by the Company or, if such notice is not mailed to Participant, upon receipt by Participant. Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the fourth day after the day it is so placed in the mail.

5.3 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.4 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws and, to the extent Applicable Laws permit, will be deemed amended as necessary to conform to Applicable Laws.

5.5 Rights as a Stockholder. Participant shall not have any rights as a stockholder of the Company with respect to any Shares that may become deliverable hereunder unless and until Participant has become the holder of record of such Shares, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of any such Shares, except as otherwise specifically provided for in the Plan or this Agreement.

5.6 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement will inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in the Plan, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

5.7 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Grant Notice, this Agreement and the Option will be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3) that are requirements for the application of such exemptive rule. To the extent Applicable Laws permit, this Agreement will be deemed amended as necessary to conform to such applicable exemptive rule.

5.8 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof; provided, however, that the terms of this Agreement shall not modify and shall be subject to the terms and conditions of any employment, consulting and/or severance agreement between the Company or an Affiliate and Participant in effect as of the date a determination is to be made under this Agreement.

5.9 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held illegal or invalid, the provision will be severable from, and the illegality or invalidity of the provision will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

5.10 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and may not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant will have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the Option, and rights no greater than the right to receive the Shares as a general unsecured creditor with respect to the Option, as and when exercised pursuant to the terms hereof.

5.11 No Right to Continued Service or Awards. Nothing in the Plan, the Grant Notice or this Agreement confers upon Participant any right to continue in the service of the Company or any Affiliate or interferes with or restricts in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and Participant. The grant of the Option is a one-time benefit and does not create any contractual or other right to receive a grant of Awards or benefits in lieu of Awards in the future. Any future Awards will be granted at the sole discretion of the Company.

5.12 Satisfaction of Claims. Any issuance or transfer of Shares or other property to Participant or Participant's legal representative, heir, legatee or distribute, in accordance with the Plan, the Grant Notice and this Agreement shall be in full satisfaction of all claims of such person hereunder.

5.13 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which will be deemed an original and all of which together will constitute one instrument.

5.14 Consent to Electronic Delivery; Electronic Signature. In lieu of receiving documents in paper format, Participant agrees, to the fullest extent permitted by law, to accept electronic delivery of any documents that the Company may be required to deliver (including, without limitation, prospectuses, prospectus supplements, grant or award notifications and agreements, account statements, annual and quarterly reports and all other forms of communications) in connection with this and any other Award made or offered by the Company. Electronic delivery may be via a Company electronic mail system or by reference to a location on a Company intranet or third party website to which Participant has access. Participant hereby consents to any and all procedures the Company has established or may establish for an electronic signature system for delivery and acceptance of any such documents that the Company may be required to deliver, and agrees that Participant's electronic signature is the same as, and shall have the same force and effect as, Participant's manual signature.

5.15 Company Recoupment of Awards. Participant's rights with respect to this Award shall in all events be subject to (a) any right that the Company may have under any Company recoupment policy or other agreement or arrangement with Participant, or (b) any right or obligation that the Company may have regarding the clawback of "incentive-based compensation" under Section 10D of the Exchange Act and any applicable rules and regulations promulgated thereunder from time to time by the U.S. Securities and Exchange Commission.

* * * * *

Exhibit 10.9

BIGBEAR.AI HOLDINGS, INC.
2021 LONG-TERM INCENTIVE PLAN
PERFORMANCE STOCK UNIT GRANT NOTICE

Pursuant to the terms and conditions of the BigBear.ai Holdings, Inc. 2021 Long-Term Incentive Plan, as amended, restated or otherwise modified from time to time (the "Plan"), BigBear.ai Holdings, Inc., a Delaware corporation (the "Company"), hereby grants to the individual listed below ("Participant") the target number of performance stock units (the "PSUs") set forth below. This award of PSUs (this "Award") is subject to the terms and conditions set forth herein and in the Performance Stock Unit Agreement attached hereto as Exhibit A (the "Agreement"), which is incorporated herein by reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Plan.

Participant:	_____
Grant Date:	[__], 2021
Target Number of PSUs:	150,000
Vesting Schedule:	The PSUs will vest, if at all, based on the performance metrics as set forth in Exhibit B to this Grant Notice, so long as Participant has not incurred a Termination of Service prior to the applicable settlement dates set forth therein.

By Participant's signature below, Participant agrees to be bound by the terms of this Grant Notice (including all exhibits thereto), the Plan and the Agreement. Participant has reviewed the Plan, this Grant Notice and the Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, this Grant Notice and the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Agreement. This Grant Notice may be executed in one or more counterparts (including portable document format (.pdf) and facsimile counterparts), each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Notwithstanding any provision of this Grant Notice or the Agreement, if Participant has not executed this Grant Notice within 90 days following the Grant Date set forth above, Participant will be deemed to have accepted this Award, subject to all of the terms and conditions of this Grant Notice, the Agreement and the Plan.

[*Signature Page Follows*]

BIGBEAR.AI HOLDINGS, INC.	**PARTICIPANT**
By: _____	_____
Name: _____	
Title: _____	

SIGNATURE PAGE
TO
PERFORMANCE STOCK UNIT GRANT NOTICE

Exhibit A

PERFORMANCE STOCK UNIT AGREEMENT

Capitalized terms not specifically defined in this Agreement have the meanings specified in the Grant Notice or, if not defined in the Grant Notice, in the Plan.

ARTICLE I.
GENERAL

1.1 Award of PSUs. The Company has granted the PSUs to Participant effective as of the grant date set forth in the Grant Notice (the "Grant Date"). Each PSU represents the right to receive one Share as set forth in this Agreement. Participant will have no right to the distribution of any Shares or payment of any cash until the time (if ever) the PSUs have vested.

1.2 Incorporation of Terms of Plan. The PSUs are subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan will control.

1.3 Unsecured Promise. The PSUs will at all times prior to settlement represent an unsecured Company obligation payable only from the Company's general assets.

ARTICLE II.
VESTING; FORFEITURE AND SETTLEMENT

2.1 Vesting. The PSUs will vest according to the vesting terms set forth in the Grant Notice.

2.2 Forfeiture. In the event of Participant's Termination of Service for any reason, any PSUs that have not yet been settled in accordance with Section 2.4 will immediately and automatically be cancelled and forfeited as of the date of such Termination of Service at no cost to the Company.

2.3 Dividend Equivalents. In the event that the Company declares and pays a cash dividend in respect of its outstanding Shares and, on the record date for such dividend, Participant holds PSUs granted pursuant to this Agreement, the Company shall record the amount of such dividend in a bookkeeping account and pay to Participant an amount in cash equal to the cash dividends Participant would have received if Participant was the holder of record, as of such record date, of a number of Shares equal to the number of PSUs held by Participant that have not been settled as of such record date, such payment to be made on the date on which such PSUs are settled in accordance with Section 2.4 (the "Dividend Equivalents"). For purposes of clarity, if any of the PSUs are forfeited by Participant pursuant to the terms of this Agreement, then Participant shall also forfeit the Dividend Equivalents, if any, accrued with respect to such forfeited PSUs. No interest will accrue on the Dividend Equivalents between the declaration and payment of the applicable dividends and the settlement of the Dividend Equivalents.

2.4 Settlement. As soon as administratively practicable following a Measurement Date, as set forth in Exhibit B to the Grant Notice, but in no event later than the end of the calendar quarter following such Measurement Date, the Company shall deliver to Participant a number of Shares equal to the number of PSUs, if any, that become vested with respect to such Performance Period (provided that the Participant has not incurred a Termination of Service prior to such settlement date). All Shares issued hereunder shall be delivered either by delivering one or more certificates for such shares to Participant or by entering such shares in book-entry form, as determined by the Committee in its sole discretion. The value of Shares shall not bear any interest owing to the passage of time.

ARTICLE III.
TAXATION AND TAX WITHHOLDING

3.1 Representation. Participant represents to the Company that Participant has reviewed with Participant's own tax advisors the tax consequences of this Award and the transactions contemplated by the Grant Notice and this Agreement. Participant is relying solely on such advisors and not on any statements or representations of the Company or any of its agents.

3.2 Tax Withholding. To the extent that the receipt, vesting or settlement of this Award results in compensation income or wages to Participant for federal, state, local and/or foreign tax purposes, Participant shall make arrangements satisfactory to the Company regarding the payment of, any income tax, social insurance contribution or other applicable taxes that are required to be withheld in respect of this Award, which arrangements include the delivery of cash or cash equivalents, Shares (including previously owned Shares (which is not subject to any pledge or other security interest), net settlement, a broker-assisted sale, or other cashless withholding or reduction of the amount of shares otherwise issuable or delivered pursuant to this Award), other property, or any other legal consideration the Committee deems appropriate. If such tax obligations are satisfied through net settlement or the surrender of previously owned Shares, the maximum number of Shares that may be so withheld (or surrendered) shall be the number of Shares that have an aggregate Fair Market Value on the date of withholding or surrender equal to the aggregate amount of such tax liabilities determined based on the greatest withholding rates for federal, state, local and/or foreign tax purposes, including payroll taxes, that may be utilized without creating adverse accounting treatment for the Company with respect to this Award, as determined by the Committee. Any fraction of a Share required to satisfy such tax obligations shall be disregarded and the amount due shall be paid instead in cash to Participant. Participant acknowledges that there may be adverse tax consequences upon the receipt, vesting or settlement of this Award or disposition of the underlying shares and that Participant has been advised, and hereby is advised, to consult a tax advisor. Participant represents that Participant is in no manner relying on the Board, the Committee, the Company or an Affiliate or any of their respective managers, directors, officers, employees or authorized representatives (including attorneys, accountants, consultants, bankers, lenders, prospective lenders and financial representatives) for tax advice or an assessment of such tax consequences.

ARTICLE IV.
OTHER PROVISIONS

4.1 Adjustments. Participant acknowledges that the PSUs and the Shares subject to the PSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan.

4.2 Notices. All notices and other communications under this Agreement shall be in writing and shall be delivered to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company, unless otherwise designated by the Company in a written notice to Participant (or other holder):

BigBear.ai Holdings, Inc.
Attn: General Counsel
6811 Benjamin Franklin Drive
Columbia, MD 21046

If to Participant, at Participant's last known address on file with the Company. Any notice that is delivered personally or by overnight courier or telecopier in the manner provided herein shall be deemed to have been duly given to Participant when it is mailed by the Company or, if such notice is not mailed to Participant, upon receipt by Participant. Any notice that is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the fourth day after the day it is so placed in the mail.

4.3 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

4.4 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws and, to the extent Applicable Laws permit, will be deemed amended as necessary to conform to Applicable Laws.

4.5 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement will inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in the Plan, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

4.6 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Grant Notice, this Agreement, the PSUs will be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3) that are requirements for the application of such exemptive rule. To the extent Applicable Laws permit, this Agreement will be deemed amended as necessary to conform to such applicable exemptive rule.

4.7 Entire Agreement. The Plan, the Grant Notice and this Agreement (in each case, including all exhibits thereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof; provided, however, that the terms of this Agreement shall not modify and shall be subject to the terms and conditions of any employment, consulting and/or severance agreement between the Company or an Affiliate and Participant in effect as of the date a determination is to be made under this Agreement.

4.8 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held illegal or invalid, the provision will be severable from, and the illegality or invalidity of the provision will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

4.9 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and may not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant will have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the PSUs, and rights no greater than the right to receive cash or the Shares as a general unsecured creditor with respect to the PSUs, as and when settled pursuant to the terms of this Agreement.

4.10 Non-Transferability. During the lifetime of Participant, the PSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the PSUs have been issued, and all restrictions applicable to such Shares have lapsed. Neither the PSUs not any interest or right therein shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

4.11 Legends. If a stock certificate is issued with respect to the Shares delivered hereunder, such certificate shall bear such legend or legends as the Committee deems appropriate in order to reflect the restrictions set forth in this Agreement and to ensure compliance with the terms and provisions of this Agreement, the rules, regulations and other requirements of the Securities and Exchange Commission and any other Applicable Laws. If the Shares issued hereunder are held in book-entry form, then such entry will reflect that the Shares are subject to the restrictions set forth in this Agreement.

4.12 No Right to Continued Service or Awards. Nothing in the Plan, the Grant Notice or this Agreement confers upon Participant any right to continue in the service of the Company or any Affiliate or interferes with or restricts in any way the rights of the Company and its Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between the Company or an Affiliate and Participant. The grant of the PSUs is a one-time benefit and does not create any contractual or other right to receive a grant of Awards or benefits in lieu of Awards in the future. Any future Awards will be granted at the sole discretion of the Company.

4.13 Satisfaction of Claims. Any issuance or transfer of Shares or other property to Participant or Participant's legal representative, heir, legatee or distribute, in accordance with the Plan, the Grant Notice and this Agreement shall be in full satisfaction of all claims of such person hereunder.

4.14 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which will be deemed an original and all of which together will constitute one instrument.

4.15 Consent to Electronic Delivery; Electronic Signature. In lieu of receiving documents in paper format, Participant agrees, to the fullest extent permitted by law, to accept electronic delivery of any documents that the Company may be required to deliver (including, without limitation, prospectuses, prospectus supplements, grant or award notifications and agreements, account statements, annual and quarterly reports and all other forms of communications) in connection with this and any other Award made or offered by the Company. Electronic delivery may be via a Company electronic mail system or by reference to a location on a Company intranet or third party website to which Participant has access. Participant hereby consents to any and all procedures the Company has established or may establish for an electronic signature system for delivery and acceptance of any such documents that the Company may be required to deliver, and agrees that Participant's electronic signature is the same as, and shall have the same force and effect as, Participant's manual signature.

4.16 Company Recoupment of Awards. Participant's rights with respect to this Award shall in all events be subject to (a) any right that the Company may have under any Company recoupment policy or other agreement or arrangement with Participant, or (b) any right or obligation that the Company may have regarding the clawback of "incentive-based compensation" under Section 10D of the Exchange Act and any applicable rules and regulations promulgated thereunder from time to time by the U.S. Securities and Exchange Commission.

Exhibit B

VESTING SCHEDULE AND PERFORMANCE METRICS

ARTICLE I.
GENERAL TERMS

1.1 General. This Exhibit B contains the performance vesting conditions and methodology applicable to the PSUs. Subject to the terms and conditions set forth in the Grant Notice, the Plan and the Agreement, the portion of the PSUs subject to this Award that become vested, if any, with respect to each Performance Period (as defined below) will be determined upon the Committee's certification of achievement of the performance criteria in accordance with this Exhibit B.

1.2 Vesting Requirements.

(a) *General*. As soon as administratively practicable, and in any event within the first calendar quarter following the end of a Performance Period (as defined below), the Committee shall determine the Company's total commercial revenue computed under Generally Accepted Accounting Principles (GAAP) (the "TCR") for such Performance Period, and on the settlement date for such Performance Period (as set forth in Section 2.4 of the Agreement), a number of PSUs (if any) shall become vested, with such number of PSUs equal to (i) the Target PSUs applicable to such Performance Period, as set forth in Section 1.2(b) below, multiplied by (ii) the applicable Performance Factor set forth in Section 1.2(c) below.

(b) *Performance Targets*. During each performance period set forth in the table below (each, a "Performance Period"), up to twenty-five percent (25%) (i.e., 37,500) (the "Target PSUs") of the Target Number of PSUs set forth in the Grant Notice are eligible to become vested upon the Company's achievement of the TCR target set forth in the table below (each, a "TCR Target") for such Performance Period, as measured on the last date of such Performance Period (each, a "Measurement Date").

Performance Period	TCR Target	Target PSUs
January 1, 2022 – December 31, 2022	$ 22,000,000	37,500
January 1, 2023 – December 31, 2023	$ 65,000,000	37,500
January 1, 2024 – December 31, 2024	$144,000,000	37,500
January 1, 2025 – December 31, 2025	$266,000,000	37,500

(c) *Performance Factor.* The number of PSUs, if any, that vest with respect to a Performance Period will be determined in accordance with the following table:

Performance Vesting Schedule

Percentage of TCR Target Achieved	Percentage of Target PSUs That Vest (each, a "Performance Factor")
100%	100%
90%	90%
80%	60%
70%	30%
less than 70%	0%

(d) *Illustrative Example.* The following table provides an example of the application of the performance vesting targets and performance factors for the 2022 Performance Period.

2022 Performance Period

TCR Target	TCR Target Achieved	Percent of Target PSUs Vested
22,000,000	70% Achieved	30% of 37,500 (*i.e.* 11,250)
22,000,000	80% Achieved	60% of 37,500 (*i.e.* 22,500)
22,000,000	90% Achieved	90% of 37,500 (*i.e.* 33,750)
22,000,000	100% Achieved	100% of 37,500 (*i.e.* 37,500)

(e) *Interpolation*. To the extent that a TCR Target for a Performance Period is between specified vesting levels, the portion of the Target PSUs that shall vest shall be determined on a pro rata basis using straight-line interpolation; provided that the maximum portion of the Target PSUs that may vest based on TCR Target for a Performance Period shall not exceed 100% of the Target PSUs; provided further, that to the extent the TCR Target achieved as of a Measurement Date is less than 70% of the TCR Target, all Target PSUs for that Performance Period (and all rights arising from such PSUs) shall be immediately forfeited without consideration and the Participant shall have no further rights with respect to the forfeited PSUs.

Exhibit 10.17

Execution Version

CREDIT AGREEMENT

Dated as of December 7, 2021

among

BIGBEAR.AI HOLDINGS, INC.,
as the Lead Borrower,

THE OTHER BORROWERS PARTY HERETO FROM TIME TO TIME,

THE FINANCIAL INSTITUTIONS PARTY HERETO,
as Lenders

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

BANK OF AMERICA, N.A.,
as Sole Lead Arranger and Sole Bookrunner

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SCHEDULES:

EXHIBITS:

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of December 7, 2021 (this "Agreement"), by and among BigBear.ai Holdings, Inc., a Delaware corporation (the "Lead Borrower"), the other Borrowers party hereto from time to time, the Lenders from time to time party hereto and Bank of America, N.A. (Bank of America"), as administrative agent (in such capacity, the "Administrative Agent") and collateral agent for the Lenders (in such capacity, the "Collateral Agent").

RECITALS

Pursuant to the Agreement and Plan of Merger, dated as of June 4, 2021 (as amended, supplemented, waived or modified from time to time, the "Merger Agreement"), by and among GigCapital4, Inc., a Delaware corporation ("Acquiror"), GigCapital4 Merger Sub Corporation, a Delaware corporation and direct, wholly owned Subsidiary of Acquiror ("Merger Sub"), BigBear.ai Holdings, LLC, a Delaware limited liability company (formerly known as Lake Intermediate, LLC) (the "Company"), and BBAI Ultimate Holdings, LLC, a Delaware limited liability company (formerly known as PCISM Ultimate Holdings, LLC) ("BBAI Holdings"), (i) immediately prior to the consummation of the Mergers (as defined below), the Note Financing will be made by the Note Investors and the Acquiror will change its name to BigBear.ai Holdings, Inc., (ii) Merger Sub will merge with and into the Company (the "First Merger"), with the Company being the surviving entity of the First Merger, and (iii) immediately following the First Merger and as part of the same overall transaction as the First Merger, the Company will merge with and into Acquiror (the "Second Merger" and, together with the First Merger, the "Mergers"), with Acquiror being the surviving entity of the Second Merger (Acquiror, in its capacity as the surviving entity of the Second Merger, the "Surviving Entity").

The Lead Borrower has requested that, prior to but substantially simultaneously with the consummation of the Mergers, the Lenders extend credit to the Lead Borrower on the Closing Date in the form of an Initial Revolving Facility with commitments in an aggregate principal amount equal to $50,000,000.

On the Closing Date, the Initial Revolving Loans, together with cash on hand, will be used (i) to consummate the Refinancing and (ii) to pay fees, costs and expenses and other related amounts incurred in connection with the Transactions. From and after the Closing Date, the Revolving Loans shall be used for working capital, capital expenditures and other general corporate purposes, including financing of Permitted Acquisitions and capital expenditures and any acquisitions, Investments, Restricted Payments and other transactions not prohibited by the Loan Documents.

The applicable Lenders have indicated their willingness to lend and the Issuing Bank has indicated its willingness to issue Letters of Credit, in each case, on the terms and subject to the conditions set forth herein.

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

ARTICLE 1 DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Acceptable Intercreditor Agreement" means a Market Intercreditor Agreement or another intercreditor agreement or subordination agreement that is reasonably satisfactory to the Borrower and the Administrative Agent (such approval of the Administrative Agent not to be unreasonably withheld, denied, delayed or conditioned) (which may, if applicable, consist of a payment "waterfall").

"ACH" means automated clearing house transfers.

"Acquiror" has the meaning assigned to such term in the recitals to this Agreement.

"Additional Agreement" has the meaning assigned to such term in Article 8.

"Additional Commitment" means any commitment hereunder added pursuant to Sections 2.22, 2.23 and/or 9.02(b).

"Additional Lender" has the meaning assigned to such term in Section 2.22(b).

"Additional Revolving Credit Commitments" means any revolving credit commitment added pursuant to Sections 2.22, 2.23 and/or 9.02(b).

"Additional Revolving Credit Exposure" means, with respect to any Lender at any time, the aggregate outstanding principal amount at such time of all Additional Revolving Loans of such Lender, plus the aggregate outstanding amount at such time of such Lender's LC Exposure and Swingline Exposure, in each case, attributable to its Additional Revolving Credit Commitment.

"Additional Revolving Lender" means any Lender with an Additional Revolving Credit Commitment or any Additional Revolving Credit Exposure.

"Additional Revolving Loans" means any revolving loan added pursuant to Sections 2.22, 2.23 and/or 9.02(b).

"Administrative Agent" has the meaning assigned to such term in the preamble to this Agreement.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 1.01(b), or such other address or account as the Administrative Agent may from time to time notify the Lead Borrower and the Lenders.

"Administrative Questionnaire" has the meaning assigned to such term in Section 2.22(e)(i).

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Lead Borrower or any of its Restricted Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claim), whether pending or, to the knowledge of the Lead Borrower or any of its Restricted Subsidiaries, threatened in writing, against the Lead Borrower or any of its Restricted Subsidiaries or any property of the Lead Borrower or any of its Restricted Subsidiaries.

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

"Affiliate" means, as applied to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person. None of the Administrative Agent, the Lead Arranger, the Collateral Agent, any Lender or any of their respective Affiliates shall be considered an Affiliate of the Lead Borrower or any subsidiary thereof.

"Agents" means, collectively, the Administrative Agent, the Collateral Agent and the Lead Arranger.

"Agent Parties" means the Administrative Agent and/or any of its Related Parties.

"Agreement" has the meaning assigned to such term in the preamble to this Agreement, and as such Agreement may be amended, restated, amended and restated, supplemented, extended, restructured, refinanced or otherwise modified from time to time.

"AHYDO Payment" shall mean any mandatory prepayment or redemption pursuant to the terms of any Indebtedness, in an amount not to exceed the minimum amount necessary to cause such Indebtedness not to be treated as an "applicable high yield discount obligation" within the meaning of Code Section 163(i).

"Anti-Corruption Laws" means all laws dealing with bribery or corruption, including, to the extent applicable to a Person, the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act 2010, and any law implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions.

"Applicable Country" means any country or jurisdiction in which a Foreign Subsidiary designated as a Subsidiary Guarantor pursuant to the second sentence of the definition of "Subsidiary Guarantor" is incorporated or organized.

"Applicable Percentage" means, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender's Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.21. If the Commitment of all of the Revolving Lenders to make Revolving Loans have been terminated pursuant to Article 7, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments and to any Lender's status as a Defaulting Lender at the time of determination. The Applicable Percentage of each Lender in respect of the Revolving Facility is set forth opposite the name of such Lender on Schedule 1.01(a) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means a percentage per annum equal to with respect to Revolving Loans, Swingline Loans, unused Initial Revolving Credit Commitments and Letter of Credit fees:

(a) initially and until the first Business Day following the date a Compliance Certificate is delivered under Section 5.01(c) for the Fiscal Quarter ending March 31, 2022, (A) for BSBY Rate Loans, 2.00% *per annum,* (B) for Base Rate Loans, 1.00% *per annum,* (C) in the case of Letter of Credit fees, the applicable margin then in effect with respect to Revolving Loans that are BSBY Rate Loans, (D) in the case of Swingline Loans, the applicable margin then in effect with respect to Revolving Loans that are Base Rate Loans, and (E) the undrawn Commitment Fee for the Initial Revolving Credit Commitments is 0.25% *per annum*, and

(b) thereafter, the following percentages *per annum*, based upon the Secured Net Leverage Ratio, as measured to the last day of a Fiscal Quarter, and as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(c):

Pricing Level	Applicable Rate Secured Net Leverage Ratio	BSBY Rate Loans & Letter of Credit Fee	Base Rate Loans	Commitment Fee
1	< 1.75:1.0	1.75%	0.75%	0.25%
2	³ 1.75:1.0, *but* < 2.00:1.0	2.00%	1.00%	0.25%
3	³ 2.00:1.0, *but* < 2.50:1.0	2.50%	1.50%	0.25%
4	³ 2.50:1.0	3.00%	2.00%	0.25%

Any increase or decrease in the Applicable Rate resulting from a change in the Secured Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 5.01(c); *provided*, *however*, that if a Compliance Certificate is not delivered when due in accordance with Section 5.01(c) (after giving effect to any applicable grace periods), then, solely upon the request of the Required Lenders, Pricing Level 4 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

The Applicable Rate set forth above shall be increased as, and to the extent, required by Section 2.22.

"Applicable Revolving Percentage" means with respect to any Revolving Lender at any time, such Revolving Lender's Applicable Percentage in respect of the Revolving Facility at such time. In the event that (a) the Revolving Credit Commitments of any Class have expired or been terminated in accordance with the terms hereof (other than pursuant to Article 7), the Applicable Revolving Percentage shall be recalculated without giving effect to the Revolving Credit Commitments of such Class or (b) the Revolving Credit Commitments of all Classes have terminated (or the Revolving Credit Commitments of any Class have terminated pursuant to Article 7), the Applicable Revolving Percentage shall be determined based upon the Revolving Credit Commitments (or the Revolving Credit Commitments of such Class) most recently in effect, giving effect to any assignments thereof.

"Approved Fund" means, with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and is administered, advised or managed by (a) such Lender, (b) any Affiliate of such Lender or (c) any entity or any Affiliate of any entity that administers, advises or manages such Lender.

"Assignee" has the meaning set forth in Section 9.05(b).

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.05), and accepted by the Administrative Agent in substantially the form of Exhibit A-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent and the Borrower.

"Available Amount" means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the greater of (i) $4,700,000 and (ii) 25% of Consolidated Adjusted EBITDA as of the last day of the last Test Period (calculated on a Pro Forma Basis), *plus*

(b) an amount (which shall not be less than zero) equal to (i) 50% of Excess Cash Flow if the Secured Net Leverage Ratio (determined on a Pro Forma Basis in accordance with Section 1.11) as of the last day of such Fiscal Year is greater than or equal to 2.25 to 1.00, (ii) 75% of Excess Cash Flow if the Secured Net Leverage Ratio (determined on a Pro Forma Basis in accordance with Section 1.11) as of the last day of such Fiscal Year is less than 2.25 to 1.00 and greater than or equal to 1.75 to 1.00, and (iii) 100% of Excess Cash Flow if the Secured Net Leverage Ratio (determined on a Pro Forma Basis in accordance with Section 1.11) as of the last day of such Fiscal Year is less than 1.75 to 1.00,*plus*

(c) the cumulative amount of aggregate net proceeds from (i) the sale of Capital Stock of the Lead Borrower or any direct or indirect parent of the Borrowers after the Closing Date and on or prior to such time (including upon exercise of warrants or options) (other than (1) a sale to a Restricted Subsidiary, (2) any amount designated as a Cure Amount, (3) any Available Excluded Contribution Amount, (4) any amount used to build Section 6.06(e) or (5) any amount used for Equity Funded Employee Plan Costs) which proceeds have been received by or contributed as equity to the capital of the Lead Borrower or any Restricted Subsidiary and (ii) the Capital Stock of the Lead Borrower or any direct or indirect parent of the Borrowers (other than (1) any amount designated as a Cure Amount, (2) any Available Excluded Contribution Amount or (3) any amount used for Equity Funded Employee Plan Costs) issued upon conversion of Indebtedness (other than the Convertible Notes and Indebtedness that is contractually subordinated in right of payment to the Obligations) of the Lead Borrower or any Restricted Subsidiary owed to a Person other than a Loan Party or a Restricted Subsidiary of a Loan Party not previously applied for a purpose (including as a Cure Amount, any Available Excluded Contribution Amount or any amount used for Equity Funded Employee Plan Costs) other than use in the Available Amount, *plus*

(d) 100% of the aggregate amount of contributions to the capital (including 100% of the Fair Market Value of marketable securities and other property (other than cash and Cash Equivalents) as reasonably determined by the Lead Borrower) of the Lead Borrower and its Restricted Subsidiaries or the net proceeds of the issuance of any direct or indirect parent of the Borrowers contributed to the Lead Borrower and its Restricted Subsidiaries, received (x) in cash or Cash Equivalents by the Lead Borrower and its Restricted Subsidiaries after the Closing Date (other than from a Restricted Subsidiary or the Lead Borrower and other than (1) any amount designated as a Cure Amount, (2) any Available Excluded Contribution Amount, (3) any amount used to build Section 6.06(e) or (4) any amount used for Equity Funded Employee Plan Costs) or (y) in other property,*plus*

(e) to the extent not already reflected, at the election of the Lead Borrower, as a Return of capital with respect to such Investment for purposes of determining the amount of such Investment, 100% of the aggregate amount of cash, Cash Equivalents and the Fair Market Value of other property received by the Lead Borrower and each Restricted Subsidiary (as reasonably determined by the Lead Borrower) after the Closing Date from:

(i) the sale, transfer or other disposition (other than to the Lead Borrower or any Restricted Subsidiary) of the Capital Stock or any assets of an Unrestricted Subsidiary or any minority Investments or other joint venture (that is not a Restricted Subsidiary),

(ii) any dividend or other distribution by an Unrestricted Subsidiary or received in respect of minority Investments or other joint venture (that is not a Restricted Subsidiary), or

(iii) any interest, returns of principal, repayments and similar payments by such Unrestricted Subsidiary or received in respect of any minority Investments,

(f) in the event any Unrestricted Subsidiary has been re-designated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Lead Borrower or a Restricted Subsidiary, the Fair Market Value of the Investments of the Lead Borrower and the Restricted Subsidiaries made using the Available Amount in such Unrestricted Subsidiary at the time of such re-designation, combination or transfer (or of the assets transferred or conveyed, as applicable), *plus*

(g) an amount equal to any returns in cash and Cash Equivalents (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income, the Fair Market Value of property and similar amounts) actually received by the Lead Borrower or any Restricted Subsidiary in respect of any Investments to the extent of the Investments originally funded with and in reliance on the Available Amount, *plus*

(h) [reserved], *minus*

(i) any amount of the Available Amount used to make Investments pursuant to clause (iii) of the definition of "Permitted Acquisitions" and Section 6.06(r) after the Closing Date and prior to such time, *minus*

(j) any amount of the Available Amount used to pay dividends or make distributions or other Restricted Payments pursuant to Section 6.04(a)(ii)(C) or 6.04(a)(iii)(A) after the Closing Date and prior to such time, *minus*

(k) any amount of the Available Amount used to make Restricted Debt Payments pursuant to Section 6.04(b)(viii)(A) after the Closing Date and prior to such time, *minus*

(l) any amount of the Available Amount used to make any Permitted Acquisition pursuant to Section 6.06(e)(i) after the Closing Date and prior to such time,

provided that, with respect to the amounts set forth in clauses (e)(i), (e)(ii), (e)(iii) and (f) of this definition, such amount shall be limited to the Investments made in such Unrestricted Subsidiary, minority Investments or other joint venture, as applicable, originally funded with and in reliance on the Available Amount.

"Available Excluded Contribution Amount" means an amount equal to net cash proceeds received by a Borrower as capital contributions to its common equity capital after the Closing Date (other than from a Restricted Subsidiary or the Lead Borrower) or from the issuance or sale (other than (i) to a Restricted Subsidiary, (ii) to any management equity plan or equity option plan or any other management or employee benefit plan or agreement of the Lead Borrower or direct or indirect parent thereof or (iii) Cure Amounts) of Capital Stock (other than Disqualified Capital Stock) of a Borrower or direct or indirect parent thereof or the Fair Market Value of Investment Grade Securities or Qualified Proceeds contributed to a Borrower, in each case, designated as Available Excluded Contribution Amounts pursuant to an officer's certificate executed by a Responsible Officer of the Lead Borrower (including a Compliance Certificate) from time to time which are excluded from the calculation of Available Amount, *minus* any Available Excluded Contribution Amount applied or used hereunder after the Closing Date and prior to such time.

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

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation 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).

"Banking Services" means each and any of the following bank services provided to any Loan Party or any Restricted Subsidiary: commercial credit cards, stored value cards, purchasing cards, treasury and/or cash management services, netting services, overdraft protections, check drawing services, automated payment services (including depository, overdraft, controlled disbursement, ACH transactions, return items and interstate depository network services), employee credit card programs, cash pooling services, foreign exchange facilities, merchant services and any arrangements or services similar to any of the foregoing and/or otherwise in connection with Cash management and Deposit Accounts.

"Banking Services Bank" means each provider of Banking Services to any Loan Party or any Restricted Subsidiary the obligations under which constitute Banking Services Obligations.

"Banking Services Obligations" means any and all obligations of any Loan Party or any Restricted Subsidiary, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) (a) under any arrangement that is in effect on the Closing Date between any Loan Party or any Restricted Subsidiary and a counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or the Lead Arranger as of the Closing Date or (b) under any arrangement that is entered into after the Closing Date by any Loan Party or any Restricted Subsidiary with any counterparty that is (or is an Affiliate of) the Administrative Agent, any Lender or the Lead Arranger at the time such arrangement is entered into, in each case in connection with Banking Services, in each case, that have been designated to the Administrative Agent in writing by the Lead Borrower as being "Banking Services Obligations" for purposes of the Loan Documents; it being understood that (i) each counterparty thereto (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent and (ii) each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Section 9.03 and Section 9.10 and the Acceptable Intercreditor Agreements as if it were a Lender.

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. § 101 et seq.).

"Base Rate" means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate *plus* 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) the BSBY Rate *plus* 1.00%, subject to the interest rate floors set forth therein; *provided* that if the Base Rate shall be less than 0.00%, such rate shall be deemed 0.00% for purposes of this Agreement. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"Base Rate Loan" means a Revolving Loan that bears interest based on the Base Rate.

"BBAI Holdings" has the meaning assigned to such term in the recitals to this Agreement.

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

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

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

"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.

"Bloomberg" means Bloomberg Index Services Limited.

"Board" means the Board of Governors of the Federal Reserve System of the US.

"Bona Fide Debt Fund" means with respect to any Company Competitor or any Affiliate thereof, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity that is (a) primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of business for financial investment purposes and (b) managed, sponsored or advised by any person that is controlling, controlled by or under common control with the relevant Company Competitor or affiliate thereof, but only to the extent that neither the Company Competitor nor any personnel involved with the investment in the relevant Company Competitor (i) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such debt fund, investment vehicle, regulated bank entity or unregulated entity or (ii) has access to any information (other than information that is publicly available) relating to the Lead Borrower and/or any entity that forms part of any of their respective businesses (including any of their respective subsidiaries); it being understood and agreed that the term "Bona Fide Debt Fund" shall not include any Disqualified Institution that qualifies under clauses (a) and (b) of such definition, or any Affiliate of any such Disqualified Institution qualifying underclause (a) of such definition, that is reasonably identifiable as an Affiliate of such Disqualified Institution on the basis of such Affiliate's name.

"Borrower" means, as the context may require, (a) on the Closing Date, the Lead Borrower and each other Person listed on the signature pages hereto as a "Borrower" and (b) thereafter, each Restricted Subsidiary that is a Wholly-owned Domestic Subsidiary that shall have become a Borrower pursuant to this definition and Section 5.12. For the avoidance of doubt, the Lead Borrower may (subject toclause (b) of the definition of "Collateral and Guarantee Requirement"), from time to time upon not less than five (5) Business Days' notice to the Administrative Agent, request to cause any Wholly-owned Domestic Restricted Subsidiary that is not a Borrower or a Guarantor to cease to be an Excluded Subsidiary and to become a Borrower by causing such Restricted Subsidiary to execute and deliver a joinder to this Agreement and the Loan Guaranty in form and substance reasonably satisfactory to the Administrative Agent and the Lead Borrower and causing such Restricted Subsidiary to satisfy the Collateral and Guarantee

Requirement. The parties hereto acknowledge and agree that prior to any such Restricted Subsidiary becoming entitled to utilize the credit facilities provided for herein the Administrative Agent and such Lenders shall have received such supporting resolutions, incumbency certificates, customary opinions of counsel and other documents or information of the type required under Section 4.01(n) with respect to the Loan Parties on the Closing Date, as may be reasonably required by the Administrative Agent, and a Promissory Note signed by such Restricted Subsidiary to the extent any Lender so requires.

"Borrower Materials" has the meaning assigned to such term in Section 5.01.

"Borrowing" means any Loans of the same Type and Class made, converted or continued on the same date.

"BSBY" means the Bloomberg Short-Term Bank Yield Index rate.

"BSBY Rate" means:

(a) for any Interest Period with respect to a BSBY Rate Loan, the rate per annum equal to the BSBY Screen Rate two Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; *provided* that if the rate is not published on such determination date then BSBY Rate means the BSBY Screen Rate on the first Business Day immediately prior thereto; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the BSBY Screen Rate with a term of one month commencing that day;

provided that if the BSBY Rate determined in accordance with the foregoing provisions of this definition would otherwise be less than zero, the BSBY Rate shall be deemed zero for purposes of this Agreement.

"BSBY Rate Borrowing" has the meaning assigned to such term in Section 1.02.

"BSBY Rate Loan" means a Revolving Loan that bears interest at a rate based on clause (a) of the definition of BSBY Rate.

"BSBY Screen Rate" means the Bloomberg Short-Term Bank Yield Index rate administered by Bloomberg and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any BSBY Rate Loan, in New York City.

"Capital Lease" means, subject to Section 1.04, all leases that have been or are required to be, in accordance with GAAP, recorded as financing leases; *provided* that for all purposes hereunder the amount of obligations under any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP; *provided further*, that all leases of any Person that are or would be characterized as operating leases in accordance with GAAP on December 31, 2019 (whether or not such operating leases were in effect on such date) shall continue to be accounted for as operating leases (and not as Capital Leases) for purposes of this Agreement regardless of any change in GAAP following December 31, 2019 that would otherwise require such leases to be recharacterized as Capital Leases.

"Capital Stock" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities); *provided*, that any instrument evidencing Indebtedness convertible or exchangeable for any of the foregoing shall not be deemed to be Capital Stock unless and until such instrument is so converted or exchanged.

"Capitalized Software Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

"Captive Insurance Subsidiary" means any Restricted Subsidiary of the Borrowers that is subject to regulation as an insurance company (or any Restricted Subsidiary thereof).

"Cash" means money, currency or a credit balance in any Deposit Account, in each case determined in accordance with GAAP.

"Cash Equivalents" means any of the following types of Investments, to the extent owned by the Lead Borrower or any Restricted Subsidiary:

(a) Dollars, Euros, Pounds Sterling, Canadian Dollars, Mexican Pesos, Singapore Dollars or any national currency of any Participating Member State in the European Union or local currencies held from time to time in the ordinary course of business,

(b) readily marketable securities issued or directly and fully and unconditionally guaranteed or insured by the United States government or any country that is a member state of the European Union or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition,

(c) certificates of deposit, time deposits, and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding one year, and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $100,000,000 in the case of U.S. banks and $100,000,000 (or the equivalent thereof as of the date of determination) in the case of foreign banks,

(d) repurchase obligations for underlying securities of the types described in clauses (b) and (c) above and clause (h) below entered into with any financial institution meeting the qualifications specified in clause (c) above,

(e) commercial paper rated at least P-2 (or the equivalent thereof) by Moody's or at least A-2 (or the equivalent thereof) by S&P and in each case maturing within 12 months after the date of creation thereof,

(f) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 (or, in either case, the equivalent thereof) from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized ratings agency), and in each case maturing within 12 months after the date of creation or acquisition thereof,

(g) readily marketable direct obligations issued by any state, commonwealth, or territory of the United States or any political subdivision or taxing authority thereof having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 24 months or less from the date of acquisition,

(h) readily marketable Indebtedness or preferred Capital Stock issued by Persons with a rating of "A" (or the equivalent thereof) or higher from S&P or "A2" (or the equivalent thereof) or higher from Moody's with maturities of 24 months or less from the date of acquisition, that is traded on an internationally recognized securities exchange,

(i) solely with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business; *provided* such country is a member of the Organization for Economic Cooperation and Development, in each case, maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers acceptances of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least "A-2" or the equivalent thereof or from Moody's is at least "P-2" or the equivalent thereof (any such bank being an "Approved Foreign Bank"), and, in each case, with maturities of not more than 24 months from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank, in each case, customarily used by entities for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by such Foreign Subsidiary organized in such jurisdiction,

(j) in the case of investments by any Foreign Subsidiary or investments made in a country outside the United States, Cash Equivalents shall also include investments of the type and maturity described in clauses (a) through (i) above of foreign obligors to the extent such investments are necessary or useful for the business of such Person, which investments have ratings, described in such clauses or equivalent ratings from comparable foreign rating agencies, and

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

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (a) above; *provided* that such amounts are converted into any currency listed in clause (a) as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"CERCLA" has the meaning assigned to such term in Section 9.03(d).

"CFC" means a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"CFC Holdco" means a Subsidiary of the Lead Borrower that has no material assets other than (a) the equity interests (including, for this purpose, any debt or other instrument treated as equity for U.S. federal income tax purposes), or equity interests and indebtedness, in one or more Foreign Subsidiaries, each of which is a CFC, and/or one or more CFC Holdcos and (b) cash, Cash Equivalents and other assets being held incidental to the holding of assets described in clause (a) of this definition (excluding for purposes of this determination any indebtedness of such Foreign Subsidiaries).

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

"Change of Control" means (a) any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), but excluding (w) any employee benefit plan of such person and its Subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, (x) any combination of Permitted Holders, (y) any one or more direct or indirect parent companies of the Lead Borrower and in which there is no Person or "group" (other than any persons described in the preceding clause (x)), and (z) any one or more direct or indirect parent companies of Lead Borrower in which the Sponsor, directly or indirectly, owns the largest percentage of such parent company's voting Capital Stock, shall have, directly or indirectly, acquired beneficial ownership of Capital Stock representing 40% or more of the aggregate voting power represented by the issued and outstanding Capital Stock of the Lead Borrower and the Permitted Holders shall own, directly or indirectly, less than such person or "group" of the aggregate voting power represented by the issued and outstanding Capital Stock of the Lead Borrower, unless the Permitted Holders have, at such time, the right or the ability by voting power, contract, or otherwise to elect or designate for election at least a majority of the board of directors (or analogous governing body) of the Lead Borrower, as applicable, or (b) there shall occur any "fundamental change" (or equivalent term) under any agreement (other than this Agreement) governing the terms of the Convertible Notes. Notwithstanding the preceding or any provision of Rule 13d-3 of the Exchange Act (or any successor provision), a Person or group shall not be deemed to beneficially own securities subject to an equity or asset purchase agreement, merger agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the transactions contemplated by such agreement.

"Charged Amounts" has the meaning assigned to such term in Section 9.20.

"Class", when used with respect to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Revolving Loans or Additional Revolving Loans of any series established as a separate "Class" pursuant to Sections 2.22, 2.23 or 9.02(b) or Swingline Loans, (b) any Commitment, refers to whether such Commitment is an Initial Revolving Credit Commitment or an Additional Revolving Credit Commitment of any series established as a separate "Class" pursuant to Sections 2.22, 2.23 or 9.02(b) or a commitment to make Swingline Loans, (c) any Lender, refers to whether such Lender has a Loan or Commitment of a particular Class and (d) any Revolving Credit Exposure, refers to whether such Revolving Credit Exposure is attributable to a Revolving Credit Commitment of a particular Class.

"Closing Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02) which date is December 7, 2021.

"Closing Date Financial Statements" means (a) the unaudited combined balance sheet of BigBear.ai Holdings, LLC and its Subsidiaries as of December 31, 2020, and the related unaudited combined statements of operations and the comprehensive income, members' equity and cash flows for the period from May 22, 2020 to December 31, 2020, (b) the unaudited balance sheet of PCI STRATEGIC MANAGEMENT, LLC (d/b/a BigBear.ai Cyber and Engineering, LLC) as of December 31, 2019, and the related unaudited statements of operations and the comprehensive income, members' equity and cash flows for the year ended December 31, 2019 and for the periods from January 1, 2020 to October 22, 2020, (c) the unaudited balance sheets of NuWave Solutions, L.L.C. (d/b/a BigBear.ai Analytics, LLC) as of December 31, 2019 and June 18, 2020, and the related unaudited statements of operations and the comprehensive income, members' equity and cash flows for the year ended December 31, 2019 and for the period from January 1, 2020 to June 18, 2020, (d) the unaudited balance sheet of Open Solutions Group, LLC as of December 1, 2020, and the related unaudited statements of operations and the comprehensive income, members' equity and cash flows for the period from January 1, 2020 to December 1, 2020, and (e) the unaudited balance sheet of ProModel Government Solutions, Inc. as of December 20, 2020, and the related unaudited statements of operations and the comprehensive income, members' equity and cash flows for the period from January 1, 2020 to December 20, 2020.

"Code" means the U.S. Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations promulgated thereunder, as amended from time to time (unless as specifically provided otherwise).

"Collateral" means "Collateral" (or any comparable term) as defined in the Security Agreement and all the "Collateral" or "Pledged Assets" (or comparable terms) as defined in any other Collateral Document and any other assets pledged pursuant to any Collateral Document. For the avoidance of doubt, in no event shall "Collateral" include any Excluded Asset.

"Collateral Agent" has the meaning assigned to such term in the preamble to this Agreement.

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

(a) the Collateral Agent shall have received each Collateral Document required to be delivered (i) on the Closing Date, pursuant to Section 4.01(a) and (ii) at such time as may be designated therein, pursuant to the Collateral Documents orSection 5.12, subject, in each case, and as applicable, to the limitations and exceptions of this Agreement and the other Loan Documents, if applicable, duly executed by each Loan Party a party thereto;

(b) all Obligations shall have been unconditionally guaranteed by each Borrower (other than with respect to the Obligations of such Borrower) and each existing and subsequently acquired or organized (including, without limitation, by division) Restricted Subsidiary that is a direct or indirect Wholly-owned Material Domestic Subsidiary (other than any Excluded Subsidiary) and not designated as a Borrower hereunder, including those that are listed on Schedule I hereto; *provided* that the Lead Borrower may, in its sole discretion, designate any Restricted Subsidiary that is an Excluded Subsidiary as a Guarantor (or, in the case of a Domestic Subsidiary, a Borrower) in accordance with the definition of "Guarantor" (or "Borrower", if applicable); *provided* that no Foreign Subsidiary shall become a Guarantor unless such security documents and other actions reasonably requested by the Collateral Agent and consistent with customary market standard in such jurisdiction in respect of security and this Agreement (within such time periods as the Collateral Agent may agree in its reasonable discretion) shall have been delivered and/or taken to create and perfect the Liens on the Capital Stock and substantially all assets (consistent in scope to "Collateral" as defined herein) of such Foreign Subsidiary in its jurisdiction of organization;

(c) the Obligations and the Guarantee shall have been secured by a first-priority security interest (subject to Liens permitted by Section 6.02) in (i) all of the Capital Stock of each Borrower (other than the Lead Borrower) and of each Subsidiary Guarantor (if directly owned by a Loan Party), (ii) all of the Capital Stock of each Wholly-owned Restricted Subsidiary that is a Material Subsidiary (other than a Domestic Subsidiary described in the following clause (iii) or a Foreign Subsidiary described in clause (iv) below) directly owned by the Lead Borrower, any other Borrower or any Subsidiary Guarantor, (iii) 65% of the issued and outstanding voting Capital Stock and 100% of the non-voting Capital Stock of each Restricted Subsidiary that is a Wholly-owned Material Domestic Subsidiary and constitutes a CFC Holdco that is directly owned by the Lead Borrower, any other Borrower or by any Subsidiary Guarantor (other than, for the avoidance of doubt, in each case, any Domestic Subsidiary of any Foreign Subsidiary of the Lead Borrower that is a CFC or of any Domestic Subsidiary of the Lead Borrower that is a CFC Holdco) and (iv) 65% of the issued and outstanding voting Capital Stock and 100% of the non-voting Capital Stock of each Restricted Subsidiary that is a Wholly-owned Material Foreign Subsidiary that is a CFC or CFC Holdco and directly owned by the Lead Borrower, any other Borrower or by any Subsidiary Guarantor, in each case other than any Excluded Pledged Subsidiary;

(d) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 6.02, or under any Collateral Document, the Obligations and the Loan Guaranty shall have been secured by a perfected first-priority security interest (to the extent such security interest may be perfected by delivering certificated securities or instruments, filing financing statements under the Uniform Commercial Code or making any necessary Intellectual Property Security Agreement filings with the United States Patent and Trademark Office or United States Copyright Office or as required in the Security Agreement) in substantially all assets (other than Excluded Assets) of the Lead Borrower, each other Borrower and each Guarantor (including accounts, inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, material intercompany notes, cash, deposit accounts, securities accounts and proceeds of the foregoing), in each case, (i) with the priority required by the Collateral Documents and (ii) subject to exceptions and limitations otherwise set forth in this Agreement (for the avoidance of doubt, including the limitations and exceptions set forth in Section 4.01) and the Collateral Documents; and

(e) in the case of any Foreign Subsidiary that the Lead Borrower has elected to become a Guarantor in accordance with clause (b) above and Section 5.12, the Collateral Agent shall have received such other customary Collateral Documents as it shall reasonably require to provide and perfect Liens on the Capital Stock and property of such Foreign Subsidiary constituting Collateral for the benefit of the Secured Parties securing the Secured Obligations on a basis substantially comparable to the Liens on the Collateral for the benefit of the Secured Parties securing the Secured Obligations granted by Borrowers and Guarantors that are not Foreign Subsidiaries, in each case, as mutually reasonably agreed by the Lead Borrower and the Collateral Agent and taking into account applicable foreign law and local market custom;

provided, *however*, that (i) the foregoing definition (other than as expressly set forth in clauses (b) and (e) above) shall not require, and the Loan Documents shall not contain any requirements as to, the creation or perfection of pledges of, security interests in, mortgages on, or the obtaining of title insurance, surveys, abstracts or appraisals or taking other actions with respect to any Excluded Assets and (ii) the Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in this Agreement and the Collateral Documents.

The Collateral Agent may grant extensions of time for the perfection of security interests in, or the delivery of the Collateral Documents and the obtaining of title insurance and surveys with respect to, particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) or any other compliance with the requirements of this definition where it reasonably determines, in consultation with the Lead Borrower, that perfection or compliance cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement, the Collateral Documents or any other Loan Documents.

Notwithstanding anything herein to the contrary, if the Lead Borrower and the Collateral Agent mutually agree in their reasonable judgment that the cost or other consequences (including adverse tax, accounting and regulatory consequences (other than *de minimis* tax consequences)) of creating or perfecting any Lien on any property is excessive in relation to the benefits afforded to the Secured Parties thereby, then such property may be excluded from the Collateral for all purposes of the Loan Documents.

Notwithstanding anything herein to the contrary (other than as expressly set forth in clauses (b) and (e) above), the Borrowers and the Guarantors shall not be required, nor shall the Collateral Agent be authorized (unless otherwise approved by the Lead Borrower), (i) to perfect the above-described pledges and security interests by any means other than by (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or equivalent filing office of the relevant State of the respective jurisdiction of organization of the Lead Borrower, any other Borrower or any Guarantor), (B) filings of Intellectual Property Security Agreements in United States government offices with respect to intellectual property as expressly required herein and under the other Loan Documents, or (C) delivery to the Collateral Agent, for its possession and control, of all Collateral consisting of material intercompany notes, instruments, chattel paper and all stock (or similar) certificates of the Lead Borrower and its material Wholly-owned Restricted Subsidiaries to the extent required herein and under the other Loan Documents, (ii) to enter into any control agreement, including, without limitation, with respect to any Deposit Account, securities account or commodities account or contract, (iii) (A) other than a Foreign Subsidiary that becomes a Borrower or a Guarantor pursuant to Section 5.12 solely with respect to assets arising under the Law of the jurisdiction of incorporation of such Foreign Subsidiary, to take any action in any non-U.S. jurisdiction or pursuant to the requirements of the laws of any non-U.S. jurisdiction in order to create any security interests (for the avoidance of doubt, other than the execution of documents by individuals located outside of the U.S.) or (B) to perfect any security interests in assets located outside of (or governed by or arising or existing under, pursuant to or by virtue of any Laws outside of) the United States, including with respect to any intellectual property registered outside of the United States (it being understood that there shall be no security agreements or pledge agreements governed by the laws of any non-U.S. jurisdiction), (iv) except as expressly provided above, to take any other action with respect to any Collateral to perfect through control agreements or to otherwise perfect by "control", (v) to enter into any mortgages and fixture filings relating to any Real Estate Asset, (vi) to provide any notice or to obtain the consent of governmental authorities under the Federal Assignment of Claims Act (or any state equivalent thereof) or (vii) to enter into any source code escrow arrangement (or be obligated to register or apply to register any intellectual property); *provided* that, for the avoidance of doubt, the Lead Borrower may elect to perform any of the foregoing in its sole discretion.

"Collateral Documents" means, collectively, (i) the Security Agreement, (ii) [reserved], (iii) each Intellectual Property Security Agreement, (iv) any supplement to any of the foregoing delivered to the Collateral Agent pursuant to the definition of "Collateral and Guarantee Requirement" and (v) each other document and/or instrument pursuant to which any Loan Party grants (or purports to grant) a Lien on any Collateral as security for payment of the Secured Obligations.

"Commercial Tort Claim" has the meaning set forth in Article 9 of the UCC.

"Commitment" means, with respect to each Lender, such Lender's Initial Revolving Credit Commitment and Additional Commitment, as applicable, in effect as of such time.

"Commitment Fee" has the meaning set forth in Section 2.12(e).

"Commitment Schedule" means the Schedule attached hereto as Schedule 1.01(a).

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

"Company" has the meaning assigned to such term in the recitals to this Agreement.

"Company Competitor" means any competitor of the Lead Borrower and/or any of its subsidiaries.

"Company Competitor Debt Fund Affiliate" means, with respect to any Company Competitor or any affiliate thereof, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity (in each case, other than any Disqualified Institution or any Excluded Party) that is (i) primarily engaged in, or advise funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business for financial investment purposes and (ii) managed, sponsored or advised by any person that is controlling, controlled by or under common control with the relevant Company Competitor or affiliate thereof, but only to the extent that neither the Company Competitor nor any personnel involved with the investment in the relevant Company Competitor (A) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such debt fund, investment vehicle, regulated bank entity or unregulated entity or (B) has access to any information (other than information that is publicly available) relating to the Lead Borrower and/or any entity that forms part of any of their respective businesses (including any of their respective subsidiaries).

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

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit C.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with BSBY or any proposed Successor Rate, as applicable, any conforming changes to the definitions of Base Rate, BSBY and Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent (with notice to the Lead Borrower), to reflect the adoption and implementation of such applicable rate, and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

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

"Consolidated Adjusted EBITDA" means, for any period, Consolidated Net Income for such period, plus:

(a) without duplication and, except with respect to clauses (vii)(B), (x) and (xi) below, to the extent deducted (and not added back or excluded) in arriving at such Consolidated Net Income, the sum of the following amounts for such period with respect to the Lead Borrower and its Restricted Subsidiaries:

(i) total interest expense determined in accordance with GAAP (including, (A) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (B) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (C) non-cash interest payments, (D) the interest component of Capital Leases, (E) net payments, if any, pursuant to interest Swap Contracts with respect to Indebtedness, (F) amortization of deferred financing fees, debt issuance costs, commissions and fees, (G) the interest component of any pension or other post-employment benefit expense, and (H) to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed)),

(ii) without duplication, provision for taxes based on income (or similar taxes in lieu of income taxes), profits or capital gains of the Lead Borrower and the Restricted Subsidiaries, including federal, foreign, state, local, franchise, excise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations paid or accrued during such period and, to the extent reflected as a charge in the statement of such Consolidated Net Income (regardless of classification), and any tax distributions made during, or with respect to, such period,

(iii) depreciation and amortization expense, including the amortization of deferred financing fees or costs, debt issuance costs, commissions, fees, and expenses, capitalized expenditures, Capitalized Software Expenditures or costs, amortization of expenditures relating to software, license and intellectual property payments, amortization of any lease related assets recorded in purchase accounting, depreciation of lease payments, customer acquisition costs, unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, depreciation of goodwill, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and incentive payments, conversion costs, and contract acquisition costs of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP,

(iv) (A) extraordinary, exceptional, unusual and non-recurring charges, expenses or losses or special items and (B) any losses on sales of assets outside of the ordinary course of business,

(v) any other non-cash charges, expenses or losses, including, without limitation, any non-cash asset retirement costs, non-cash increase in expenses resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments or due to purchase accounting, or any other acquisition, non-cash compensation charges, non-cash expense relating to the vesting of warrants, impairment charges, write-offs or write-downs for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Lead Borrower may determine not to add back such non-cash item in the current period or (ii) to the extent the Lead Borrower determines to add back such non-cash item in the current period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Adjusted EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period) and non-cash translation (gain) loss,

(vi) (x) retention, recruiting, relocation, integration and severance, signing and stay bonuses and expenses, including payments made to employees, producers or others who are subject to non-compete agreements, and stock option and other equity-based compensation expenses, and (y) costs associated with implementation of operational and reporting systems and technology initiatives (including any such payments made in connection with the consummation of the Transactions),

(vii) (A) (x) restructuring costs, integration costs, opening,pre-opening, consolidation and closing costs for facilities, transactions fees and expenses and management, monitoring, consulting and advisory fees, indemnities and expenses, costs incurred in connection with any non-recurring strategic initiatives, costs incurred in connection with acquisitions andnon-recurring intellectual property development after the Closing Date, contract termination costs, other business optimization expenses and charges (including costs and expenses relating to business optimization programs and new systems design, upgrade and implementation costs), project start-up costs and other restructuring charges, accruals or reserves (including restructuring costs related to acquisitions after the Closing Date and to closure/consolidation of facilities and retention charges), any one time expense relating to enhanced accounting function or other transaction costs, including those associated with becoming a standalone entity or public company and Public Company Costs, and (y) transition costs and (B) (i) LTM *pro forma* results for acquisitions and dispositions of business entities or properties or assets constituting a division or line of business of any business entity calculated in accordance with Section 1.11(c), and (ii) the "run rate" amount of cost savings, operating expense reductions, other operating expense improvements and cost synergies projected by the Lead Borrower in good faith to be realizable in connection with the Transactions or any Specified Transaction or the implementation of an operational initiative or operational change (including, to the extent applicable, from the Transactions or the effect of new customer contracts that have at least one full quarter of operations (with such operations annualized) or projects or increased pricing or volume in existing customer contracts) before or after the Closing Date (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions, other operating improvements and cost synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions, other operating improvements and cost synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that (x) a duly completed certificate signed by a Responsible Officer of the Lead Borrower shall be delivered to the Administrative Agent together with the Compliance Certificate required to be delivered pursuant to Section 5.01(c), certifying that such cost savings, operating expense reductions, other operating improvements and/or cost synergies are readily identifiable, factually supportable and have been determined in good faith by the Lead Borrower to be reasonably anticipated to be realizable within eighteen (18) months after the consummation of the Transactions or the applicable Specified Transaction, or the implementation of the applicable operational initiative or operational change, as applicable (with actions in respect of any such transaction occurring prior to the Closing Date occurring within eighteen (18) months of the Closing Date) and (y) no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (vii)(B) to the extent duplicative of any expenses or charges otherwise added to Consolidated Adjusted EBITDA, whether through a *pro forma* adjustment or otherwise, for such period;

(viii) any director's fees and related expenses payable to any independent director or operating partner of the Lead Borrower or any direct or indirect parent entity thereof, in each case, in cash during such period,

(ix) (A) other accruals, charges, payments, fees and expenses (including rationalization, legal, tax, structuring and other costs and expenses), or any amortization thereof, related to, or otherwise incurred in connection with, the Transactions (including all Transaction Costs) and all such accruals, charges, payments, fees and expenses payable in connection with the Loan Documents, acquisitions, Investments, Restricted Payments, Dispositions, or any amortization thereof, refinancings, issuances or registrations (actual or proposed) of Indebtedness or Capital Stock permitted by the terms of this Agreement or repayment of debt, issuance of equity securities, refinancing transactions, negotiation, forbearance, extension or amendment or other modification or waiver of any documentation governing the transactions described in this clause (ix)(A) (including the Loan Documents) (in each case, including any such transaction consummated on the Closing Date and any such transaction undertaken but not completed) (including, for the avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with Account Standards Codification Topic No. 805, Business Combinations) and (B) costs of surety bonds incurred in such period in connection with financing activities permitted by the terms of this Agreement,

(x) to the extent actually received or expected by the Lead Borrower in good faith to be received within 365 days of such determination and not already included in Consolidated Net Income, proceeds of business interruption insurance to the extent replacing lost revenue for such period (it being understood and agreed that, to the extent such anticipated amounts are not actually received within such 365 day period, such amounts shall be deducted in calculating Consolidated Adjusted EBITDA),

(xi) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated Adjusted EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated Adjusted EBITDA pursuant to paragraph (b) below for any previous period and not added back,

(xii) any non-cash increase in expenses (A) resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments (including any non-cash increase in expenses as a result of last-in first-out and/or first-in first-out methods of accounting) or any other acquisition or (B) due to purchase accounting,

(xiii) [reserved],

(xiv) the amount of (A) management, consulting, monitoring and advisory fees (including termination and exit fees), transaction fees and related expenses and indemnifications paid to the Permitted Holders and (B) payments by the Lead Borrower or any of its Restricted Subsidiaries to any of the Permitted Holders made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures which payments are approved by the Lead Borrower in good faith,

(xv) any Equity Funded Employee Plan Costs,

(xvi) [reserved],

(xvii) adjustments (A) [reserved], (B) evidenced by or contained in a quality of earnings report made available to the Administrative Agent prepared with respect to the target of a Permitted Acquisition or other Investment permitted hereunder by (x) a "big-four" nationally recognized accounting firm or regionally recognized accounting firm or (y) any other accounting firm that shall be reasonably acceptable to the Administrative Agent (such approval not to be unreasonably withheld, delayed, denied or conditioned), (C) consistent with Regulation S-X, or (D) including the *pro forma* adjustments of the type set forth in the Sponsor Model,

(xviii) payments or accruals by the Borrowers and their Restricted Subsidiaries paid or accrued during such period in respect of purchase price holdbacks, earn-outs and other similar contingent obligations to the extent deducted in calculating Consolidated Net Income of the Borrowers and their Restricted Subsidiaries,

(xix) [reserved],

(xx) any net loss from disposed, abandoned or discontinued operations or product lines,

(xxi) to the extent reducing Consolidated Net Income, any charges, costs, expenses or losses relating to any litigation (or the settlement thereof),

(xxii) the amount of costs, charges and expenses relating to payments made to option holders of any direct or indirect parent of the Borrowers in connection with, or as a result of, any distribution being made to equityholders of such Person, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted under this Agreement,

(xxiii) any fees, costs and expenses incurred in connection with the implementation of ASC 606 and anynon-cash losses or charges resulting from the application of ASC 606,

(xxiv) any net increases in deferred revenue liabilities (including current portion),

(xxv) to the extent not otherwise added back pursuant to clause (xvii) above, the amount of all non-cash net periodic benefit costs recognized by the Borrowers or any of their Restricted Subsidiaries with respect to any defined benefit pension plan, and

minus (b) without duplication and to the extent included in arriving at such Consolidated Net Income,(i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Adjusted EBITDA in any prior period) including non-cash gains as a result of last-in first-out and/or first-in first-out methods of accounting, (ii)(x) any extraordinary or unusual net gains and (y) any gains on sales of assets outside of the ordinary course of business (cash and non-cash), (iii) any net gains from disposed, abandoned or discontinued operations or product lines and (iv) any net decreases in deferred revenue liabilities (including current portion); *provided* that:

(A) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA (x) currency translation gains and losses related to currency re-measurements of Indebtedness (including the net loss or gain (i) resulting from Swap Contracts for currency exchange risk and (ii) resulting from intercompany indebtedness) and (y) all other foreign currency translation gains or losses to the extent such gains or losses are non-cash items;

(B) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period any adjustments resulting from the application of FASB Accounting Standards Codification 815 and International Accounting Standard No. 39 and their respective related pronouncements and interpretations;

(C) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period any income (loss) for such period attributable to the early extinguishment of (i) Indebtedness, (ii) obligations under any Swap Contracts or (iii) other derivative instruments; and

(D) to the extent included in Consolidated Net Income, there shall be excluded in determining Consolidated Adjusted EBITDA for any period the estimated pro forma service costs of pension, post-retirement employee benefits plans and SERPs as evidenced by and included in the Sponsor Model.

Notwithstanding anything to the contrary contained herein, (i) all amounts added to Consolidated Adjusted EBITDA pursuant to clauses (a)(vi)(x), (a)(vii)(A) and (a)(vii)(B)(ii) above, together with all amounts added back to Consolidated Adjusted EBITDA pursuant to Section 1.11(c)(ii), and all amounts excluded from Consolidated Net Income pursuant to clauses (a) (other than subclause (a)(i), subclause (a)(iv) and subclause (a)(xi)) and (u) thereof, shall not exceed, in the aggregate, 30% of Consolidated Adjusted EBITDA (determined after giving effect to all such amounts that would be added back pursuant to the foregoing) and (ii) for purposes of determining Consolidated Adjusted EBITDA under this Agreement for any period that includes any of the Fiscal Quarters ended December 31, 2020, March 31, 2021, June 30, 2021 and September 30, 2021, Consolidated Adjusted EBITDA for such Fiscal Quarters shall be $5,435,373, $3,444,590, $823,045 and $9,139,143, respectively (such amounts, for the avoidance of doubt, exclude any addback or adjustment pursuant to clause (a)(vii)(B) as set forth herein on the Closing Date), in each case as may be subject to add-backs and adjustments (without duplication) pursuant to clause (vii)(B) and Section 1.11(c) for the applicable Test Period (subject to the limitations set forth in the immediately preceding clause (i) with respect to such add-backs and adjustments). For the avoidance of doubt, Consolidated Adjusted EBITDA shall be calculated, including *pro forma* adjustments, in accordance with Section 1.11.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) by the Lead Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Lead Borrower and its Restricted Subsidiaries.

"Consolidated Net Income" means, for any period, the net income (loss) of the Lead Borrower and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided*, *however*, that, without duplication,

(a) (i) any after-tax effect of extraordinary items (less all fees and expenses relating thereto), charges or expenses (including relating to the Transactions), (ii) severance, recruiting, retention and relocation costs, charges and expenses, (iii) signing and stay bonuses and related costs, charges and expenses, (iv) costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans, (v) start-up, transition, strategic initiative (including any multi-year strategic initiative) and integration costs, charges or expenses and costs associated with implementation of operational and reporting systems and technology initiatives and system establishment costs, (vi) restructuring costs, charges, reserves or expenses, (vii) (1) costs, charges and expenses related to acquisitions after the Closing Date and (2) to the start-up, pre-opening, opening, closure, and/or consolidation of distribution centers, operations, offices and facilities and related contract termination costs, (viii) business optimization costs, charges or expenses, (ix) costs, charges and expenses incurred in connection with new product design, development and introductions, (x) costs and expenses incurred in connection with intellectual property development and new system designs, (xi) any costs, expenses or charges relating to any governmental investigation or any litigation or other dispute, and (xiii) one-time compensation charges, in each case, shall be excluded,

(b) the cumulative effect of a change in accounting principles during such period to the extent included in Consolidated Net Income shall be excluded,

(c) accruals and reserves that are established or adjusted within 12 months after the Closing Date that are so required to be established or adjusted as a result of the Transactions (or within 12 months after the closing of any acquisition or other similar Investment that are so required to be established or adjusted as a result of such acquisition or other similar Investment) in accordance with GAAP or charges as a result of adoption or modification of accounting policies in accordance with GAAP shall be excluded,

(d) any net after-tax effect of gains or losses (*less* all fees, expenses and charges relating thereto) attributable to asset dispositions or abandonments or the sale or other disposition of any Capital Stock of any Person, in each case other than in the ordinary course of business, as determined in good faith by the Lead Borrower, shall be excluded,

(e) the net income (loss) for such period of any Person that is not a Subsidiary of the Lead Borrower, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the Lead Borrower shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent subsequently converted into cash or Cash Equivalents) to the Lead Borrower or a Restricted Subsidiary thereof in respect of such period,

(f) any impairment charge or asset write-off or write-down (other than write-offs or write-downs of accounts receivable and inventory), including impairment charges or asset write-offs or write-downs related to intangible assets, goodwill, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP or SEC guidelines, and the amortization of intangibles arising pursuant to GAAP or SEC guidelines shall be excluded,

(g) any (i) equity or phantom equity based non-cash compensation charge or expense, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs or any other equity-based compensation, and (ii) cash charges associated with the rollover, acceleration or payout of Capital Stock by managers, officers, directors, consultants or employees of the Borrowers, any Restricted Subsidiary or any of the Borrowers' direct or indirect parents, shall be excluded,

(h) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Lead Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365-day period), shall be excluded,

(i) to the extent covered by insurance or a third party and actually paid for or reimbursed, or indemnified, or, so long as the Lead Borrower reasonably expects that such amount will in fact be paid for or reimbursed by the insurer or third party and only to the extent that such amount is in fact paid for, reimbursed or indemnified within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption shall be excluded,

(j) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with the Lead Borrower or any of its Restricted Subsidiaries or such Person's assets are acquired by the Lead Borrower or any of its Restricted Subsidiaries shall be excluded (except to the extent required for any calculation of Consolidated Adjusted EBITDA on a Pro Forma Basis in accordance with Section 1.11),

(k) [reserved],

(l) the purchase accounting effects of adjustments in component amounts required or permitted by GAAP (including in the inventory, property and equipment, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) and related authoritative pronouncements (including the effects of such adjustments pushed down to the Borrowers and their Restricted Subsidiaries), as a result of the Transactions, any acquisition constituting an Investment permitted under this Agreement consummated prior to or after the Closing Date, or the amortization or write-off of any amounts thereof shall be excluded,

(m) letter of credit fees shall be excluded,

(n) any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowance related to such items, shall be excluded,

(o) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period shall be excluded,

(p) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards Nos. 87, 106 and 112, and any other items of a similar nature, shall be excluded,

(q) any non-cash adjustments resulting from the application of Accounting Standards Codification Topic No. 460,*Guarantees*, or any comparable regulation, shall be excluded,

(r) earn-out obligations and other contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise (and including deferred performance incentives in connection with Permitted Acquisitions or other Investments permitted hereunder whether or not a service component is required from the transferor or its related party)) and adjustments thereof and purchase price adjustments, shall be excluded,

(s) (i) accruals and reserves (including contingent liabilities) that are (A) established or adjusted within twelve months after the Closing Date that are so required to be established as a result of the Transactions or (B) established or adjusted within twelve months after the closing of any Permitted Acquisition or any other acquisition (other than any such other acquisition in the ordinary course of business) that are so required to be established or adjusted as a result of such Permitted Acquisition or such other acquisition, in each case in accordance with GAAP or (ii) charges, accruals, expenses and reserves as a result of adoption or modification of accounting policies, shall be excluded,

(t) (i) extraordinary, exceptional, unusual andnon-recurring charges, expenses or losses or special items and (ii) any losses on sales of assets outside of the ordinary course of business, shall be excluded,

(u) retention, recruiting, relocation, integration and signing bonuses and expenses, stock option and other equity-based compensation expenses, severance costs, stay bonuses, transaction fees and expenses and management fees and expenses, including any one time expense relating to enhanced accounting function or other transaction costs, including those associated with becoming a standalone entity or public company and implementation, replacement, development or upgrade of operational, reporting and information technology systems and technology initiatives (including, without limitation, any such payments made in connection with the consummation of the Transactions), shall be excluded,

(v) [reserved], and

(w) the amount of (i) Management Fees and related expenses paid to the Permitted Holders in accordance with any management agreement and (ii) payments by the Lead Borrower or any of its Restricted Subsidiaries to any of the Permitted Holders made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions or divestitures which payments are approved by the Lead Borrower in good faith, shall be excluded.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries in any period, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance.

For the avoidance of doubt, Consolidated Net Income shall be calculated, including*pro forma* adjustments, in accordance withSection 1.11.

"Consolidated Total Assets" means the total assets of the Lead Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Lead Borrower delivered pursuant to Sections 5.01(a) or (b) or, for the period prior to the time any such statements are so delivered pursuant to Sections 5.01(a) or (b), the Pro Forma Financial Statements.

"Consolidated Total Debt" means, as to any Person at any date of determination, the aggregate principal amount of Indebtedness of the Lead Borrower and its Restricted Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of Indebtedness resulting from the application of purchase accounting in connection with the Transactions or any acquisition constituting an Investment permitted under this Agreement) consisting of (a) Indebtedness for borrowed money (including LC Disbursements that have not been reimbursed and the outstanding principal balance of all third party Indebtedness of such Person represented by notes, bonds and similar instruments), (b) Capital Leases and purchase money Indebtedness and (c) all obligations of such Person in respect of Disqualified Capital Stock. For the avoidance of doubt, it is understood that obligations (x) under Swap Contracts and Hedge Agreements, (y) owed by Unrestricted Subsidiaries or (z) under Supplier Financing Facilities do not constitute Consolidated Total Debt.

"Consolidated Total Net Debt" means, as to any Person at any date of determination, (a) Consolidated Total Debt *minus* (b) the aggregate amount of Unrestricted Cash Amount.

"Consolidated Working Capital" means, with respect to the Lead Borrower and its Restricted Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent, (b) the effects of purchase accounting or (c) the effect of fluctuations in the amount of accrued or contingent obligations, assets or liabilities under Swap Contracts.

"Contract Consideration" has the meaning set forth in the definition of "Excess Cash Flow".

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

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

"Convertible Notes" means the unsecured 6.00% Convertible Senior Notes due 2026 issued by the Lead Borrower pursuant to the Note Financing Documents in an aggregate principal amount not to exceed $200,000,000.

"Copyright" means any and all copyrights throughout the world, including the following: (a) all rights and interests in copyrights, works protectable by copyright whether published or unpublished, copyright registrations, copyright applications and other rights in works of authorship (including all copyrights embodied in software); (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing.

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

"Covered Party" has the meaning specified in Section 9.26.

"Credit Extension" means each of (i) the making of a Revolving Loan or Swingline Loan (other than any Revolving Loan resulting from the applicable terms of Section 2.04(b)) or (ii) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the Stated Amount of the relevant Letter of Credit).

"Cure Amount" has the meaning assigned to such term in Section 6.14(b).

"Cure Expiration Date" has the meaning assigned to such term in Section 6.14(b).

"Cure Right" has the meaning assigned to such term in Section 6.14(b).

"Current Assets" means, with respect to the Lead Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all assets (other than cash and Cash Equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as current assets at such date of determination, other than (i) amounts related to current or deferred Taxes based on income, profits or capital gains, (ii) assets held for sale, (iii) loans (permitted) to third parties, (iv) pension assets, (v) deferred bank fees, and (vi) derivative financial instruments, and excluding the effects of adjustments pursuant to GAAP resulting from the application of purchase accounting, as the case may be, in relation to the Mergers or any consummated acquisition.

"Current Liabilities" means, with respect to the Lead Borrower and the Restricted Subsidiaries on a consolidated basis at any date of determination, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as current liabilities at such date of determination, other than (a) the current portion of any Indebtedness, (b) the current portion of interest expense, (c) accruals for current or deferred Taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) deferred revenue, (f) any Revolving Credit Exposure or Revolving Loans, and (g) the current portion of pension liabilities and excluding the effects of adjustments pursuant to GAAP resulting from the application of purchase accounting, as the case may be, in relation to the Mergers or any consummated acquisition.

"Daily Simple SOFR" with respect to any applicable determination date means the secured overnight financing rate ("SOFR") published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source).

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

"Default" means any event or condition which upon notice, lapse of time or both hereunder would become an Event of Default.

"Default Rate" means (a) with respect to overdue principal, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2.00% per annum; *provided* that with respect to a BSBY Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.00% per annum, and (b) with respect to any other overdue amount (including overdue interest), the interest rate (including any Applicable Rate) applicable to Base Rate Loans plus 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

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

"Defaulting Lender" means any Lender that, as reasonably determined by the Administrative Agent and the Lead Borrower, has (a) defaulted in (or is otherwise unable to perform) its obligations under this Agreement, including, without limitation, (i) to make a Loan within two Business Days of the date required to be made by it hereunder, or (ii) to fund its participation in a Letter of Credit or Swingline Loan required to be funded by it hereunder within two Business Days of the date such obligation arose or such Loan, Letter of Credit or Swingline Loan was required to be made or funded unless, in the case of sub clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Administrative Agent, the Issuing Bank or Swingline Lender or the Lead Borrower in writing that it does not intend to satisfy any such obligation or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under agreements in which it commits to extend credit generally (unless such writing indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan cannot be satisfied), (c) failed, within three Business Days after the request of the Administrative Agent or the Lead Borrower, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit or Swingline Loans; *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, (d) become (or any parent company thereof has become) insolvent or been determined by any Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the assets or management of which has been taken over by any Governmental Authority or (e) become the subject of (A)(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 or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (B) a Bail-In Action, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, unless in the case of any Lender subject to this clause (e), the Lead Borrower and the Administrative Agent have each determined that such Lender intends, and has all approvals required to enable it (in form and substance satisfactory to the Lead Borrower and the Administrative Agent), to continue to perform its obligations as a Lender hereunder; *provided* that no Lender shall be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Lender or its parent by any Governmental Authority; *provided* that such action does not result in or provide such Lender with immunity from the jurisdiction of courts within the U.S. 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 contract or agreement to which such Lender is a party. Any determination that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(f)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Lead Borrower, the Issuing Bank, the Swingline Lender and each other Lender promptly following such determination.

"Deposit Account" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, excluding, for the avoidance of doubt, any investment property (within the meaning of the UCC) or any account evidenced by an instrument (within the meaning of the UCC).

"Derivative Transaction" means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; *provided*, that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management, managers or consultants of the Borrowers or its subsidiaries shall constitute a Derivative Transaction.

"Designated Cash Interest Expense" means, with respect to any Person for any period, (a) the sum of consolidated total interest expense of such Person and its Restricted Subsidiaries for such period, that is paid or payable currently in Cash, (i) including, to the extent payable currently in Cash (A) the interest component of any payment under any Capital Lease (regardless of whether accounted for as interest expense under GAAP), (B) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (C) any commission, discount and/or other fee or charge owed with respect to any letter of credit and/or bankers' acceptance and (D) net payments arising under any interest rate Hedge Agreement with respect to Indebtedness and (ii) excluding (A) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (B) any expense arising from any bridge, commitment and/or other financing fee (including fees and expenses associated with the Transactions and annual agency fees), (C) any fee or expense resulting from the discounting of Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting, (D) fees and expenses associated with any Dispositions, acquisitions, Investments, issuances of Capital Stock or Indebtedness (in each case, whether or not consummated), (E) costs associated with obtaining, or breakage costs in respect of, any Hedge Agreement or any other derivative instrument other than any interest rate Hedge Agreement or interest rate derivative instrument with respect to Indebtedness, (F) penalties and interest relating to Taxes and (G) for the avoidance of doubt, any non-cash interest expense attributable to any movement in the mark to market valuation of any obligation under any Hedge Agreement or any other derivative instrument and/or any payment obligation arising under any Hedge Agreement or derivative instrument other than any interest rate Hedge Agreement or interest rate derivative instrument with respect to Indebtedness minus (b) interest income for such period. For purposes of this definition, interest in respect of any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capital Lease in accordance with GAAP.

"Designated Non-Cash Consideration" means the Fair Market Value (as determined by the Lead Borrower in good faith) ofnon-Cash consideration received by the Lead Borrower or any Restricted Subsidiary in connection with any Disposition pursuant to Section 6.07(h) and/or Section 6.07(cc) that is designated from time to time as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Lead Borrower, setting forth the basis of such valuation (which amount will be reduced by the amount of Cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to Cash or Cash Equivalents).

"Disposition" or "Dispose" means the sale, lease, sublease, or other disposition of any property of any Person.

"Disqualified Capital Stock" means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock and cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to 91 days following the Latest Revolving Credit Maturity Date at the time such Capital Stock is issued (it being understood that if any such redemption is in part, only such part coming into effect prior to 91 days following the Latest Revolving Credit Maturity Date shall constitute Disqualified Capital Stock), (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to 91 days following the Latest Revolving Credit Maturity Date at the time such Capital Stock is issued, (c) contains any mandatory repurchase obligation or any other repurchase obligation at the option of the holder thereof (other than for Qualified Capital Stock and cash in lieu of fractional shares), in whole or in part, which may come into effect prior to 91 days following the Latest Revolving Credit Maturity Date at the time such Capital Stock is issued (it being understood that if any such repurchase obligation is in part, only such part coming into effect prior to 91 days following the Latest Revolving Credit Maturity Date shall constitute Disqualified Capital Stock) or (d) provides for the scheduled payments of dividends in Cash on or prior to 91 days following the Latest Revolving Credit Maturity Date at the time such Capital Stock is issued; *provided* that any Capital Stock that would not constitute Disqualified Capital Stock except for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of any change of control, or any Disposition (or similar event) occurring prior to 91 days following the Latest Revolving Credit Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions prior to the Termination Date.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued pursuant to any plan for the benefit of directors, officers, employees, members of management, managers or consultants or by any such plan to such directors, officers, employees, members of management, managers, consultants, operating partners or advisers, in each case in the ordinary course of business of the Lead Borrower or any Restricted Subsidiary, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations or as a result of the termination, death or disability of such directors, officers, employees, members of management, managers, consultants, operating partners, or advisers, and (B) no Capital Stock held by any future, present or former employee, director, officer, manager, member of management or consultant (or their respective Affiliates or Immediate Family Members) of the Borrowers (or any Parent Company or any subsidiary) shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

"Disqualified Institution" means:

(a) (i) any Person identified in writing by the Lead Borrower to the Lead Arranger on or prior to the Closing Date (the "Identified Disqualified Lenders") and (ii) any Affiliate of any Identified Disqualified Lender that is identified in writing by the Lead Borrower to the Administrative Agent as such,

(b) any Affiliate or Representative of the Lead Arranger (or any director (or equivalent manager), officer or employee of the Lead Arranger or any Affiliate thereof) that is engaged as a principal primarily in private equity, mezzanine financing or venture capital (each such person, an "Excluded Party"),

(c) (i) any Person that is or becomes a Company Competitor and is (A) identified in writing by the Lead Borrower to the Lead Arranger on or prior to the Closing Date and (B) any Person identified in writing by the Lead Borrower to the Administrative Agent on or after the Closing Date, and (ii) any Affiliate of any Person described in clause (c)(i) above (other than a Company Competitor Debt Fund Affiliate) that is identified in writing by the Lead Borrower to the Administrative Agent as such, and

(d) any Affiliate of any Person described in clauses (a) or (c) above that is readily identifiable as an Affiliate of such Person on the basis of such Affiliate's name, other than, in the case of clause (c) above, a Company Competitor Debt Fund Affiliate (unless specified pursuant to clause (a));

it being understood and agreed that the identification of any Person as a Disqualified Institution after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan, subject, in the case of assignments and participations made after the date on which any such Person is identified as a Disqualified Institution, to the provisions of Section 9.05.

"Dollars" or "$" refers to lawful money of the U.S.

"Domestic Subsidiary" means any Subsidiary incorporated or organized under the laws of the U.S., any state thereof, the District of Columbia or, solely for purposes of Section 5.12(a), any Applicable Country.

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

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

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

"Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

"Eligible Assignee" has the meaning set forth in Section 9.05(a)(i).

"Environment" means ambient air, indoor air, surface water, groundwater, drinking water, land surface and subsurface strata and natural resources such as wetlands, flora and fauna.

"Environmental Claim" means any investigation, notice of liability, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any Environmental Law; (b) in connection with any Hazardous Material; or (c) in connection with any actual or alleged damage, injury, threat or harm to the Environment.

"Environmental Laws" means any and all applicable foreign or domestic, federal or state (or any subdivision of any of them) laws, statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other applicable requirements of or binding agreements with Governmental Authorities and the common law, now or hereafter in effect, relating to (a) protection of the Environment or (b) the generation, management, use, storage, transportation or disposal of or exposure to hazardous materials or any other Hazardous Materials Activity.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) resulting from or based upon (a) any Environmental Law, (b) the generation, management, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials or any other Hazardous Materials Activity, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement to the extent liability is assumed or imposed with respect to any of the foregoing.

"Equity Funded Employee Plan Costs" means cash costs or expenses, incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent funded with cash proceeds contributed to the capital of the Lead Borrower or net cash proceeds of an issuance of Qualified Capital Stock of the Lead Borrower or Capital Stock of any direct or indirect parent of the Lead Borrower (other than any amount designated as a Cure Amount, any Available Excluded Contribution Amount or any amount used in calculating the Available Amount).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is under common control with the Borrowers or any Restricted Subsidiary and is treated as a single employer within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 412 of the Code, under Section 414 of the Code.

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrowers or any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations at any facility of the Borrowers or any Restricted Subsidiary or any ERISA Affiliate as described in Section 4062(e) of ERISA, in each case, resulting in liability pursuant to Section 4063 of ERISA; (c) a complete or partial withdrawal by the Borrowers or any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on the Borrowers or any Restricted Subsidiary, written notification of the Borrowers or any Restricted Subsidiary or any ERISA Affiliate concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is "insolvent" within the meaning of Section 4245 of ERISA

or has been determined to be in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing of a notice of intent to terminate a Pension Plan under Section 4041(c) of ERISA, the treatment of a Pension Plan amendment as a termination under Section 4041(c) of ERISA, the commencement of proceedings by the PBGC to terminate a Pension Plan or the receipt by the Borrowers or any Restricted Subsidiary or any ERISA Affiliate of notice of the treatment of a Multiemployer Plan amendment as a termination under Section 4041A of ERISA or of notice of the commencement of proceedings by the PBGC to terminate a Multiemployer Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrowers or any Restricted Subsidiary or ERISA Affiliates; (g) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (h) the conditions for imposition of a Lien under Section 303(k) of ERISA have been met with respect to any Pension Plan.

"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.

"Euros" means lawful currency of the European Union.

"Event of Default" has the meaning assigned to such term in Article 7.

"Excess Cash Flow" means, for any Excess Cash Flow Period, an amount equal to:

(a) the sum, without duplication, of:

(i) Consolidated Net Income for such Excess Cash Flow Period; *provided*, for the avoidance of doubt, Consolidated Net Income for purposes of this clause (a)(i) shall not exceed Consolidated Net Income calculated for purposes determining Consolidated EBITDA (subject to the caps set forth therein) for such Excess Cash Flow Period,

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortization) to the extent deducted in arriving at such Consolidated Net Income,

(iii) decreases in Consolidated Working Capital for such Excess Cash Flow Period (other than (A) any such decreases arising from acquisitions or dispositions by the Lead Borrower and its Restricted Subsidiaries completed during such Excess Cash Flow Period or (B) reclassification of items from short-term to long-term or vice versa in accordance with GAAP),

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Lead Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period (other than sales in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income, and

(v) expenses deducted from Consolidated Net Income during such Excess Cash Flow Period in respect of expenditures made during any prior Excess Cash Flow Period for which a deduction from Excess Cash Flow was made in such Excess Cash Flow Period pursuant to clause (b)(xi), (xii), (xiii), (xv) or (xvi) below, *minus*

(b) the sum, without duplication, of:

(i) an amount equal to the amount of allnon-cash gains and credits included in arriving at such Consolidated Net Income (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of any Permitted Acquisition or other consummated acquisition permitted hereunder), and Transaction Costs to the extent not deducted in arriving at such Consolidated Net Income and paid in cash during such period, and cash charges, losses, costs, fees or expenses to the extent excluded in arriving at such Consolidated Net Income during such period,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior Excess Cash Flow Periods, the amount of any Consolidated Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property to the extent not expensed or accrued during such Excess Cash Flow Period, to the extent that such Consolidated Capital Expenditures, Capitalized Software Expenditures or acquisitions were financed with Internally Generated Cash,

(iii) to the extent financed with Internally Generated Cash, the aggregate amount of all principal payments of Indebtedness of the Lead Borrower and its Restricted Subsidiaries (including (A) the principal component of payments in respect of Capital Leases, (B) [reserved], (C) [reserved] and (D) payments of earn-outs or seller notes or notes converted from an earn-out, but excluding all prepayments in respect of any revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder),

(iv) an amount equal to the aggregate net non-cash gain on dispositions by the Lead Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period (other than dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital for such Excess Cash Flow Period (other than (A) any such increases arising from acquisitions or dispositions by the Lead Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period or (B) reclassification of items from short-term to long-term or vice versa in accordance with GAAP),

(vi) cash payments by the Lead Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period in respect of long-term liabilities of the Lead Borrower and its Restricted Subsidiaries other than Indebtedness to the extent such payments are not expensed during such Excess Cash Flow Period or are not deducted in calculating Consolidated Net Income and to the extent financed with Internally Generated Cash,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior Excess Cash Flow Periods, at the election of the Lead Borrower, the amount of any Investments or acquisitions during such Excess Cash Flow Period pursuant to Section 6.06 (other than Investments in any Borrower or any Restricted Subsidiary), to the extent that such Investments and acquisitions were financed with Internally Generated Cash,

(viii) at the election of the Lead Borrower, the amount of Restricted Payments paid during such Excess Cash Flow Period pursuant to Section 6.04(a) (other than Restricted Payments paid to any Borrower or any Restricted Subsidiary), to the extent such Restricted Payments were financed with Internally Generated Cash,

(ix) the aggregate amount of expenditures actually made by the Lead Borrower and its Restricted Subsidiaries in cash during such Excess Cash Flow Period (including Consolidated Capital Expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such Excess Cash Flow Period, in each case to the extent financed with Internally Generated Cash,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Lead Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period that are required to be made in connection with any prepayment of Indebtedness, in each case to the extent financed with Internally Generated Cash,

(xi) without duplication of amounts deducted from Excess Cash Flow in prior Excess Cash Flow Periods and, at the option of the Lead Borrower, (1) the aggregate consideration required to be paid in cash by the Lead Borrower and its Restricted Subsidiaries pursuant to binding contracts or executed letters of intent (the "Contract Consideration") entered into (x) prior to or during such Excess Cash Flow Period (including all contracts on account of which the Lead Borrower or any of its Subsidiaries have deferred revenue) or (y) at the election of the Lead Borrower, any Contract Consideration paid after year-end and prior to when such Excess Cash Flow prepayment is due, and (2) any planned cash expenditures by the Lead Borrower or any of the Restricted Subsidiaries, in the case of each of clauses (1) and (2) relating to Permitted Acquisitions, Investments, Consolidated Capital Expenditures or Capitalized Software Expenditures to be consummated or made during the period of four consecutive Fiscal Quarters following the end of the applicable Excess Cash Flow Period, *plus* any restructuring cash expenses, pension payments or tax contingency payments then due and payable that have been added to Excess Cash Flow pursuant to clause (a)(ii) above; *provided* that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such acquisitions, Investments, Consolidated Capital Expenditures or Capitalized Software Expenditures during such Excess Cash Flow Period is less than the Contract Consideration, together with the amount of planned cash expenditures pursuant to clause (2) above, the amount of such shortfall shall be added to the calculation of Excess Cash Flow for the next Fiscal Year,

(xii) without duplication of amounts deducted from Excess Cash Flow in prior Excess Cash Flow Periods, the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such Excess Cash Flow Period, *plus* the amount of cash distributions with respect to taxes made in such Excess Cash Flow Period under Section 6.04, in each case, to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such Excess Cash Flow Period,

(xiii) cash expenditures in respect of Swap Contracts during such Excess Cash Flow Period to the extent not deducted in arriving at such Consolidated Net Income,

(xiv) any payment of cash to be amortized or expensed over a future Excess Cash Flow Period and recorded as a long-term asset,

(xv) at the election of the Lead Borrower, reimbursable or insured expenses incurred during such Excess Cash Flow Period to the extent that such reimbursement has not yet been received and to the extent not deducted in arriving at such Consolidated Net Income,

(xvi) cash expenditures for costs and expenses (including retention, recruiting, relocation, stay and signing bonuses and expenses) in connection with the Transactions (including all Transaction Costs, but excluding any consideration paid to any Affiliate of the Lead Borrower), acquisitions, Investments, Restricted Payments, dispositions and the issuance of equity interests or Indebtedness, repayments of debt, refinancing transactions or amendments or other modifications of any debt instrument (including, in each case, any such transaction consummated on the Closing Date and any such transaction undertaken but not completed), in each case to the extent not deducted in arriving at such Consolidated Net Income,

(xvii) payments by the Lead Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period in respect of purchase price holdbacks, earn-outs, other contingent obligations and long-term liabilities (other than the current portion thereof) of the Lead Borrower and its Restricted Subsidiaries other than Indebtedness (including purchase price holdbacks, earn-outs, seller notes or notes converted from earn-outs and similar obligations), to the extent not already deducted from Consolidated Net Income and to the extent financed with Internally Generated Cash; and

(xviii) any cash fees, costs and expenses incurred in connection with the implementation of ASC 606.

Notwithstanding anything in the definition of any term used in the definition of "Excess Cash Flow" to the contrary, all components of Excess Cash Flow shall be computed for the Lead Borrower and its Restricted Subsidiaries on a consolidated basis.

"Excess Cash Flow Period" shall mean each full Fiscal Year of the Lead Borrower commencing after the Closing Date.

"Exchange Act" means the Securities Exchange Act of 1934 and the rules and regulations of the SEC promulgated thereunder.

"Excluded Assets" means (unless otherwise elected by the Lead Borrower) (i) any fee owned real property (including any Real Estate Asset) and any leasehold rights and interests in real property (including any Real Estate Asset) (it being understood and agreed that there shall be no requirement on the part of the Loan Parties to deliver landlord or other third-party waivers, estoppels, consents or collateral access letters), (ii) motor vehicles, airplanes and other assets subject to certificates of title, (iii) Commercial Tort Claims for which a claim with a value of less than $2,500,000 is made, (iv) any lease related to or any property subject to a purchase money security interest, Capital Lease or similar arrangements, in each case, to the extent permitted under the Loan Documents, to the extent that a grant of a security interest therein would violate or invalidate such lease, purchase money, Capital Lease or a similar arrangement or create a right of termination or consent in favor of any other party thereto (other than of the Lead Borrower or a Restricted Subsidiary) (it being understood and agreed that there shall be no obligation to seek or obtain such consent), (v) any lease, license, permit, franchise or other agreement, and the property subject thereto, in each case, to the extent that a grant of a security interest therein (A) is prohibited by applicable Law other than to the extent such prohibition is rendered ineffective under the UCC notwithstanding such prohibition or (B) to the extent and for so long as it would violate the terms thereof (in each case of clauses (v)(A) and (B), after giving effect to the relevant provisions of the UCC) or would give rise to a termination or governmental or other third-party consent right (other than of the Lead Borrower or a Restricted Subsidiary) thereunder

(except to the extent such provision is overridden by the UCC), (vi)(A) Margin Stock and (B)(1) to the extent not permitted by the terms of such Person's organizational or joint venture documents (so long as such documents are not entered into for the sole purpose of evading the "Collateral and Guarantee Requirements" set forth herein as determined by the Lead Borrower in good faith), Capital Stock in any Person other than the Borrowers and other Wholly-owned Restricted Subsidiaries of the Lead Borrower and (2) Capital Stock in any Person in an amount in excess of the amounts required to be pledged under the definition of "Collateral and Guarantee Requirement" above (and excluding, for the avoidance of doubt, Excluded Pledged Subsidiaries), (vii) any property subject to a Lien permitted by Sections 6.02(n) or (k) (to the extent relating to a Lien originally incurred pursuant to Sections 6.02(n)) or (o) solely to the extent that a security interest therein is prohibited by the terms of the agreements governing such Lien, and such prohibition existed at the time such Restricted Subsidiary becomes a Loan Party (and was not incurred in contemplation thereof)), (viii) any property or assets (I) of any Subsidiary that is a CFC, CFC Holdco or a Subsidiary of a CFC or CFC Holdco or (II) for which the creation or perfection of pledges of, or security interests in, could result in adverse tax consequences (other than de minimis tax consequences) or adverse regulatory consequences to the Borrowers or any of their Subsidiaries, each as reasonably determined by the Lead Borrower, in consultation with (but without the consent of) the Administrative Agent, (ix) Letter of Credit Rights with a value of less than $2,500,000, except to the extent constituting support obligations for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement (it being understood and agreed that no actions shall be required to perfect a security interest in Letter of Credit Rights, other than the filing of a UCC financing statement), (x) Deposit Accounts or securities accounts maintained and used (I) for payroll or payroll taxes, (II) for withholding tax or other tax accounts, including without limitation, sales tax accounts, (III) for employee benefits or wages, (IV) as escrow, trust or any other fiduciary account, (V) zero balance accounts, (VI) cash collateral accounts securing credit card facilities, or merchant accounts permitted hereunder, (VII) accounts that are used as cash collateral or escrow accounts or otherwise with third parties to the extent such deposits or securities therein constitute Liens permitted hereunder, (VIII) accounts that are maintained outside of the United States, (IX) to support performance bonds or (X) accounts in which the average daily balance of any five (5) consecutive Business Day period does not exceed $500,000 in the aggregate for all such accounts, taken as a whole, (xi) any intent-to-use Trademark application prior to the filing and acceptance of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use Trademark application or any registration that issues therefrom under applicable federal Law, (xii) particular assets if and for so long as, if reasonably agreed by the Administrative Agent and the Lead Borrower, the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance, surveys, abstracts or appraisals in respect of such assets is excessive in relation to the practical benefits to be obtained by the Lenders therefrom, (xiii) any assets of any Subsidiary of the Lead Borrower which is not a Loan Party, (xiv) [reserved], (xv) [reserved] and (xvi) Capital Stock and assets of Captive Insurance Subsidiaries, Subsidiaries that are not Material Subsidiaries, Unrestricted Subsidiaries and each other Excluded Pledged Subsidiary (other than, in each case, any such Subsidiary that is a Loan Party); *provided*, *however*, that Excluded Assets shall not include any proceeds, substitutions or replacements of any Excluded Assets referred to in clauses (i) through (xvi) (unless such proceeds, substitutions or replacements would independently constitute Excluded Assets referred to in clauses (i) through (xvi)).

"Excluded Party" has the meaning assigned to such term in clause (b) of the definition of "Disqualified Institution".

"Excluded Pledged Subsidiary" means (a) any Subsidiary for which the pledge of its Capital Stock is prohibited by applicable Law or, solely in the case of a newly acquired Subsidiary, by Contractual Obligation in existence at the time of acquisition but not entered into for the sole purpose of evading the "Collateral and Guarantee Requirements" set forth herein, or for which governmental (including regulatory)

consent, approval, license or authorization would be required unless such consent, approval, license or authorization has been received (it being understood and agreed that there shall be no obligation to seek or obtain such consent, approval, license or authorization), (b) any other Subsidiary with respect to which, to the extent reasonably agreed by the Lead Borrower and the Administrative Agent, the burden or cost or other consequences (including any adverse tax or regulatory consequences (other than de minimis tax or regulatory consequences)) of the pledge of its Capital Stock shall be excessive in view of the benefits to be obtained by the Lenders therefrom (as reasonably determined by the Lead Borrower in consultation with (but without the consent of) the Administrative Agent), (c) any not-for-profit Subsidiaries, (d) any special purpose vehicle (or similar entity) and (e) any Unrestricted Subsidiary.

"Excluded Subsidiary" means, unless otherwise elected by the Lead Borrower, (a) any Subsidiary that is not a Wholly-owned Domestic Subsidiary of the Lead Borrower or a Guarantor and each joint venture, (b) any Subsidiary for which guarantees of the Obligations are (i) prohibited by applicable Law, rule or regulation or require consent, approval, license or authorization of a Governmental Authority, unless such consent, approval, license or authorization has been received; *provided*, that there shall be no obligation to obtain such consent, approval, license or authorization or (ii) contractually prohibited on the Closing Date or, following the Closing Date, the date of the acquisition thereof, so long as such prohibition exists and so long as such prohibition is not created for the sole purpose of evading the "Collateral and Guarantee Requirements" set forth herein, (c) any Subsidiary with respect to which, in the reasonable judgment of the Lead Borrower and the Administrative Agent, the burden or cost of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom (giving due consideration to regulatory, accounting and tax consequences), (d) any not-for-profit Subsidiaries, (e) any Unrestricted Subsidiaries, (f) any special purpose vehicle (or similar entity), (g) any direct or indirect Subsidiary of the Lead Borrower or a Guarantor that is a CFC Holdco or a CFC, (h) any Subsidiary that is a direct or indirect Subsidiary of a Subsidiary of the Lead Borrower or a Guarantor that is a CFC Holdco or a CFC, (i) Captive Insurance Subsidiaries and any other Excluded Pledged Subsidiary, (j) any Subsidiary that is not a Material Subsidiary, (k) any broker-dealer Subsidiary, (l) any receivables Subsidiary and (m) any Subsidiary acquired pursuant to a Permitted Acquisition or other Investment permitted under this Agreement and financed with assumed Indebtedness permitted to be incurred pursuant to this Agreement (and not incurred in contemplation of such Permitted Acquisition or Investment), and each Restricted Subsidiary acquired in such Permitted Acquisition or other Investment permitted hereunder that guarantees such Indebtedness, in each case in this clause (k), to the extent that, and for so long as, the documentation relating to such Indebtedness to which such Subsidiary is a party prohibits such Subsidiary from guaranteeing the Obligations and such prohibition is not created in contemplation of such Permitted Acquisition or other Investment permitted hereunder.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Loan Guaranty of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Loan Guaranty thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.18 of the Loan Guaranty and any other "keepwell", support or other agreement for the benefit of such Loan Party) at the time the Loan Guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation or (b) in the case of any Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Party is a "financial entity," as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee provided by (or grant of such security interest by, as applicable) such Loan Party becomes or would become effective with respect to such Swap Obligation. If any Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Loan Guaranty or security interest is or becomes illegal.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient (in each case, a "Recipient") of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) Taxes imposed on (or measured by) its net or gross income (however denominated) or franchise Taxes (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office located in or, in the case of any Lender, having its applicable lending office located in, the taxing jurisdiction or (ii) that are Other Connection Taxes (*provided* that, for the avoidance of doubt, imposition of any Taxes by withholding shall not result in such Taxes being treated as gross income taxes), (b) any branch profits Taxes imposed under Section 884(a) of the Code or any similar Tax imposed by any jurisdiction described in clause (a), (c) any U.S. federal withholding tax that is imposed on amounts payable to the relevant Recipient pursuant to a Requirement of Law in effect at the time the relevant Recipient becomes a party to this Agreement (or designates a new lending office), except (i) in the case of a Recipient that became a recipient pursuant to an assignment under Section 2.19 or a Recipient that designates a new lending office under Section 2.19 and (ii) to the extent that the relevant Recipient (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to Section 2.17, (d) any tax imposed as a result of a failure by such Recipient to comply with Section 2.17(f) and (e) any withholding taxes imposed under FATCA.

"Existing Revolving Credit Commitment" has the meaning set forth in Section 2.23(b).

"Existing Revolving Credit Facility" has the meaning set forth in Section 2.23(b).

"Existing Revolving Loans" has the meaning set forth in Section 2.23(b).

"Extended Revolving Credit Commitment" has the meaning assigned to such term in Section 2.23(b).

"Extended Revolving Loans" means one or more Classes of Revolving Loans that result from an Extension Amendment.

"Extending Revolving Lender" has the meaning assigned to such term in Section 2.23(c).

"Extension Amendment" has the meaning assigned to such term in Section 2.23(d).

"Extension Election" has the meaning assigned to such term in Section 2.23(c).

"Fair Market Value" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as determined in good faith by the Lead Borrower.

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

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; *provided* that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Fee Letter" means that certain Fee Letter, dated as of the Closing Date, by and among the Borrowers and the Administrative Agent.

"First Merger" has the meaning assigned to such term in the recitals to this Agreement.

"First Priority" means, with respect to any Lien purported to be created on any Collateral pursuant to any Collateral Document, that, subject to any applicable Acceptable Intercreditor Agreement, such Lien is senior in priority to any other Lien to which such Collateral is subject, other than any Permitted Lien.

"Fiscal Quarter" means each period of three months ending on March 31, June 30, September 30 and December 31.

"Fiscal Year" means the twelve month period ending on December 31.

"Fixed Amounts" has the meaning assigned to such term in Section 1.10.

"Fixed Charge Coverage Ratio" means for the Lead Borrower and its Restricted Subsidiaries on a consolidated basis the ratio of (a) Consolidated Adjusted EBITDA for the most recently completed Test Period *less* the aggregate amount of Federal, state, local and foreign income taxes paid in cash during such Test Period, *less* the aggregate amount of all Consolidated Capital Expenditures paid during such Test Period (except (i) to the extent financed with long term Indebtedness (other than Revolving Loans) and (ii) investments made in research and development up to $5,000,000), *less*, to the extent not already deducted from Consolidated Adjusted EBITDA, Management Fees (but not, for the avoidance of doubt, any expenses or indemnities) paid in cash during such period by the Borrowers and the Restricted Subsidiaries to (b) Fixed Charges for the most recently completed Test Period.

"Fixed Charges" means, with reference to any period, without duplication, the sum of (a) Designated Cash Interest Expense for such period, plus (b) the aggregate amount of scheduled principal payments in respect of Indebtedness for borrowed money of the Borrowers and their Restricted Subsidiaries paid or payable in Cash during such period (other than (i) payments made by any Borrower or any Restricted Subsidiary to the Borrowers or any Restricted Subsidiary and in any case, excluding any earn-out obligation, purchase price adjustment and intercompany Indebtedness and (ii) scheduled principal payments in respect of such Indebtedness "paid in kind" or paid with Capital Stock), plus (c) scheduled payments in respect of Capital Leases paid or payable in Cash during such period to the extent allocated to principal in accordance with GAAP, all calculated for such period for the Borrowers and their Restricted Subsidiaries on a consolidated basis during such period. For purposes of determining the amount of principal allocated to scheduled payments under Capital Leases under this definition, interest in respect of any Capital Lease of any Person shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capital Lease in accordance with GAAP.

"Foreign Lender" means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"Foreign Subsidiary" means any direct or indirect Restricted Subsidiary or any Guarantor that is not a Domestic Subsidiary.

"GAAP" means generally accepted accounting principles in the United States of America, as in effect from time to time*provided, however*, that, subject to Section 1.04, if the Lead Borrower notifies the Administrative Agent that the Lead Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through conforming changes made consistent with IFRS) on the operation of such provision (or if the Administrative Agent notifies the Lead Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through conforming changes made consistent with IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government, or any supra-national bodies (such as the European Union or the European Central Bank).

"Governmental Authorization" means any permit, license, authorization, approval, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Granting Lender" has the meaning assigned to such term in Section 9.05(h).

"Guarantee" of or by any Person (for purposes of this definition, the "Guarantor") means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (for purposes of this definition, the "Primary Obligor") in any manner and including any obligation of the Guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (f) secured by any Lien on any assets of such Guarantor securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness or other monetary obligation to obtain any such Lien); *provided* that the term "Guarantee" shall not include (i) endorsements of instruments for deposit or collection in the ordinary course of business or (ii) customary and reasonable indemnity obligations or product warranties in effect on the Closing Date or entered into in connection with any acquisition, disposition of assets or other transactions permitted under this Agreement (other than such obligations with respect to Indebtedness). 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.

"Guarantors" means (1) each Borrower with respect to the obligations of each other Borrower, any Banking Services Obligations or Secured Hedging Obligations owing by any Loan Party or any of its Restricted Subsidiaries and any Swap Obligation of a Non-ECP Guarantor (as defined in the Loan Guaranty) (determined before giving effect to Section 3.18 of the Loan Guaranty) under the Loan Guaranty, (2) each existing Restricted Subsidiary that is a direct or indirect Wholly-owned Material Domestic Subsidiary (other than any Excluded Subsidiary) as of the Closing Date and not designated as a Borrower hereunder and (3) each subsequently acquired or organized (including, without limitation, by division) Restricted Subsidiary that is a direct or indirect Wholly-owned Material Domestic Subsidiary (other than any Excluded Subsidiary) and not designated as a Borrower hereunder that shall become a Guarantor pursuant to Section 5.12. For the avoidance of doubt, the Lead Borrower may (subject to the terms of clauses (b) and (e) of the "Collateral and Guarantee Requirement") elect to cause any Restricted Subsidiary that is not a Guarantor to cease to be an Excluded Subsidiary and to Guarantee the Secured Obligations by causing such Restricted Subsidiary to execute a joinder to this Agreement and/or the Loan Guaranty in form and substance reasonably satisfactory to the Administrative Agent and the Lead Borrower and causing such Restricted Subsidiary to satisfy the Collateral and Guarantee Requirement, whereupon any such Restricted Subsidiary shall be a Guarantor, Loan Party and Subsidiary Guarantor (but not a Borrower) hereunder for all purposes.

"Hazardous Materials" means any pollutant, contaminant, waste or chemical, including any material, substance or waste, or any constituent thereof, which is classified, defined, regulated or otherwise characterized as "hazardous", or "toxic" or as a "pollutant" or "contaminant" or words of similar meaning or regulatory effect pursuant to Environmental Laws.

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

"Hedge Agreement" means any agreement with respect to any Derivative Transaction between any Loan Party or any Restricted Subsidiary and any other Person.

"Hedge Bank" means any Person that is (x) a Lender or an Affiliate of a Lender or Agents at the time it enters into a Hedge Agreement the obligations under which constitute Secured Hedging Obligations or (y) at the option of the Lead Borrower, any other Person, in each case, in its capacity as a party thereto and that is designated a "Hedge Bank" with respect to such Hedge Agreement in a writing from the Lead Borrower to the Administrative Agent, and (other than a Person already party hereto as a Lender or Agents) that delivers to the Administrative Agent a letter agreement reasonably satisfactory to it (i) appointing the Administrative Agent as its agent under the applicable Loan Documents and (ii) agreeing to be bound by Sections 9.03, 9.10 and 9.11 and Article 8 as if it were a Lender; *provided* that the aggregate principal amount of the Hedging Obligations owed to all Persons so designated pursuant to the foregoing clause (y) at any time (other than in respect of purchasing card services, performance bonds and letters of credit permitted under Section 6.01, in each case, in the ordinary course of business) which may be secured as an Obligation, shall not exceed $5,000,000 in the aggregate.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

"ICC" has the meaning assigned to such term in Section 2.05(j).

"ICC Rule" means each of ISP and UCP.

"Identified Disqualified Lender" has the meaning assigned to such term in the definition of "Disqualified Institution".

"Immediate Family Member" means, with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual's estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"IFRS" means international accounting standards as promulgated by the International Accounting Standards Board.

"Incremental Commitment" has the meaning set forth in Section 2.22(a).

"Incremental Facility Agreement" has the meaning set forth in Section 2.22(e).

"Incremental Facility Closing Date" has the meaning set forth in Section 2.22(c).

"Incremental Revolving Facility" has the meaning set forth in Section 2.22(a).

"Incremental Revolving Lender" has the meaning set forth in Section 2.22(b).

"Incremental Revolving Loans" has the meaning set forth in Section 2.22(a).

"Incurrence-Based Amounts" has the meaning assigned to such term in Section 1.10.

"Indebtedness" as applied to any Person means, without duplication:

(a) all indebtedness for borrowed money;

(b) that portion of obligations with respect to Capital Leases to the extent recorded as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(c) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(d) any obligation of such Person owed for all or any part of the deferred purchase price of property or services;

(e) indebtedness described in clauses (a) through (d) and (f) through (j) (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 and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) the face amount of all letters of credit (including standby and commercial), bankers' acceptances, and bank guaranties issued or created by or for the account of such Person;

(g) all obligations of such Person in respect of any Disqualified Capital Stock;

(h) net obligations of such Person under any Swap Contract; and

(i) to the extent not otherwise included above, all Guarantees of such Person in respect of Indebtedness of the type described in clauses (a) through (h) in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (B) exclude (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation until such obligation is not paid for fifteen (15) Business Days after becoming earned, due and payable, (iii) accruals for payroll and other liabilities accrued in the ordinary course of business, (iv) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, (v) contingent obligations incurred in the ordinary course of business, (vi) deferred Taxes, deferred and prepaid or deferred revenue, in each case arising in the ordinary course of business and (vii) customary obligations under employment agreements and deferred compensation; *provided, further*, that Indebtedness of any direct or indirect parent company appearing upon the balance sheet of the Lead Borrower solely by reason of push down accounting under GAAP shall be excluded. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith.

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

"Indemnitee" has the meaning assigned to such term in Section 9.03(b).

"Information" has the meaning assigned to such term in Section 9.13.

"Initial Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Initial Revolving Loans (and acquire participations in Letters of Credit and Swingline Loans) hereunder as set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender assumed its Initial Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 or 2.19, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05 or (c) increased pursuant to Section 2.22. The aggregate amount of the Initial Revolving Credit Commitments as of the Closing Date is $50,000,000.

"Initial Revolving Credit Exposure" means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of all Initial Revolving Loans of such Lender, plus the aggregate amount at such time of such Lender's LC Exposure and Swingline Exposure, in each case, attributable to its Initial Revolving Credit Commitment.

"Initial Revolving Credit Maturity Date" means the date that is four years after the Closing Date.

"Initial Revolving Facility" means the Initial Revolving Credit Commitments and the Initial Revolving Loans and other extensions of credit thereunder.

"Initial Revolving Lender" means any Lender with an Initial Revolving Credit Commitment or any Initial Revolving Credit Exposure.

"Initial Revolving Loans" means any revolving loans made by the Initial Revolving Lenders to the Borrowers pursuant toSection 2.01(a)(ii).

"Intellectual Property Security Agreement" means any agreement, or a supplement thereto, executed on or after the Closing Date confirming or effecting the grant of any security interest on IP Rights owned by any Loan Party to the Administrative Agent, for the benefit of the Secured Parties, in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement substantially in the form of an exhibit thereto.

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

"Interest Period" means, as to each BSBY Rate Loan, the period commencing on the date such BSBY Rate Loan is disbursed or converted to or continued as a BSBY Rate Loan and ending on the date one (1), three (3) or six (6) months thereafter (in each case, subject to availability), as selected by the Lead Borrower in its Loan Notice; *provided* that:

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

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

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

"Internally Generated Cash" means, with respect to any Person, funds of such Person not constituting proceeds of the incurrence of long-term Indebtedness (other than revolving indebtedness or intercompany indebtedness) of such Person and its Restricted Subsidiaries.

"Investment" means, as to any Person, (a) the purchase or other acquisition of Capital Stock or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or

division of such Person; *provided*, that, in the event that any Investment is made by any Borrower or any Restricted Subsidiary in any Person through substantially concurrent interim transfers of any amount through the Lead Borrower or any Restricted Subsidiary, then such other substantially concurrent interim transfers shall be disregarded for purposes of Section 6.06. For purposes of covenant compliance, the amount of any Investment at any time shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment, less any Returns in respect of such Investment.

"Investment Grade Securities" shall mean:

(i) securities issued or directly, fully and unconditionally guaranteed by the United States government or any agency or instrumentality thereof (other than Cash Equivalents),

(ii) debt securities or debt instruments with an investment grade rating, but excluding any debt securities or instruments constituting loans or advances among the Lead Borrower and its Subsidiaries, and

(iii) investments in any fund that invests all or substantially all of its assets in investments of the type described in clauses (i) and (ii), which fund may also hold immaterial amounts of cash pending investment or distribution.

"Investors" means (a) the Sponsor, (b) the Management Investors and (c) any Permitted Transferee of any of the foregoing Persons.

"IP Rights" has the meaning assigned to such term in Section 3.05(c).

"IRS" means the United States Internal Revenue Service.

"ISP" has the meaning assigned to such term in Section 2.05(j).

"Issuing Bank" means Bank of America, N.A. in its capacity as issuer of Letters of Credit hereunder and any successor issuer of Letters of Credit hereunder. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by any branch or Affiliate of the Issuing Bank, in which case the term "Issuing Bank" shall include any such branch or Affiliate with respect to Letters of Credit issued by such branch or Affiliate.

"Junior Indebtedness" means any Indebtedness (other than Indebtedness among the Lead Borrower and/or their Restricted Subsidiaries) of the Lead Borrower or any of its Restricted Subsidiaries that is unsecured or that is expressly subordinated in right of payment to the Obligations or unsecured Indebtedness.

"Junior Lien Indebtedness" means any Indebtedness that is secured by a security interest on the Collateral (other than Indebtedness among the Lead Borrower and/or its Restricted Subsidiaries) that is expressly junior or subordinated to the Lien securing the Revolving Facility with respect to the Collateral.

"Latest Revolving Credit Maturity Date" means, as of any date of determination, the latest maturity or expiration date applicable to any Revolving Loan or Revolving Credit Commitment hereunder at such time including the latest maturity or expiration date of any Additional Revolving Loans or Additional Revolving Credit Commitments.

"Law" means any federal, state, local or foreign law, statute, code or ordinance, or any rule or regulation promulgated by any Governmental Authority.

"LC Collateral Account" has the meaning assigned to such term in Section 2.05(i).

"LC Disbursement" means a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the Outstanding Amount of all outstanding Letters of Credit at such time (if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn) and (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall equal its Applicable Revolving Percentage of the aggregate LC Exposure at such time.

"LCT Election" has the meaning assigned to such term in Section 1.11(g).

"LCT Test Date" has the meaning assigned to such term in Section 1.11(g).

"Lead Arranger" means Bank of America, N.A., in its capacities as sole lead arranger and sole bookrunner.

"Lead Borrower" shall have the meaning provided in the preamble to this Agreement.

"Legal Reservations" means the application of relevant Debtor Relief Laws, general principles of equity and/or principles of good faith and fair dealing, (i) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties and (ii) the effect of foreign Laws, rules and regulations as they relate to pledges of Capital Stock in or Indebtedness owed by Foreign Subsidiaries.

"Lenders" means the Revolving Lenders, any lender with an Additional Commitment or an outstanding Additional Revolving Loan and any other Person that becomes a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Lender Recipient Party" means collectively, any Lender, the Issuing Bank, and the Swingline Lender.

"Letter of Credit" means any Standby Letter of Credit issued pursuant to this Agreement.

"Letter of Credit Right" has the meaning set forth in Article 9 of the UCC.

"Letter of Credit Sublimit" means $5,000,000, subject to increase in accordance with Section 2.22 hereof.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capital Lease having substantially the same economic effect as any of the foregoing), in each case, in the nature of security; *provided* that in no event shall an operating lease in and of itself be deemed to constitute a Lien.

"Limited Condition Transaction" means any (i) Permitted Acquisition or other permitted acquisition of any assets, business or person or Investment (including acquisitions subject to a letter of intent or purchase agreement), in each case, the consummation of which is not conditioned on the availability of, or on obtaining, financing, (ii) redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment, (iii) Disposition or (iv) Restricted Payment.

"Loan Documents" means this Agreement, any Promissory Note, the Loan Guaranty, the Collateral Documents, any Acceptable Intercreditor Agreements, each Refinancing Amendment, each Incremental Facility Agreement, each Extension Amendment and any other document or instrument designated by the Borrowers and the Administrative Agent as a "Loan Document." Any reference in this Agreement or any other Loan Document to any Loan Document shall include all appendices, exhibits or schedules thereto.

"Loan Guaranty" means (a) the Guaranty Agreement as of the Closing Date executed by each Loan Party party thereto and the Administrative Agent for the benefit of the Secured Parties, as supplemented in accordance with the terms of Section 5.12 and (b) solely with respect to any Foreign Subsidiary designated as a Guarantor pursuant to the definition of "Guarantor", any local law guaranty that may have been executed by such Foreign Subsidiary.

"Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of BSBY Rate Loans, pursuant to Section 2.03, which shall be substantially in the form of Exhibit B or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Lead Borrower.

"Loan Parties" means the Borrowers and each Guarantor.

"Loans" means any Revolving Loan, any Replacement Revolving Loan, Swingline Loan, any Additional Revolving Loan, or any Extended Revolving Loans, as the context requires.

"Management Fees" means any periodic management, advisory, monitoring or consulting fees paid by any Loan Party or Restricted Subsidiary to the Sponsor or its Affiliates.

"Management Investors" means any current or former director, officer, employee or member of management of the Lead Borrower or any of its Subsidiaries or any direct or indirect parent company thereof (including with respect to warrants and options) in the Lead Borrower or any direct or indirect parent thereof.

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

"Market Intercreditor Agreement" means an intercreditor agreement substantially in a form to be mutually agreed in good faith among the Lead Borrower and the Administrative Agent and the representatives for purposes thereof for holders of one or more classes of Indebtedness pari passu in right of payment and security (other than the Obligations) or secured by a Lien junior in priority to those securing the Obligations which shall be on customary terms in light of prevailing market conditions, which if deemed reasonably necessary by the Administrative Agent shall be posted to the Lenders not less than five Business Days before execution thereof and, if the Required Lenders shall not have objected to such agreement within

five Business Days after posting, then the Required Lenders shall be deemed (a) to have agreed that the Administrative Agent's entry into such intercreditor agreement (with such changes as the Administrative Agent deems reasonably necessary) is reasonable and to have consented to such intercreditor agreement (with such changes as the Administrative Agent and the Lead Borrower deem reasonably necessary) and to the Administrative Agent's execution thereof and (b) to have directed the Administrative Agent to execute such agreement.

"Material Adverse Effect" means (a) on the Closing Date, a "Material Adverse Effect" (as defined in the Merger Agreement) or (b) after the Closing Date, any event, circumstance or condition that has had or could reasonably be expected to have (i) a material and adverse effect on the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Lead Borrower and its Restricted Subsidiaries, taken as a whole, (ii) a material adverse effect on material remedies (taken as a whole) of the Administrative Agent and the Lenders under this Agreement and the other Loan Documents or (iii) a material adverse effect on the ability of the Lead Borrower and the Guarantors, taken as a whole, to perform their material payment obligations under this Agreement and the other Loan Documents.

"Material Debt Instrument" means any physical instrument evidencing any Indebtedness for borrowed money which is required to be pledged and delivered to the Administrative Agent (or its bailee) pursuant to the Security Agreement.

"Material Domestic Subsidiary" means, at any date of determination, each of the Lead Borrower's Domestic Subsidiaries that are Restricted Subsidiaries (a) whose total assets at the last day of the most recent Test Period were equal to or greater than 5.00% of Consolidated Total Assets at such date or (b) whose gross revenues for such Test Period were equal to or greater than 5.00% of the consolidated gross revenues of the Lead Borrower and its Restricted Subsidiaries for such period, in each case, determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Domestic Subsidiaries that are Restricted Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 7.50% of Consolidated Total Assets as of the end of the most recently ended Fiscal Quarter of the Lead Borrower for which financial statements have been delivered pursuant to Section 5.01 or more than 7.50% of the consolidated gross revenues of the Lead Borrower and its Restricted Subsidiaries for such Test Period, then the Lead Borrower shall, not later than 60 days after the date by which financial statements for such quarter are required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as "Material Domestic Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 5.12 applicable to such Subsidiary.

"Material Foreign Subsidiary" means, at any date of determination, each of the Lead Borrower's Foreign Subsidiaries (a) whose consolidated total assets (calculated, for such purposes as the assets of such Foreign Subsidiary, together with the assets of its direct and indirect subsidiaries) at the last day of the most recent Test Period were equal to or greater than 5.00% of Consolidated Total Assets at such date or (b) whose consolidated gross revenues (calculated, for such purposes as the gross revenues of such Foreign Subsidiary, together with the gross revenues of its direct and indirect subsidiaries) for such Test Period were equal to or greater than 5.00% of the consolidated gross revenues of the Lead Borrower and the Restricted Subsidiaries for such period, in each case, determined in accordance with GAAP; *provided* that if, at any time and from time to time after the Closing Date, Foreign Subsidiaries not meeting the thresholds set forth in clauses (a) or (b) comprise in the aggregate more than 7.50% of Consolidated Total Assets as of the end of the most recently ended Fiscal Quarter of the Borrowers for which financial statements have been delivered pursuant to Section 6.01 or more than 7.50% of the consolidated gross revenues of the Lead Borrower and the Restricted Subsidiaries for such Test Period, then the Lead Borrower shall, not later than 60 days after the date by which financial statements for such quarter are required to be delivered pursuant

to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Foreign Subsidiaries as "Material Foreign Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of the definition of "Collateral and Guarantee Requirement".

"Material Intellectual Property" means any material intellectual property that is material to the operation of the business of the Lead Borrower and its Restricted Subsidiaries (taken as a whole).

"Material Non-Public Information" means, with respect to any Person, information that is (a) of a type that would not be publicly available (and could not be derived from publicly available information) if such Person and its Subsidiaries were public reporting companies and (b) material (as reasonably determined by the Lead Borrower) with respect to such Person, its Subsidiaries or the respective securities of such Person and its Subsidiaries for purposes of United States Federal and state securities laws, in each case, assuming such laws were applicable to such Person and its Subsidiaries.

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

"Maturity Date" means (a) with respect to the Initial Revolving Facility, the Initial Revolving Credit Maturity Date, (b) with respect to any Replacement Revolving Loans, the final maturity date for such Replacement Revolving Loans as set forth in the applicable Refinancing Amendment, (c) with respect to any Incremental Revolving Facility, the final maturity date set forth in the applicable Incremental Facility Agreement and (d) with respect to any Extended Revolving Credit Commitment, the final maturity date set forth in the applicable Extension Amendment.

"Maximum Rate" has the meaning assigned to such term in Section 9.20.

"Merger Agreement" has the meaning assigned to such term in the recitals to this Agreement.

"Merger Sub" has the meaning assigned to such term in the recitals to this Agreement.

"Mergers" has the meaning assigned to such term in the recitals to this Agreement.

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

"Multiemployer Plan" means any employee benefit plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA that is subject to the provisions of Title IV of ERISA, and in respect of which the Borrowers or any of its Restricted Subsidiaries makes or is obligated to make contributions, or during the preceding six plan years, has made or been obligated to make contributions or to which a Loan Party would have liability thereto (including any liability on account of any ERISA Affiliate).

"Non-Consenting Lender" has the meaning assigned to such term in Section 2.19(b).

"Non-Defaulting Revolving Lenders" has the meaning assigned to such term in Section 2.21(d)(i).

"Non-Loan Party Cap" means an aggregate amount of Indebtedness incurred by Restricted Subsidiaries that are not Loan Parties in reliance on Sections 6.01(j), (n), (p) and (v), equal to the greater of $4,700,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis).

"Non-Loan Party Investment Amount" means an aggregate amount of Investments made in respect of Restricted Subsidiaries that are not Loan Parties, in reliance on Sections 6.06(b) and (e), equal to the greater of $5,640,000 and 30% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis).

"Note Financing" means the issuance of the Convertible Notes.

"Note Financing Documents" means (a) those certain Subscription Agreements, dated as of June 4, 2021, by and between the Acquiror and the Note Investors party thereto, and (b) the Indenture executed in connection with the issuance of the Convertible Notes by and between the Lead Borrower and Wilmington Trust, National Association, as trustee.

"Note Investors" means certain investors party to one or more convertible note Subscription Agreements pursuant to which such investors have committed to purchase the Convertible Notes.

"Notice of Intent to Cure" has the meaning assigned to such term in Section 6.14(b).

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

"Obligations" means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding (or that would accrue but for the operation of applicable bankruptcy or insolvency laws), regardless of whether allowed or allowable in such proceeding) on the Loans, all LC Exposure, all Swingline Exposure, all accrued and unpaid fees, premiums and all expenses (including fees, premiums and expenses accruing during the pendency of any proceeding under Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding), reimbursements, indemnities and all other advances to, debts, liabilities and obligations of any Loan Party to the Lenders or to any Lender, the Administrative Agent, the Collateral Agent, the Issuing Bank, Swingline Lender, the Lead Arranger or any indemnified party arising under the Loan Documents in respect of any Loan, Letter of Credit or otherwise, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

"OFAC" has the meaning assigned to such term in Section 3.17(a).

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization and itsby-laws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement, and (e) with respect to any other form of entity, such other organizational documents required by local Requirements of Law or customary under such jurisdiction to document the formation and governance principles of such type of entity. In the event that any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

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

"Other Taxes" means all present or future stamp, court or documentary Taxes or any intangible, recording, filing or other excise or property or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but excluding, for the avoidance of doubt, any such Taxes that are Other Connection Taxes imposed with respect to an assignment or participation (other than an assignment made pursuant to Section 2.19(b)).

"Outstanding Amount" means (a) with respect to any Revolving Loan and/or Swingline Loan on any date, the amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Revolving Loan and/or Swingline Loan, as the case may be, occurring on such date, (b) with respect to any Letter of Credit, the aggregate amount available to be drawn under such Letter of Credit after giving effect to any changes in the aggregate amount available to be drawn under such Letter of Credit or the issuance or expiry of such Letter of Credit, including as a result of any LC Disbursement, and (c) with respect to any LC Disbursement on any date, the amount of the aggregate outstanding amount of such LC Disbursement on such date after giving effect to any disbursements with respect to any Letter of Credit occurring on such date and any other changes in the aggregate amount of such LC Disbursement as of such date, including as a result of any reimbursements by the Borrowers of such unreimbursed LC Disbursement.

"Parent Company" means any Person of which the Lead Borrower is a direct or indirect Wholly-owned Subsidiary.

"Participant" has the meaning assigned to such term in Section 9.05(e).

"Participant Register" has the meaning assigned to such term in Section 9.05(e).

"Patent" means the following: (a) any and all patents and patent applications throughout the world; (b) all inventions described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions and continuations in part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing.

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

"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 the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, that the Borrowers or any of their Restricted Subsidiaries maintains or contributes to or has an obligation to contribute to or has any liability (including on account of any ERISA Affiliate).

"Permitted Acquisition" means any acquisition of all or substantially all the assets of a Person or any Capital Stock in a Person or division or product line of business of a Person (or any subsequent Investment consisting of the acquisition of additional Capital Stock from minority shareholders in a Person previously acquired in a Permitted Acquisition), in a single transaction or series of related transactions, if immediately after giving effect thereto on a Pro Forma Basis: (i) subject to Section 1.11(g), no Event of Default shall have occurred and be continuing or would result from such acquisition; (ii) to the extent

required by the Collateral and Guarantee Requirement, (A) the property, assets and businesses acquired in such purchase or other acquisition shall constitute Collateral and (B) any such newly created or acquired Restricted Subsidiary (other than an Excluded Subsidiary or an Unrestricted Subsidiary) shall become a Borrower or a Guarantor, in each case, in accordance with and subject to Section 5.12; (iii) the aggregate amount of Investments by Loan Parties pursuant to this definition in assets (other than Capital Stock) that are not (or do not become at the time of such acquisition) directly owned by a Loan Party or in Capital Stock of Persons that do not become Loan Parties at any time outstanding shall not exceed the sum of (1) the Non-Loan Party Investment Amount, *plus* (2) the Available Amount, *plus* (3) the Available Excluded Contribution Amount; (iv) the assets and/or Person acquired complies with Section 6.10; (v) [reserved]; (vi) [reserved]; (vii) such acquisition shall benon-hostile; and (viii) subject to clause (iii) above and Section 5.10, any such acquired Person shall become a Restricted Subsidiary; *provided*, that if any Investment made pursuant toclause (iii) is in Capital Stock of a Person that subsequently becomes a Loan Party, such Investment shall thereafter be deemed permitted under Section 6.06 and shall not be included as having been made pursuant to clause (iii) above.

"Permitted Holders" means (a) the Investors; (b) any Permitted Transferee of the Investors; and (c) any "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) including any of the foregoing Persons; *provided*, that (x) any combination of such foregoing Persons referred to in clauses (a), (b) and (c) shall hold a majority of the aggregate voting interests in the Capital Stock of the Lead Borrower held by all members of such combination.

"Permitted Initial Revolving Credit Borrowing Purposes" means one or more Borrowings of Revolving Loans to fund a portion of the Transactions and for other general corporate purposes not prohibited by the Loan Documents, in an aggregate amount not to exceed $10,000,000.

"Permitted Liens" means Liens permitted pursuant to Section 6.02.

"Permitted Ratio Debt" means Indebtedness of the Borrowers or any other Restricted Subsidiary; *provided* that immediately after giving Pro Forma Effect thereto and to the use of the proceeds thereof, (i) the aggregate amount of such Indebtedness outstanding at the time of incurrence or issuance shall not exceed the sum of (A) an amount equal to the greater of (x) $18,800,000 or (y) 100% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis), *minus* the aggregate principal amount of Indebtedness incurred pursuant to Section 2.22(c)(iii)(A), *plus* (B) such additional amounts to the extent that, after giving effect thereto, for the most recently ended Test Period (on a Pro Forma Basis) at the time of incurrence or issuance, (1) in the case of Indebtedness secured by Liens on the Collateral that rank pari passu with the Liens securing the Revolving Loans, the Senior Secured Net Leverage Ratio (calculated on a Pro Forma Basis in accordance with Section 1.11) is not greater than 2.00 to 1.00 or in the case of any incurrence in connection with a Permitted Acquisition or permitted Investment, the Senior Secured Net Leverage Ratio is no worse than the Senior Secured Net Leverage Ratio in effect immediately prior to such Permitted Acquisition or permitted Investment, (2) in the case of Indebtedness secured by Liens on the Collateral that rank junior to the Liens on the Collateral securing the Revolving Loans, the Secured Net Leverage Ratio (calculated on a Pro Forma Basis in accordance with Section 1.11) is not greater than 2.75 to 1.00 or in the case of any incurrence in connection with a Permitted Acquisition or permitted Investment, the Secured Net Leverage Ratio is no worse than the Secured Net Leverage Ratio (calculated on a Pro Forma Basis) in effect immediately prior to such Permitted Acquisition or permitted Investment and (3) in the case of unsecured Indebtedness, the Total Net Leverage Ratio (calculated on a Pro Forma Basis in accordance with Section 1.11) is not greater than 5.00 to 1.00 or in the case of any incurrence in connection with a Permitted Acquisition or permitted Investment the Total Net Leverage Ratio is no worse than the Total Net Leverage Ratioin effect immediately prior to such Permitted Acquisition or permitted Investment, in each case, after giving effect to any acquisition consummated in connection therewith and all other appropriate *pro forma* adjustments (including giving

effect to the prepayment of Indebtedness on or prior to the consummation of such acquisition) and assuming for purposes of this calculation that (I) the full committed amount of any revolving loans then being made shall be treated as fully drawn and outstanding for such purpose and (II) cash proceeds of any such Permitted Ratio Debt or other Indebtedness permitted hereunder then being incurred shall not be netted from the numerator in the Total Net Leverage Ratio, Secured Net Leverage Ratio or the Senior Secured Net Leverage Ratio, as applicable, *plus* (C) the sum, without duplication, of all (i) mandatory assignments pursuant to Section 2.19 or of other *pari passu* Indebtedness and (ii) voluntary commitment reductions and voluntary prepayments of the Loans under the Revolving Facility or any other *pari passu* revolving facility to the extent accompanied by a permanent commitment reduction (in each case, including any substantially concurrent prepayment, redemption, reduction, termination, buy-back (the amount of any debt buy backs limited to the cash payment actually made in respect thereof) or purchase, other than to the extent funded with proceeds of long term Indebtedness (other than revolving Indebtedness or intercompany Indebtedness); *provided* that in the case of Indebtedness incurred by Restricted Subsidiaries that are not Guarantors, the Indebtedness shall not exceed the Non-Loan Party Cap at any time outstanding, (ii)(x) in the case of any Indebtedness secured by a Lien on any Collateral ranking junior to the Lien securing the Secured Obligations, such Indebtedness shall have a final maturity not sooner than 91 days after the Latest Revolving Credit Maturity Date, as determined at the time of issuance or incurrence of such Indebtedness, and (y) in the case of any Indebtedness secured by a Lien on the Collateral ranking *pari passu* with the Secured Obligations, such Indebtedness shall have a final scheduled maturity date not sooner than the Latest Revolving Credit Maturity Date, as determined at the time of issuance or incurrence of such Indebtedness (in each case, other than any customary bridge facility so long as the Indebtedness into which such customary bridge facility is to be converted complies with such requirements), (iii) in the case of any secured Indebtedness, such Indebtedness shall be subject to an Acceptable Intercreditor Agreement, (iv) such Indebtedness shall not provide for any mandatory repayment (except, subject to clause (vii), scheduled principal amortization payments), redemption or sinking fund payment obligations prior to the Latest Revolving Credit Maturity Date, as determined at the time of issuance or incurrence of the Indebtedness (other than, in each case, customary offers or obligations to repurchase, redeem or repay upon a change of control, asset sale, excess cash flow sweep, casualty or condemnation event or similar events, AHYDO Payments, customary acceleration rights after an event of default, solely with respect to any such Indebtedness constituting Indebtedness secured by a Lien ranking junior to the Lien securing the Secured Obligations and/or any lender(s) in respect of any other Indebtedness secured by a Lien ranking *pari passu* with the Secured Obligations being prepaid or that constitute a customary prepayment provision with respect to Refinancing Indebtedness on a *pro rata* basis in connection with such prepayment in accordance with this Agreement, and solely with respect to any such Indebtedness secured by a Lien ranking *pari passu* with the Lien securing the Secured Obligations, any payment obligations (including any mandatory repayment obligation relating to generation of excess cash flow) that will also be applied to the Revolving Loans hereunder on a *pro rata* or less than *pro rata* basis (but not a greater than pro rata basis) or that constitute a customary prepayment provision with respect to Refinancing Indebtedness) (other than, for the avoidance of doubt, voluntary prepayments, which shall be as directed by the Lead Borrower)), (v) [reserved], (vi) other than as required by the preceding clauses (i) through (v) and the succeeding clauses (vii) and (viii), shall contain such terms as are reasonably satisfactory to the Lead Borrower, the borrower thereof (if not the Lead Borrower) and the providers of such Indebtedness; *provided*, that the terms of such Indebtedness shall be no more favorable to the providers of such Indebtedness than the applicable terms of this Agreement and the other Loan Documents (except for any terms (w) applicable only to periods after the Latest Revolving Credit Maturity Date, as determined at the time of issuance or incurrence of such Permitted Ratio Debt, (x) that are also added for the benefit of the Revolving Lenders, (y) that are not materially more restrictive than the terms of this Agreement (as determined by the Lead Borrower in good faith) or (z) reasonably acceptable to the Administrative Agent (not to be unreasonably withheld, conditioned, delayed or denied)), (vii) [reserved], (viii) the Indebtedness shall not at any time be guaranteed by any Person other than the Guarantors (unless the Required Lenders have declined a guarantee from such other Person and except as otherwise permitted under this Agreement) and, to the extent secured, are not

secured by a Lien on any property or asset that does not secure the Revolving Facility (unless the Required Lenders have declined and except as otherwise permitted under this Agreement), (ix) no Event of Default exists or shall exist after giving effect to such Permitted Ratio Debt; *provided*, that in the case of Permitted Ratio Debt incurred in connection with a Limited Condition Transaction, no Event of Default shall exist on the date of execution of the definitive documentation or binding commitment (or notice, as applicable) with respect to such Limited Condition Transaction and no Specified Event of Default shall exist on the date of incurrence of such Permitted Ratio Debt and (x) subject to Section 1.11(g), after giving effect thereto on a Pro Forma Basis (in each case, without "netting" the cash proceeds of the applicable Indebtedness being incurred), the Borrowers shall be in Pro Forma Compliance with the financial covenants set forth in Section 6.14(a) (it being understood that (x) amounts under clause (i)(B) (to the extent compliant therewith) and/or clause (i)(C) shall be deemed to have been used prior to utilization of amounts under clause (i)(A), (y) Indebtedness may be incurred under clauses (i)(A), (i)(B) and (i)(C) above, and/or any other indebtedness incurred or assumed other than in reliance on a ratio-based incurrence test, and proceeds from any such incurrence may be utilized in a single transaction or series of related transactions by first calculating the incurrence under clause (i)(B) and then calculating the incurrence under clause (i)(A) and/or (i)(C) and, for the avoidance of doubt, any such incurrence under clause (i)(A) and/or (i)(C) and/or any other indebtedness incurred or assumed other than in reliance on a ratio-based incurrence test, shall not be given pro forma effect for purposes of determining the Total Net Leverage Ratio, the Secured Net Leverage Ratio or the Senior Secured Net Leverage Ratio, as applicable, for purposes of effectuating the incurrence under clause (i)(B) in such single transaction or series of related transactions and (z) any Indebtedness originally incurred pursuant to clause (i)(A) and/or clause (i)(C) shall be redesignated (as the Lead Borrower may elect from time to time) as incurred pursuant to clause (i)(B) if the Borrowers meet the applicable leverage ratio under clause (i)(B) at such time on a Pro Forma Basis (for purposes of clarity, with any such redesignation having the effect of increasing the ability to incur Indebtedness pursuant to clause (i)(A) and/or clause (i)(C) as of the date of such redesignation by the amount of such Indebtedness so redesignated).

"Permitted Tax Restructuring" means any re-organizations and other activities among the Lead Borrower and its Restricted Subsidiaries related to tax planning and re-organization so long as, after giving effect thereto, taken as a whole, the security interests of the Collateral Agent in the Collateral are not materially impaired (as determined by the Lead Borrower in good faith).

"Permitted Transferee" means (A) in the case of any Management Investors, his or her Immediate Family Members (including, for the avoidance of doubt, (v) any trust, partnership, limited liability company, corporate body or other entity established by any such director, officer, employee or member of management of the Lead Borrower or any of its Subsidiaries or any direct or indirect parent thereof or any Person described in the succeeding clause (w), as applicable, to hold an investment in the Lead Borrower or any direct or indirect parent thereof in connection with such Person's estate or tax planning, (w) any Person who acquires an investment in the Lead Borrower or any direct or indirect parent thereof by will or by the laws of intestate succession as a result of the death of any such director, officer, employee or member of management of the Lead Borrower or any of its Subsidiaries or any direct or indirect parent thereof, (x) his or her executor, administrator, testamentary trustee, legatee or beneficiaries, (y) his or her spouse, parents, siblings, members of his or her immediate family (including adopted children and step children) and/or direct lineal descendants or (z) a trust, the beneficiaries of which, or a corporation or partnership, the stockholders or partners of which, include only a Management Investor and his or her spouse, parents, siblings, members of his or her immediate family (including adopted children and step children) and/or direct lineal descendants) or (B) in the case of the Sponsor, (i) the Sponsor, (ii) any Sponsor Associate, and (iii) any Immediate Family Member of any Sponsor Associate (including, for the avoidance of doubt, (x) the heirs, executors, administrators, testamentary trustees, legatees or beneficiaries of any Sponsor Associate and (y) any trust, the beneficiaries of which, or a corporation or partnership, the stockholders or partners of which, include only a Sponsor Associate, his or her spouse, parents, siblings, members of his or her immediate family (including adopted children and step children) and/or direct lineal descendants.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or any other entity.

"Platform" has the meaning assigned to such term in Section 5.01.

"Primary Obligor" has the meaning assigned to such term in the definition of "Guarantee".

"Pro Forma Basis" and "pro forma effect" means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.11.

"Pro Forma Compliance" means, with respect to the covenants in Section 6.14, compliance on a Pro Forma Basis with such covenant in accordance with Section 1.11.

"Pro Forma Financial Statements" has the meaning set forth in Section 3.04(b).

"Promissory Note" means a promissory note of the Borrowers payable to any Lender or its registered assigns, in substantially the form of Exhibit G, evidencing the aggregate outstanding principal amount of Loans of the Borrowers to such Lender resulting from the Loans made by such Lender.

"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 Company Costs" means charges associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and charges relating to compliance with the provisions of the Securities Act and the Exchange Act (and in the case of any Requirement of Law, any similar Requirement of Law under any other applicable jurisdiction), as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors', managers' and/or employees' compensation, fees and expense reimbursement, charges relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors' and officers' insurance and other executive costs, legal and other professional fees and listing fees and other costs and/or expenses associated with being a public company.

"Public Lender" has the meaning set forth in Section 6.01.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified in Section 9.26.

"Qualified Capital Stock" of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

"Qualified Proceeds" shall mean assets that are used or useful in, or Capital Stock of any Person engaged in, any business conducted or proposed to be conducted by the Lead Borrower and its Restricted Subsidiaries, taken as a whole, on the Closing Date or any other business activities which are reasonable extensions thereof or otherwise similar, incidental, corollary, complementary, synergistic, reasonably related, or ancillary to any of the foregoing (including non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment), in each case as determined by the Lead Borrower in good faith.

"Real Estate Asset" means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Loan Party in and to real property (including, but not limited to, land, improvements and fixtures thereon).

"Recipient" has the meaning assigned to such term in the definition of "Excluded Taxes".

"Refinancing" means the prepayment of the loans outstanding (including the backstopping or cash collateralization of any letters of credit outstanding, if applicable) under that certain Credit Agreement, dated as of December 21, 2020, by and among, *inter alios*, BigBear.ai Intermediate Holdings, LLC (f/k/a Lake Finance, LLC), as the parent, BigBear.ai, LLC (f/k/a Lake Acquisition, LLC), as the borrower, the other borrowers party thereto, guarantors party thereto, Antares Capital LP, as administrative agent and collateral agent, and the lenders party thereto, as amended, amended and restated, supplemented, waived and/or otherwise modified prior to the date hereof.

"Refinancing Amendment" means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent and the Lead Borrower executed by (a) the Lead Borrower, (b) the Administrative Agent and (c) each Lender that agrees to provide all or any portion of the Replacement Revolving Loans being incurred pursuant thereto and in accordance with Section 9.02(b).

"Refinancing Indebtedness" has the meaning assigned to such term in Section 6.01(p).

"Refunding Capital Stock" has the meaning assigned to such term in Section 6.04(a)(viii).

"Register" has the meaning assigned to such term in Section 9.05(d).

"Regulation D" means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

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

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

"Relevant Governmental Body" means 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 Systems or the Federal Reserve Bank of New York, or any successor thereto.

"Replaced Revolving Loans" has the meaning assigned to such term in Section 9.02(b).

"Replacement Debt" means any Refinancing Indebtedness (whether borrowed in the form of secured or unsecured loans, issued in a public offering, Rule 144A under the Securities Act or other private placement or bridge financing in lieu of the foregoing or otherwise) incurred in respect of Indebtedness permitted under Section 6.01(a) (and any subsequent refinancing of such Replacement Debt).

"Replacement Revolving Loans" has the meaning assigned to such term in Section 9.02(b).

"Reportable Event" means, with respect to any Pension Plan, any of the events described in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period is waived under PBGC Reg. Section 4043.

"Representative" has the meaning assigned to such term in Section 9.13.

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the sum of the Total Outstandings and such unused Commitments at such time; *provided* that the unused Commitments of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders. For the purposes of this definition, in no event shall "Required Lenders" include fewer than two (2) unaffiliated Lenders at any time there are two (2) or more unaffiliated Lenders.

"Requirements of Law" means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

"Rescindable Amount" has the meaning as defined in Section 2.12(b)(ii).

"Responsible Officer" means, the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, controller, any executive vice president, any senior vice president, any vice president, the chief operating officer, chief administrative officer, secretary or assistant secretary of a Loan Party or any other individual or similar official thereof responsible for the administration of the obligations of such Loan Party in respect of this Agreement, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01(d), the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article 2, any other officer of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent reasonably requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate.

"Responsible Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of a Responsible Officer of the Borrowers that such financial statements fairly present, in all material respects, in accordance with GAAP in all material respects, the consolidated financial position of the Borrowers as at the dates indicated and its consolidated income and cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and any notes contained therein.

"Restricted Debt" means any Junior Indebtedness and any Junior Lien Indebtedness in each case to the extent the outstanding amount thereof is equal to or greater than the Threshold Amount.

"Restricted Debt Payment" has the meaning set forth in Section 6.04(b).

"Restricted Payment" means (a) any dividend or other distribution on account of any shares of any class of the Capital Stock of the Lead Borrower or a Restricted Subsidiary, except a dividend payable solely in shares of Qualified Capital Stock to the holders of such class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Lead Borrower or a Restricted Subsidiary and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Lead Borrower or a Restricted Subsidiary now or hereafter outstanding.

"Restricted Subsidiary" means, as to any Person, any subsidiary of such Person that is not an Unrestricted Subsidiary. Unless otherwise specified, "Restricted Subsidiary" shall mean any Restricted Subsidiary.

"Returns" means, with respect to any Investment, any dividends, distributions, interest, fees, premium, return of capital, repayment of principal, income, profits (from a Disposition or otherwise) and other amounts received or realized in respect of such Investment (including the fair market value of any applicable assets).

"Revolving Credit Commitment" means any Initial Revolving Credit Commitment and any Additional Revolving Credit Commitment.

"Revolving Credit Exposure" means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of such Lender's Initial Revolving Credit Exposure and Additional Revolving Credit Exposure.

"Revolving Credit Loan Extension Request" has the meaning assigned to such term in Section 2.23(b).

"Revolving Credit Loan Extension Series" has the meaning assigned to such term in Section 2.23(b).

"Revolving Facility" means the Initial Revolving Facility, any Incremental Revolving Facility, any facility governing Extended Revolving Credit Commitments or Extended Revolving Loans and any Replacement Revolving Loans.

"Revolving Lender" means any Initial Revolving Lender and any Additional Revolving Lender. Unless the context requires otherwise, the term "Revolving Lender" shall include the Swingline Lender.

"Revolving Loans" means any Initial Revolving Loans and any Additional Revolving Loans.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global, Inc.

"Sale and Lease-Back Transaction" means any transaction or series of related transactions pursuant to which the Borrowers or any of their Restricted Subsidiaries (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

"Sanctions" has the meaning assigned to such term in Section 3.17(a).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

"Second Merger" has the meaning assigned to such term in the recitals to this Agreement.

"Secured Hedging Obligations" means all Hedging Obligations (other than any Excluded Swap Obligation) under each Hedge Agreement that (a) is in effect on the Closing Date between any Loan Party or any Restricted Subsidiary and a counterparty that is a Hedge Bank as of the Closing Date or (b) is entered into after the Closing Date between any Loan Party or any Restricted Subsidiary and any Hedge Bank; it being understood that (i) each counterparty thereto (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent and (ii) each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article 8, Section 9.03 and Section 9.10 and the Acceptable Intercreditor Agreements as if it were a Lender.

"Secured Obligations" means all Obligations, together with (a) all Banking Services Obligations and (b) all Secured Hedging Obligations.

"Secured Parties" means (i) the Lenders, the Issuing Bank and the Swingline Lender, (ii) the Administrative Agent, (iii) each Hedge Bank, (iv) each Banking Services Bank, (v) the Lead Arranger and (vi) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document.

"Secured Party Designation Notice" means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit K.

"Securities" means any stock, shares, units, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing; *provided* that the term "Securities" shall not include any earn-out agreement or obligation or any employee bonus or other incentive compensation plan or agreement.

"Securities Act" means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

"Secured Net Debt" means, as of any date of determination, "Consolidated Total Net Debt" outstanding on such date that is secured by a Lien on the Collateral of the Lead Borrower and its Restricted Subsidiaries.

"Secured Net Leverage Ratio" means, with respect to any Test Period, the ratio of (a) Secured Net Debt as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA for such Test Period.

"Security Agreement" means the Pledge and Security Agreement dated as of the Closing Date among the Loan Parties and the Administrative Agent for the benefit of the Secured Parties.

"Senior Secured Net Debt" means, as of any date of determination, "Consolidated Total Net Debt" outstanding on such date that is secured by a first priority Lien on the Collateral of the Lead Borrower and its Restricted Subsidiaries.

"Senior Secured Net Leverage Ratio" means, with respect to any Test Period, the ratio of (a) Senior Secured Net Debt as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA for such Test Period.

"Similar Business" means any Person the majority of the revenues of which are derived from a business that would be permitted by Section 6.10 if the references to "Restricted Subsidiaries" in Section 6.10 were read to refer to such Person.

"SOFR Adjustment" with respect to Daily Simple SOFR means 0.26161% (26.161 basis points); and with respect to Term SOFR means 0.11448% (11.448 basis points) for an interest period of one-month's duration, 0.26161% (26.161 basis points) for an interest period of three-month's duration, 0.42826% (42.826 basis points) for an interest period of six-months' duration, and 0.71513% (71.513 basis points) for an interest period of twelve–months' duration.

"SOFR" has the meaning set forth in the definition of "Daily Simple SOFR".

"Solvent" and "Solvency" mean, with respect to any Person or Persons on any date of determination, that on such date such Person or Persons (a) have property with fair value (on a going concern basis) that exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise, (b) have assets with the present fair saleable value of the property (on a going concern basis) that is, on a consolidated basis, greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured in the ordinary course of business, (c) will be able to pay, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise, as they become absolute and matured in the ordinary course of business and (d) are not engaged in, and are not about to engage in, on a consolidated basis, business contemplated as of the date hereof for which they have unreasonably small capital.

"SPC" has the meaning assigned to such term in Section 9.05(h).

"Specified Event of Default" means an Event of Default under Section 7.01(a), (f) or (g).

"Specified Existing Revolving Credit Commitment" has the meaning set forth in Section 2.23(b).

"Specified Representations" means the representations and warranties set forth in Section 3.01(a)(i) (as it relates to the Loan Parties (other than with respect to a Subsidiary which does not constitute a Material Subsidiary)), Section 3.01(b), Section 3.02 (as it relates to entering into and performance of the Loan Documents), Section 3.03(b)(i), Section 3.08, Section 3.12, Section 3.14 (subject to the last sentence of Section 4.01, as it relates to the creation, validity and perfection of the security interests in the Collateral), Section 3.16 and Sections 3.17(a)(ii), (b) and (c)(ii).

"Specified Transaction" means (i) any Investment that results in a Person becoming a Restricted Subsidiary of the Lead Borrower, (ii) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary, (iii) any Permitted Acquisition, (iv) any Disposition that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Lead Borrower, (v) any Investment constituting an acquisition of assets constituting a business unit, line of business or division of, or all or substantially all of the Capital Stock of, another Person or any Disposition of a business unit, line of business or division of the Lead Borrower or a Restricted Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, (vi) any incurrence or repayment of Indebtedness, (vii) any Restricted Payment, (viii) any Incremental Revolving Facility or Incremental Revolving Loan or (ix) any other event that by the terms of this Agreement requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis or giving pro forma effect to any such transaction or event that by the terms of this Agreement requires such test to be calculated on a "Pro Forma Basis" or after giving "Pro Forma Effect."

"Sponsor" means any of (i) AE Industrial Partners, L.P. and (ii) any successors of a Person set forth in clause (i) or this clause (ii) and any of their Affiliates, and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"Sponsor Associate" means any managing director, general partner, limited partner, director, officer, operating partner or employee of the Sponsor.

"Sponsor Model" means that certain projection model delivered by the Sponsor to the Administrative Agent and the Lead Arranger on March 16, 2021, and any subsequent modifications by the Sponsor thereto that are reasonably acceptable to the Administrative Agent.

"Standby Letter of Credit" means any Letter of Credit other than any documentary Letter of Credit or trade Letter of Credit.

"Stated Amount" means, with respect to any Letter of Credit, at any time, the maximum amount available to be drawn thereunder, in each case determined (x) as if any future automatic increases in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (y) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

"Subsequent Transaction" has the meaning assigned to such term in Section 1.11(g).

"Subsidiary" or "subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, any charitable organizations, and any other Person that meets the requirements of Section 501(c)(3) of the Code) of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, (ii) more than half of the issued share capital is at the time beneficially owned or (iii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Lead Borrower.

"Subsidiary Guarantor" means any Guarantor other than the Lead Borrower.

"Successor Administrative Agent" has the meaning assigned to such term in Section 2.17(f)(iii).

"Successor Borrower" has the meaning assigned to such term in Section 6.07(a).

"Successor Rate" has the meaning specified in Section 2.14(b).

"Supplier Financing Assets" shall mean (a) any accounts receivable owed to the Lead Borrower or any of its Subsidiaries subject to a Supplier Financing Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement and which are sold, conveyed, assigned or otherwise transferred or pledged in connection with a Supplier Financing Facility.

"Supplier Financing Facility" means any agreement between the Lead Borrower or any of its Subsidiaries and a financial institution that is entered into at the request of a customer or supplier of the Lead Borrower or any of its Subsidiaries, pursuant to which (a) such Person, as applicable, agrees to sell to such financial institution accounts receivable owing by such customer, together with Supplier Financing Assets related thereto, at a maximum discount, for each such account receivable, not to exceed 5.00% of the face value thereof and (b) the obligations of the Person, as applicable, thereunder are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Lead Borrower and such Subsidiaries.

"Supported QFC" has the meaning specified in Section 9.26.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

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

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

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall equal to its Applicable Revolving Percentage of the aggregate Swingline Exposure at such time.

"Swingline Lender" means Bank of America, in its capacity as lender of Swingline Loans hereunder, or any successor lender of Swingline Loans hereunder.

"Swingline Loan" means any Loan made pursuant to Section 2.04.

"Swingline Loan Notice" means a notice of a Swingline Loan pursuant to Section 2.04(a), which shall be substantially in the form of Exhibit N or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrowers.

"Swingline Participation Notice" has the meaning assigned to such term in Section 2.04(b).

"Taxes" means all present and 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 SOFR" means, for the applicable corresponding Interest Period of BSBY (or if any Interest Period does not correspond to an interest period applicable to SOFR, the closest corresponding interest period of SOFR, and if such interest period of SOFR corresponds equally to two Interest Periods of BSBY, the corresponding interest period of the shorter duration shall be applied) the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Termination Date" has the meaning assigned to such term in the lead-in to Article 5.

"Test Period" means, as of any date, the period of four consecutive Fiscal Quarters then most recently ended for which financial statements under Section 5.01(a) or Section 5.01(b) (other than for the last Fiscal Quarter of each Fiscal Year), as applicable, have been delivered (or are required to have been delivered); it being understood and agreed that prior to the first delivery (or required delivery) of financial statements of Section 5.01(a), "Test Period" means the period of four consecutive Fiscal Quarters most recently ended for which the combined financial statements the Lead Borrower and its Restricted Subsidiaries are available.

"Threshold Amount" means the greater of (x) $3,760,000 and (y) 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis).

"Total Net Leverage Ratio" means the ratio, as of any date, of (a) Consolidated Total Net Debt outstanding as of the last day of the Test Period then most recently ended to (b) Consolidated Adjusted EBITDA for the Test Period then most recently ended, in each case of the Lead Borrower and its Restricted Subsidiaries on a consolidated basis.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans.

"Total Revolving Credit Commitment" means, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.

"Trademark" means any and all trademarks throughout the world, including the following: (a) all trademarks (including service marks), common law marks, trade names, trade dress, domain names, corporate names and logos, slogans and other indicia of origin under the Requirements of Law of any jurisdiction in the world, and the registrations and applications for registration thereof and all goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including damages, claims, and payments for past and future infringements thereof; (d) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing.

"Transaction Costs" means fees, premiums, expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by the Borrowers or any of their respective Subsidiaries or any of their direct or indirect Parent Company (including the Sponsor) in connection with the Transactions (including, without limitation, expenses in connection with hedging transactions), this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby.

"Transactions" means, collectively, (a) the Mergers and other related transactions contemplated by the Merger Agreement, (b) the Note Financing, (c) the funding of the Initial Revolving Loans on the Closing Date and the execution and delivery of Loan Documents to be entered into on the Closing Date, (d) consummation of the Refinancing and (e) the payment of Transaction Costs in connection with the foregoing.

"Treasury Capital Stock" has the meaning assigned to such term in Section 6.04(a)(viii).

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the BSBY Rate or the Base Rate.

"UCC" means (i) the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or (ii) the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral. References in this Agreement and the other Loan Documents to specific sections of the Uniform Commercial Code are based on the Uniform Commercial Code as in effect in the State of New York on the date hereof. In the event such Uniform Commercial Code is amended or another Uniform Commercial Code described in clause (ii) is applicable, such section reference shall be deemed to be a reference to the comparable section in such amended or other Uniform Commercial Code.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unrestricted Cash Amount" means, as to any Person, on any date of determination, an amount equal to the aggregate amount of unrestricted and unencumbered Cash and Cash Equivalents of the Lead Borrower and its Restricted Subsidiaries that are Domestic Subsidiaries on such date, as determined in accordance with GAAP.

"Unrestricted Subsidiary" means (i) any Subsidiary of the Borrowers that is listed on Schedule 5.10 hereto, (ii) any Subsidiary of the Borrowers designated by the Lead Borrower as an Unrestricted Subsidiary pursuant to Section 5.10 subsequent to the Closing Date and (iii) any Subsidiary of an Unrestricted Subsidiary.

"U.S." or "United States" means the United States of America.

"U.S. Special Resolution Regimes" has the meaning specified in Section 9.26.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(f).

"U.S. Treasury Regulations" means the U.S. federal tax regulations promulgated under the Code.

"UCP" has the meaning assigned to such term in Section 2.05(j).

"UCP 500" has the meaning assigned to such term in Section 2.05(j).

"UCP 600" has the meaning assigned to such term in Section 2.05(j).

"USA PATRIOT Act" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness; *provided* that for purposes of the Weighted Average Life to Maturity of such Indebtedness, the effects of any prepayments or amortization made on such Indebtedness prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

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

"Withdrawal Liability" means the liability to any Multiemployer Plan as the result of a "complete" or "partial" withdrawal by the Borrowers or any Restricted Subsidiary (or any ERISA Affiliate) from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"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 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., an "Initial Revolving Loan") or by Type (e.g., an "BSBY Rate Loan") or by Class and Type (e.g., an "BSBY Rate Initial Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., an "Initial Revolving Borrowing") or by Type (e.g., an "BSBY Rate Borrowing") or by Class and Type (e.g., an "BSBY Rate Initial Revolving Borrowing").

Section 1.03 Terms Generally. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) The word "or" is not exclusive.

(f) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(g) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(h) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(i) All references to "knowledge" of any Loan Party or a Restricted Subsidiary of Parent means the actual knowledge of a Responsible Officer.

(j) The words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(k) All references to any Person shall be constructed to include such Person's successors and assigns (subject to any restriction on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

(l) All references to "in the ordinary course of business" of the Lead Borrower or any Subsidiary thereof means (i) in the ordinary course of business of, or in furtherance of an objective that is in the ordinary course of business of the Lead Borrower or such Subsidiary, as applicable, (ii) generally consistent with the past or current practice of the Lead Borrower or such Subsidiary, as applicable, or (iii) customary and usual in the industry or industries of the Lead Borrower and its Subsidiaries in the United States or any other jurisdiction in with the Lead Borrower or any Subsidiary does business, as applicable.

(m) In the case of any cure or waiver, the Borrowers, the applicable Loan Parties, the Lenders and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default cured or waived shall be deemed to be cured or waived, as applicable, and not continuing, it being understood that no such cure or waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

(n) Any reference herein or in any other Loan Document to (i) a transfer, assignment, sale or disposition (including any Disposition), or similar term, shall be deemed to apply to a division (including, without limitation, a "plan of division" or similar plan under the Delaware Limited Liability Company Act) of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a transfer, assignment, sale or disposition (including any Disposition), or similar term, as applicable, to a separate Person and (ii) a merger, consolidation, amalgamation or consolidation, or similar term, shall be deemed to apply to any division (including, without limitation, a "plan of division" or similar plan under the Delaware Limited Liability Company Act) or the unwinding of such a division or allocation, as if it were a merger, consolidation, amalgamation or consolidation or similar term, as applicable, with a separate Person.

Section 1.04 Accounting Terms; GAAP.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, (a) unless the Lead Borrower has requested an amendment pursuant to this Section 1.04 with respect to the treatment of operating leases and Capital Leases and until such amendment has become effective, all obligations of any Person that would have been treated as operating leases for purposes of GAAP prior to the implementation of ASC 842 (whether before or after the Closing Date) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of this Agreement (whether or not such operating lease obligations were in effect on such date) regardless of any change in or application of GAAP following such date pursuant to ASC 842 or otherwise that would require such leases (on a prospective or retroactive basis or otherwise) to be treated as Capital Leases and (b) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to Statement of Financial Accounting Standards 141R or ASC 805 (or any other financial accounting standard having a similar result or effect).

(b) Notwithstanding anything to the contrary contained in paragraph (a) above or in the definition of "Capital Lease," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capital Leases (including leases that are classified as

"Financing Leases" for purposes of GAAP) in conformity with GAAP on December 31, 2019 shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

Section 1.05 Effectuation of Transactions. Each of the representations and warranties contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06 Timing of Payment of Performance. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

Section 1.07 Times of Day. Unless otherwise specified herein, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

Section 1.08 Currency Equivalents Generally.

(a) Any amount specified in this Agreement (other than in Article 2) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount to be determined at the rate of exchange quoted on the applicable Bloomberg screen page for the applicable currency at 11:00 a.m. (London time) on such day (or, in the event such rate does not appear on any Bloomberg screen page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Lead Borrower, or, in the absence of such agreement, by reference to such publicly available service for displaying exchange rates as the Administrative Agent selects in its reasonable discretion).

(b) For purposes of determining the Senior Secured Net Leverage Ratio, the Secured Net Leverage Ratio, the Fixed Charge Coverage Ratio and the Total Net Leverage Ratio, the amount of Indebtedness shall reflect the currency translation effects, determined in accordance with GAAP, of Swap Contracts permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(c) Notwithstanding the foregoing, for purposes of determining compliance with Article 6 (and, in each case, other definitions used therein) with respect to the amount of any Indebtedness, Lien, Disposition, Investment, Restricted Payment or other applicable transaction in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness or Lien is incurred or such Disposition, Investment, Restricted Payment or other applicable transaction is made (or declared or notified, as applicable) (so long as such Indebtedness, Lien, Disposition, Investment, Restricted Payment or other applicable transaction at the time incurred or made (or declared or notified, as applicable) was permitted hereunder).

(d) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Lead Borrower's prior written consent to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

Section 1.09 Cashless Rollovers. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, to the extent that any Lender extends the maturity date of, or replaces, renews or refinances, any of its then-existing Loans with Incremental Revolving Loans, Loans in connection with any Replacement Revolving Loans, Extended Revolving Loans or loans incurred under a new credit facility, in each case, to the extent such extension, replacement, renewal or refinancing is effected by means of a "cashless roll" by such Lender, such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Loan Document that such payment be made "in Dollars", "in immediately available funds", "in Cash" or any other similar requirement.

Section 1.10 Certain Calculations and Tests. For purposes of determining compliance with any of Section 5.13 or Sections 6.01 through 6.15 (other than Section 6.14(a)), in the event that any Lien, Investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), Disposition, Affiliate transaction, Contractual Obligation, Restricted Payment or prepayment of Junior Indebtedness meets the criteria of one, or more than one, of the "baskets" or categories of transactions then permitted pursuant to any clause or subsection of any such section of Article 5 or Article 6, as applicable, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses of such Section at the time of such transaction or any later time from time to time, in each case, as determined by the Lead Borrower in its sole discretion at such time and thereafter may be reclassified within such section by the Lead Borrower in any manner not expressly prohibited by this Agreement. With respect to (x) any amounts incurred or transactions entered into (or consummated) in reliance on the Revolving Facility or a provision of this Agreement that does not require compliance with a financial ratio or test (including the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio, the Secured Net Leverage Ratio and/or the Senior Secured Net Leverage Ratio) (any such amounts, the "Fixed Amounts") substantially concurrently with (y) any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (including the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio, the Secured Net Leverage Ratio and/or the Senior Secured Net Leverage Ratio) (any such amounts, the "Incurrence-Based Amounts"), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to Incurrence-Based Amounts. In addition, any Indebtedness (and associated Liens, subject to the applicable priorities required pursuant to the applicable Incurrence-Based Amounts), Investments, prepayments of debt and Restricted Payment incurred in reliance on Fixed Amounts may be reclassified at any time, as the Lead Borrower may elect from time to time, as incurred under any applicable Incurrence-Based Amounts if the Lead Borrower subsequently meets the applicable ratio or test for such Incurrence-Based Amounts on a pro forma basis (or would have met such ratio or test, in which case, such reclassification shall be deemed to have automatically occurred if not elected otherwise by the Lead Borrower).

Section 1.11 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio, the Secured Net Leverage Ratio and the Senior Secured Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.11; *provided* that notwithstanding anything to the contrary in this Section 1.11, when calculating the Secured Net Leverage Ratio for purposes of determining actual compliance (and not Pro Forma Compliance or compliance on a Pro Forma Basis) with any covenant pursuant to Section 6.14(a), in each case, the events described in this Section 1.11 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect. In addition, whenever a financial ratio or test is to be calculated on a pro forma basis, the reference to the "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements of the Lead Borrower are available (as determined in good faith by the Lead Borrower);

provided that, the provisions of this sentence shall not apply for purposes of calculating the Secured Net Leverage Ratio for purposes of the definition of "Applicable Rate" or determining actual compliance with Section 6.14(a) (other than for the purpose of determining Pro Forma Compliance with the financial covenants set forth in Section 6.14(a), each of which shall be based on the financial statements delivered pursuant toSections 5.01(a) or (b), as applicable, for the relevant Test Period).

(b) For purposes of calculating any financial ratio or test or basket that is based on a percentage of Consolidated Adjusted EBITDA or Consolidated Total Assets, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to Section 1.11(d)) that have been made (i) during the applicable Test Period and (ii) if applicable as described inSection 1.11(a), subsequent to such Test Period and prior to or substantially concurrently with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated Adjusted EBITDA, Consolidated Total Assets and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of the determination of Consolidated Total Assets, the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into any Borrower or any of the Lead Borrower's other Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.11, then such financial ratio or test (or the calculation of Consolidated Total Assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.11.

(c) Whenever pro forma effect is to be given to the Transactions, a Specified Transaction, the implementation of an operational initiative or operational change, the pro forma calculations (i) shall be made in good faith by a Responsible Officer of the Lead Borrower and (ii) may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions, other operating expense improvements and cost synergies resulting from, or relating to, such initiative or change, such Transaction or such Specified Transaction projected by the Lead Borrower in good faith to be realizable as a result of actions taken or expected to be taken (calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and cost synergies had been realized on the first day of such period as if such cost savings, operating expense reductions, other operating improvements and cost synergies were realized during the entirety of such period and such that "run-rate" means the full recurring projected benefit for a period that is associated with any action taken or expected to be taken (including any savings or other benefits expected to result from the elimination of a public target's compliance costs with public company requirements) net of the amount of actual benefits realized during such period from such actions), and any such adjustments shall be included in the initial pro forma calculation of such financial ratios or tests or basket that is based on a percentage of Consolidated Adjusted EBITDA relating to such initiative or change, such Transaction or such Specified Transaction (and in respect of any subsequent pro forma calculation in which such initiative or change, such Transaction or such Specified Transaction is given pro forma effect) and during any applicable subsequent Test Period in which the effects thereof are expected to be realizable, relating to such initiative or change, such Transaction or such Specified Transaction; *provided* that (x) a duly completed certificate signed by a Responsible Officer of the Lead Borrower shall be delivered to the Administrative Agent together with the Compliance Certificate required to be delivered pursuant to Section 5.01(c), certifying that such cost savings, operating expense reductions, other operating improvements and/or cost synergies are readily identifiable, factually supportable and have been determined in good faith by the Lead Borrower to be reasonably

anticipated to be realizable in the good faith judgment of the Lead Borrower, within eighteen (18) months after the consummation of such initiative or change (or, with respect to the Transactions, within 18 months after the consummation of the Transactions), such Transaction or such Specified Transaction, which is expected to result in such cost savings, operating expense reductions, other operating improvements or cost synergies and (y) no cost savings, operating expense reductions, other operating improvements or cost synergies shall be added pursuant to clause (ii) above to the extent duplicative of any expenses or charges otherwise added to Consolidated Adjusted EBITDA (or any component thereof), whether through a pro forma adjustment or otherwise, for such period; *provided, further,* that all amounts added back to Consolidated Adjusted EBITDA pursuant to clause (ii) above, together with all amounts added back to Consolidated Adjusted EBITDA pursuant to clause (ii) and clauses (a)(vi)(x), (a)(vii)(A) and (a)(vii)(B)(ii) in the definition thereof, and all amounts excluded from Consolidated Net Income pursuant to clauses (a) (other than subclause (a)(i), subclause (a)(iv) and subclause (a)(xi)) and (u) thereof, shall not exceed, in the aggregate 30% of Consolidated Adjusted EBITDA (calculated after giving effect to such amounts that would be added back pursuant to such clause (ii) above and clauses (a)(vi)(x), (a)(vii)(A) and (a)(vii)(B)(ii) in the definition of Consolidated Adjusted EBITDA and excluded pursuant to clauses (a) (other than subclause (a)(i), subclause (a)(iv) and subclause (a)(xi)) and (u) of the definition of Consolidated Net Income).

(d) In the event that any Borrower or any other Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subject to Section 1.11(a) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period.

(e) Any provision requiring Pro Forma Compliance with the financial covenants set forth in Section 6.14(a) shall be made assuming that compliance with the Secured Net Leverage Ratio and/or Fixed Charge Coverage Ratio pursuant to such Section is required with respect to the most recent Test Period prior to such time (it being understood that for purposes of determining Pro Forma Compliance with the financial covenants set forth in Section 6.14(a), if no Test Period with an applicable Secured Net Leverage Ratio and/or Fixed Charge Coverage Ratio cited in Section 6.14(a) has passed, the applicable Secured Net Leverage Ratio and/or Fixed Charge Coverage Ratio level shall be the level for the first Test Period cited in Section 6.14(a) with an indicated Secured Net Leverage Ratio and/or Fixed Charge Coverage Ratio level).

(f) [Reserved].

(g) In connection with any action being taken in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Total Net Leverage Ratio, the Fixed Charge Coverage Ratio, the Secured Net Leverage Ratio or the Senior Secured Net Leverage Ratio;

(ii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Consolidated Adjusted EBITDA); or

(iii) determining compliance with representations, warranties, Defaults or Events of Default;

in each case, at the option of the Lead Borrower (the Lead Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into or irrevocable notice is given in respect of such transaction (or such later date as specified by the Lead Borrower in writing to the Administrative Agent from time to time) (the "LCT Test Date"), and if, after giving Pro Forma Effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date, the Lead Borrower or any of the Restricted Subsidiaries would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with for all purposes; *provided* that if financial statements for one or more subsequent fiscal periods shall have been delivered pursuant to this Agreement, or monthly financials to the extent such monthly financials are available, the Lead Borrower may elect, in its sole discretion, to redetermine all such ratios, tests or baskets on the basis of such financial statements or monthly financial statements, as applicable, in which case such date or redetermination shall thereafter be deemed to be the applicable date the definitive agreements for such Limited Condition Transaction are entered into. For the avoidance of doubt, if the Lead Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been satisfied as a result of fluctuations in any such ratio, test or basket (including due to fluctuations of the target of any Limited Condition Transaction), including due to fluctuations in Consolidated Adjusted EBITDA or Consolidated Total Assets, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been satisfied as a result of such fluctuations. If the Lead Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any event or transaction occurring after the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement or date for redemption, repurchase, defeasance, satisfaction and discharge or repayment specified in an irrevocable notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction (a "Subsequent Transaction") in connection with which a ratio, test or basket availability calculation must be made on a pro forma basis or giving pro forma effect to such Subsequent Transaction, for purposes of determining whether such ratio, test or basket availability has been complied with under this Agreement, any such ratio, test or basket shall be required to be satisfied on a pro forma basis assuming such Limited Condition Transaction and other transactions in connection therewith have been consummated; *provided* that, solely with respect to any such ratio, test or basket calculated with respect to a Restricted Payment or payment on account of Indebtedness under any Restricted Debt, the calculation of any such ratio, test or basket shall also be required to be satisfied on a non-pro forma basis until such time as such Subsequent Transaction is actually consummated.

Section 1.12 Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The

Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to 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 other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

Section 1.13 Appointment of Lead Borrower. Each Subsidiary that is a Borrower as of the Closing Date or any other Subsidiary that is joined to the Agreement from time to time as a "Borrower" in accordance with Section 5.12 and the definition of "Borrower", hereby designates the Lead Borrower (or any successor Lead Borrower appointed in accordance with Section 6.07(a)) as its representative and agent on its behalf for all purposes under this Agreement and the other Loan Documents, including selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or the Borrowers under the Loan Documents, which appointment shall remain in full force and effect unless and until the Administrative Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed as the Lead Borrower. The Lead Borrower hereby accepts such appointment. Notwithstanding anything to the contrary contained in this Agreement, no Borrower other than the Lead Borrower shall be entitled to take any of the foregoing actions. The Administrative Agent, the Collateral Agent and each Lender may regard any notice or other communication from the Lead Borrower as if it were on behalf of all of the Borrowers, and may give any notice or communication required or permitted to be given to any Borrower or all Borrowers hereunder to the Lead Borrower on behalf of such Borrower or all Borrowers. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by the Lead Borrower (in such capacity) shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

Section 1.14 Certifications. All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

Section 1.15 Available Amount Transactions. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount of the Available Amount immediately prior to the taking of such action, the Lead Borrower may elect to sequence such transactions in its discretion and, in such event, give effect to any action sequenced prior to any other action on such date on a Pro Forma Basis in connection with testing the permissibility of such subsequent action.

Section 1.16 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

Section 1.17 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, refinancings, restatements, amendment and restatements, renewals, restructurings, extensions, supplements and other modifications

thereto, but only to the extent that such amendments, refinancings, restatements, amendment and restatements, renewals, restructuring, extensions, supplements and other modifications are not prohibited by the Loan Documents and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, superseding or interpreting such Law.

Section 1.18 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar amount of the undrawn face amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar amount of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE 2 THE CREDITS

Section 2.01 Commitments.

(a) Subject to the terms and conditions set forth herein, each Revolving Lender severally, and not jointly, agrees to make Revolving Loans to any Borrower in Dollars at any time and from time to time on and after the Closing Date, and until the earlier of the Initial Revolving Credit Maturity Date and the termination of the Initial Revolving Credit Commitment of such Initial Revolving Lender in accordance with the terms hereof; *provided* that, after giving effect to any Borrowing of Initial Revolving Loans, the Outstanding Amount of such Initial Revolving Lender's Initial Revolving Credit Exposure shall not exceed such Initial Revolving Lender's Initial Revolving Credit Commitment. Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, the Borrowers may borrow, pay or prepay and reborrow Revolving Loans.

(b) Subject to the terms and conditions of this Agreement and any applicable Refinancing Amendment, Extension Amendment or Incremental Facility Agreement, each Lender with an Additional Commitment of a given Class, severally and not jointly, agrees to make Additional Revolving Loans of such Class to any Borrower, which Loans shall not exceed for any such Lender at the time of any incurrence thereof the Additional Commitment of such Class of such Lender as set forth in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Agreement.

Section 2.02 Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. Each Swingline Loan shall be made in accordance with the terms and procedures set forth in Section 2.04.

(b) Subject to Section 2.01 and Section 2.14, each Borrowing shall be comprised entirely of Base Rate Loans or BSBY Rate Loans as the Lead Borrower may request in accordance herewith; *provided* that each Swingline Loan shall be a Base Rate Loan. Each Lender at its option may make any BSBY Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that (x) any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement, (y) such BSBY Rate Loan shall be deemed to have been made and held by such Lender, and the obligation of the applicable Borrower to repay such BSBY Rate Loan shall nevertheless be to such

Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (z) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrowers resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.15 shall apply); *provided further*, that no such domestic or foreign branch or Affiliate of such Lender shall be entitled to any greater indemnification under Section 2.17 in respect of any withholding tax with respect to such BSBY Rate Loan than that to which the applicable Lender was entitled on the date on which such Loan was made (except in connection with any indemnification entitlement arising as a result of any Change in Law after the date on which such Loan was made).

(c) At the commencement of each Interest Period for any BSBY Rate Borrowing, such BSBY Rate Borrowing shall comprise an aggregate principal amount that is an integral multiple of $100,000 and not less than $1,000,000. Each Base Rate Loan Borrowing when made shall be in a minimum principal amount of $500,000 and in an integral multiple of $100,000; *provided* that a Swingline Loan Borrowing may be made in a lesser aggregate amount that is (x) equal to the entire aggregate unused Revolving Credit Commitments or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Borrowings of more than one Type and Class may be outstanding at the same time;*provided* that there shall not at any time be more than a total of 10 different Interest Periods plus three (3) additional Interest Periods in respect of each Incremental Revolving Loan, each Loan in connection with an Extension Amendment and each Loan in connection with a Refinancing Amendment in effect for BSBY Rate Borrowings at any time outstanding (or such greater number of different Interest Periods as the Administrative Agent may agree from time to time in its reasonable discretion).

(d) Notwithstanding any other provision of this Agreement, a Borrower shall not, nor shall they be entitled to, request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable to the relevant Loans.

(e) With respect to BSBY, the Administrative Agent will have the right to make Conforming Changes from time to time (with notice to the Lead Borrower) and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrowers and the Lenders reasonably promptly after such amendment becomes effective.

Section 2.03 Requests for Borrowings.

(a) Each Revolving Loan Borrowing, each conversion of Revolving Loans from one Type to the other, and each continuation of BSBY Rate Loans shall be made upon irrevocable notice by the Lead Borrower to the Administrative Agent, which may be given by (A) telephone or (B) a Loan Notice; *provided* that any telephonic notice must be promptly confirmed in writing by delivery to the Administrative Agent of a Loan Notice (*provided* that notices in respect of any Revolving Loan Borrowing (x) to be made in connection with the Mergers on the Closing Date, may be conditioned on the closing of the Transactions, subject to delivery by the Borrower of a funding indemnity letter, and (y) to be made in connection with any acquisition, investment or

irrevocable repayment or redemption of Indebtedness or other transactions or events, in each case, may be conditioned on the closing, of such Permitted Acquisition, permitted Investment or permitted irrevocable repayment or redemption of Indebtedness, consummation of such transaction or occurrence of such events, in each case subject to Section 2.16). Each such notice must be in the form of a Loan Notice, as the case may be, appropriately completed and signed by a Responsible Officer of the Lead Borrower or by telephone (and promptly confirmed by delivery of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower) and must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including ".pdf" or ".tiff")) not later than (i) 1:00 p.m. two (2) Business Days prior to the requested date of any Borrowing of or continuation of BSBY Rate Loans (or one Business Day in the case of any BSBY Rate Borrowing to be made on the Closing Date) or any conversion of Base Rate Loans to BSBY Rate Loans, and (ii) 1:00 p.m. one Business Day prior to the requested date of any Borrowing or conversion to Base Rate Loans (other than Swingline Loans), (or, in each case, such later time as is reasonably acceptable to the Administrative Agent).

(b) If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Loan Borrowing. If no Interest Period is specified with respect to any requested BSBY Rate Borrowing, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall advise each Lender of the details and amount of any Loan to be made as part of the requested Borrowing (x) in the case of any Base Rate Loan Borrowing, on the same Business Day of receipt of a Loan Notice in accordance with this Section or (y) in the case of any BSBY Rate Borrowing, on the same Business Day as the receipt of a Loan Notice in accordance with this Section.

Section 2.04 Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans in Dollars to the Borrowers from time to time on and after the Closing Date and until the Latest Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not to exceed $5,000,000; *provided* that (i) the Swingline Lender shall not be required to make any Swingline Loan to refinance any outstanding Swingline Loan and (ii) after giving effect to any Swingline Loan, the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and LC Exposure shall not exceed the Total Revolving Credit Commitment. Each Swingline Loan shall be in a minimum principal amount of not less than $100,000 (and any amount in excess of $100,000 shall be an integral multiple of $50,000) or such lesser amount as may be agreed by the Swingline Lender; *provided* that, notwithstanding the foregoing, any Swingline Loan may be in an aggregate amount that is (x) equal to the entire unused balance of the aggregate unused Revolving Credit Commitments or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Within the foregoing limits and subject to the terms and conditions set forth herein, Swingline Loans may be borrowed, prepaid and reborrowed. To request a Swingline Loan, the Borrowers shall notify the Swingline Lender (with a copy to the Administrative Agent) of such request by delivery of a written Swingline Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower, not later than 1:00 p.m. on the day of a proposed Swingline Loan. The Swingline Lender shall make each Swingline Loan available to the Borrowers on the same Business Day by means of a credit to the account designated in the related Swingline Loan Notice or otherwise in accordance with the instructions of the Lead Borrower (including, in the case of a Swingline Loan made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e), by remittance to the Issuing Bank).

(b) The Swingline Lender (x) may by written notice (a "Swingline Participation Notice") given to the Administrative Agent not later than 12:00 p.m. on any Business Day require the Revolving Lenders to purchase participations on the second Business Day following receipt of such notice in all or a portion of the Swingline Loans outstanding and (y) may, at any time and from time to time in its sole discretion, on behalf of the Borrowers (which hereby irrevocably authorizes and directs the Swingline Lender to act on its behalf), give a Loan Notice to the Administrative Agent requesting that the Lenders (including the Swingline Lender) make Revolving Loans that are Base Rate Loans in an amount equal to the unpaid principal amount of any Swingline Loan, which Revolving Loans will be used solely for the repayment of such Swingline Loan. Such Swingline Participation Notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such Swingline Participation Notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Revolving Lender's Applicable Revolving Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Revolving Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or any 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 Lender shall comply with its obligation under this paragraph by effecting a wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Revolving Loans made by such Revolving Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders pursuant to this Section 2.04(b)), and the Administrative Agent shall promptly remit to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrowers of any participation in any Swingline Loan acquired pursuant to this Section 2.04(b), and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrowers in respect of any Swingline Loan after receipt by the Swingline Lender of the proceeds of any sale of participations therein shall be promptly remitted by the Swingline Lender to the Administrative Agent, and any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that have made their payments pursuant to this Section 2.04(b) and to the Swingline Lender, as their interests may appear;*provided* that any such payment so remitted shall be repaid to the Swingline Lender or the Administrative Agent, as the case may be, and thereafter to the Borrowers, if and to the extent such payment is required to be refunded to the Borrowers for any reason. The purchase of participations in a Swingline Loan pursuant to this Section 2.04(b) shall not relieve the Borrowers of any default in the payment thereof.

(c) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04 by the time specified in Section 2.04(b), the Swingline Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (c) shall be conclusive absent manifest error.

Section 2.05 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, (i) the Issuing Bank agrees, in each case in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.05, (A) from time to time on any Business Day during the period from the Closing Date to the fifth Business Day prior to the Latest Revolving Credit Maturity Date, upon the request of the Borrowers, to issue Letters of Credit in Dollars issued on sight basis only for the account of the Borrowers and/or any of its Subsidiaries (*provided* that the Borrowers will be the applicant and liable for any Letters of Credit issued for the account of any of its Subsidiaries) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor drafts under the Letters of Credit, and (ii) the Revolving Lenders severally agree to participate in the Letters of Credit issued pursuant to Section 2.05(d).

(i) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of any Letter of Credit, the Borrowers shall deliver to the Issuing Bank and the Administrative Agent, at least three Business Days in advance of the requested date of issuance (or such shorter period as is acceptable to the Issuing Bank or, in the case of any issuance to be made on the Closing Date, one Business Day prior to the Closing Date), a request to issue a Letter of Credit, which shall specify that it is being issued under this Agreement (it being understood that, to the extent applicable, the issuance of any Letter of Credit expressly for the benefit of any Subsidiary other than a Loan Party shall be contingent upon the Administrative Agent's receipt of any documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act). To request an amendment, extension or renewal of an outstanding Letter of Credit, (other than any automatic extension of a Letter of Credit permitted under Section 2.05(c)) the Lead Borrower shall submit such a request to the Issuing Bank selected by the Lead Borrower (with a copy to the Administrative Agent) at least three Business Days in advance of the requested date of amendment, extension or renewal (or such shorter period as is acceptable to the Issuing Bank), identifying the Letter of Credit to be amended, extended or renewed, and specifying the proposed date (which shall be a Business Day) and other details of the amendment, extension or renewal. If reasonably requested by the Issuing Bank in connection with any request for any Letter of Credit, the Lead Borrower also shall submit a letter of credit application on the Issuing Bank's standard form. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrowers to, or entered into by the Borrowers with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. No Letter of Credit, letter of credit application or other document entered into by the Borrowers with the Issuing Bank relating to any Letter of Credit shall contain any representations or warranties, covenants or events of default not set forth in this Agreement (and to the extent inconsistent herewith shall be rendered null and void (or reformed automatically without further action by any Person to conform to the terms of this Agreement)), and all representations and warranties, covenants and events of default set forth therein shall contain standards, qualifications, thresholds and exceptions for materiality or otherwise consistent with those set forth in this Agreement (and, to the extent inconsistent herewith, shall be deemed to automatically incorporate the applicable standards, qualifications, thresholds and exceptions set forth herein without action by any Person). No Letter of Credit may be

issued, amended, extended or renewed unless (and on the issuance, amendment, extension or renewal of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, or renewal (i) the LC Exposure does not exceed the Letter of Credit Sublimit and (ii) (A) the aggregate amount of the Initial Revolving Credit Exposure shall not exceed the aggregate amount of the Initial Revolving Credit Commitments then in effect, (B) the aggregate amount of the Additional Revolving Credit Exposure attributable to any Class of Additional Revolving Credit Commitments does not exceed the aggregate amount of the Additional Revolving Credit Commitments of such Class then in effect and (C) if such Letter of Credit has a term extending beyond the Maturity Date applicable to the Revolving Credit Commitments of any Class, the aggregate amount of the LC Exposure attributable to Letters of Credit expiring after such Maturity Date does not exceed the aggregate amount of the Revolving Credit Commitments then in effect that are scheduled to remain in effect after such Maturity Date. The Issuing Bank shall not be required to issue any Letter of Credit other than a Standby Letter of Credit.

(ii) The Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable generally to all letters of credit issued by it;

(C) except as otherwise agreed by the Administrative Agent and the Issuing Bank, or as otherwise provided for in this Agreement, such Letter of Credit is in an initial stated amount less than $10,000;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; and

(E) such Letter of Credit contains any provision for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) The Issuing Bank shall not be under any obligation to amend or extend any Letter of Credit if (A) the Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form in accordance with the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(b) Expiration Date.

(i) No Standby Letter of Credit shall expire later than the earlier of (A) the date that is one year after the date of the issuance of such Standby Letter of Credit and (B) the date that is five Business Days prior to the Latest Revolving Credit Maturity Date; *provided* that, any Standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods of up to one year in duration (which additional periods shall not extend beyond the date referred to in the preceding clause (B) unless 100% of the then-available face amount thereof is Cash collateralized or backstopped on or before the date that such Letter of Credit is extended beyond the date referred to in clause (B) above pursuant to arrangements reasonably satisfactory to the Issuing Bank).

(ii) [Reserved].

(c) Participations. By the issuance of any Letter of Credit (or an amendment to any Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Applicable Revolving Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Revolving Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (d) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Revolving 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 Event of 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.

(d) Reimbursement.

(i) If the Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 2:00 p.m. on the next succeeding Business Day, on which a Borrower receives written notice of such LC Disbursement under paragraph (f) of this Section; *provided* that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Sections 2.03 or 2.04 that such payment be financed with a Swingline Loan Borrowing in an equivalent amount and, to the extent so financed, the obligation of the Borrowers to make such payment shall be discharged and replaced by the resulting Swingline Loan (subject to the satisfaction of the applicable conditions set forth in Section 4.02). If a Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Revolving Lender's Applicable Revolving Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Revolving Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Revolving Lender (andSection 2.07 shall apply, *mutatis mutandis*,

to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Revolving Lenders and the Issuing Bank as their interests may appear.

(ii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Issuing Bank any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.05(d) by the time specified therein, the Issuing Bank shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Bank at a rate per annum equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (ii) shall be conclusive absent manifest error.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse LC Disbursements as provided inparagraph (d) of this Section shall be absolute and unconditional and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under any Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) 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 obligations of the Borrowers hereunder. Neither the Administrative Agent, the Revolving Lenders nor the Issuing Bank, nor any of their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages suffered by the Borrowers that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith, material breach or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised 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 any Letter of Credit, the 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.

(f) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrowers by telephone (confirmed by electronic means) upon any LC Disbursement thereunder; *provided* that no failure to give or delay in giving such notice shall relieve any Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(g) Interim Interest. If the Issuing Bank makes any LC Disbursement, unless a Borrower reimburses such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that a Borrower reimburses such LC Disbursement (or the date on which such LC Disbursement is reimbursed with the proceeds of Loans, as applicable), at the rate per annum then applicable to Initial Revolving Loans that are Base Rate Loans (or, to the extent of the participation in such LC Disbursement by any Revolving Lender of another Class, the rate per annum then applicable to the Revolving Loans of such other Class); *provided* that if the Borrowers fail to reimburse such LC Disbursement when due pursuant toparagraph (d) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (d) of this Section to reimburse the Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment and shall be payable on the date on which a Borrower is required to reimburse the applicable LC Disbursement in full (and, thereafter, on demand).

(h) Replacement or Resignation of the Issuing Bank or Designation of New Issuing Banks.

(i) The Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) at any time by written agreement among the Lead Borrower, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of the Issuing Bank. At the time any such replacement becomes effective, the Borrowers shall pay (upon written request) all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of the Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit. The Borrowers may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and the relevant Revolving Lender, designate one or more additional Revolving Lenders in writing to act as an issuing bank under the terms of this Agreement. Any Revolving Lender designated as an issuing bank pursuant to this paragraph (i) who agrees in writing to such designation shall be deemed to be an "Issuing Bank" (in addition to being a Revolving Lender) in respect of Letters of Credit issued or to be issued by such Revolving Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Revolving Lender.

(i) Notwithstanding anything to the contrary contained herein, the Issuing Bank may, upon ten days' prior written notice to the Borrowers and the Lenders, resign as Issuing Bank, which resignation shall be effective as of the date referenced in such notice (but in no event less than ten days after the delivery of such written notice); it being understood that in the event of any such resignation, any Letter of Credit then outstanding shall remain outstanding (irrespective of whether any amounts have been drawn at such time). In the event of any such resignation as an Issuing Bank, the Borrowers shall be entitled to appoint any Revolving Lender that accepts such appointment in writing as successor Issuing Bank. Upon the acceptance of any appointment as Issuing Bank hereunder, the successor Issuing Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Issuing Bank, and the retiring Issuing Bank shall be discharged from its duties and obligations in such capacity hereunder.

(j) Cash Collateralization.

(i) If any Event of Default exists and the Loans have been declared due and payable in accordance with Article 7 hereof, then within one Business Day on which the Lead Borrower receives written notice from the Administrative Agent at the direction or with the consent of the Issuing Bank demanding the deposit of Cash collateral pursuant to this paragraph (i), the Borrowers shall deposit, in a non-interest-bearing account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in Cash equal to 100% of the LC Exposure as of such date (minus the amount then on deposit in the LC Collateral Account); *provided* that the obligation to deposit such Cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrowers described in Sections 7.01(f) or (g).

(ii) Any such deposit under clause (i) above shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations in accordance with the provisions of this paragraph (j). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account, and each Borrower hereby grants the Administrative Agent, for the benefit of the Secured Parties, a First Priority security interest in the LC Collateral Account. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated be applied to satisfy other Secured Obligations. If any Borrower is required to provide an amount of Cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (together with all interest and other earnings with respect thereto, to the extent not applied as aforesaid) shall be returned to the Borrowers promptly but in no event later than three Business Days after such Event of Default has been cured or waived.

(k) Applicability of ISP and UCP. The Borrowers agree that the Issuing Bank may issue the Letters of Credit subject to the ICC Publication Nos. 500 (1993 Revision) or 600 (2007 Revision) (the "UCP 500" or the "UCP 600") or, at the Issuing Bank's option, such later revision thereof in effect at the time of issuance of the Letter of Credit (as so chosen for the Letter of Credit, the "UCP") or the International Standby Practices 1998, ICC Publication No. 590 or, at the Issuing

Bank's option, such later revision thereof in effect at the time of issuance of the Letters of Credit (as so chosen for the Letters of Credit, the "ISP", and each of the UCP and the ISP, an "ICC Rule"). The Issuing Bank's privileges, rights and remedies under such ICC Rules shall be in addition to, and not in limitation of, its privileges, rights and remedies expressly provided for in this Agreement. The UCP and the ISP (or such later revision of either) shall serve, in the absence of proof to the contrary, as evidence of general banking usage with respect to the subject matter thereof.

Section 2.06 [Reserved].

Section 2.07 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder not later than (i) 1:00 p.m., in the case of BSBY Rate Loans, and (ii) 1:00 p.m., in the case of Base Rate Loans, in each case on the Business Day specified in the applicable Loan Notice by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's respective Applicable Percentage; *provided* that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received on the same Business Day, in like funds, to the account designated in the relevant Loan Notice or as otherwise directed in writing by the Borrowers; *provided* that Swingline Loans made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent has received notice from any Lender that such Lender will not make available to the Administrative Agent such Lender's share of any Borrowing prior to the proposed date of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may but shall not be obligated to, in reliance upon such assumption, make a corresponding amount available to the Borrowers. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent (without duplication) promptly after written demand such corresponding amount with interest thereon forthwith for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to the Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing, and the obligation of the Borrowers to repay the Administrative Agent the corresponding amount pursuant to this Section 2.07(b) shall cease. If the Borrowers pay such amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrowers or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

Section 2.08 Type; Interest Elections.

(a) Each Borrowing shall initially be of the Type specified in the applicable Loan Notice and, in the case of any BSBY Rate Borrowing, shall have the initial Interest Period specified in such Loan Notice. Thereafter, the Borrowers may elect to convert any Borrowing to a Borrowing of a different Type or to continue such Borrowing and, in the case of a BSBY Rate Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders based upon their respective Applicable Percentages, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section 2.08 shall not apply to Swingline Loans, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the Borrowers shall deliver a Loan Notice in accordance with the terms of Section 2.03(a).

(c) If any such Loan Notice requests a BSBY Rate Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of each Loan Notice, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If a Borrower fails to deliver a timely Loan Notice with respect to any BSBY Rate Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, such Borrowing shall be converted at the end of such Interest Period to a BSBY Rate Borrowing with an Interest Period of one month. Notwithstanding anything to the contrary herein, if an Event of Default exists and the Administrative Agent, at the request of the Required Lenders, so notifies the Lead Borrower, then, so long as such Event of Default exists (i) no outstanding Borrowing may be converted to or continued as a BSBY Rate Borrowing and (ii) unless repaid, each BSBY Rate Borrowing shall be converted to a Base Rate Loan Borrowing at the end of the then-current Interest Period applicable thereto.

Section 2.09 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Initial Revolving Credit Commitments shall automatically terminate on the Initial Revolving Credit Maturity Date and (ii) the Additional Revolving Credit Commitments of any Class shall automatically terminate on the Maturity Date specified therefor in the applicable Incremental Facility Agreement, Extension Amendment or Refinancing Amendment, as applicable.

(b) Upon delivery of the notice required by Section 2.09(c), the Borrowers may at any time terminate or from time to time without premium or penalty reduce the Revolving Credit Commitments of any Class; *provided* that (i) each partial reduction of the Revolving Credit Commitments of any Class shall be in an amount that is an integral multiple of $1,000,000 and not less than $1,000,000 and (ii) the Borrowers shall not terminate or reduce the Revolving Credit Commitments of any Class if, after giving effect to any concurrent prepayment of Revolving Loans and Swingline Loans, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of such Class would exceed the aggregate amount Revolving Credit Commitments of such Class; *provided* that, after the establishment of any Additional Revolving Credit Commitments, any such termination or reduction of the Revolving Credit Commitments of any Class shall be subject to the provisions set forth in Sections 2.22, 2.23 and/or 9.02, as applicable.

(c) The Borrowers shall notify the Administrative Agent of any election to terminate or reduce any Revolving Credit Commitment under paragraph (b) of this Section in writing at least three (3) Business Days prior to the effective date of such termination or reduction (or such later date to which the Administrative Agent may agree in its reasonable discretion), specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Revolving Lenders of each applicable Class of the contents thereof. Each notice delivered by the Borrowers pursuant to this Section shall be irrevocable; *provided* that any such notice may state that it is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked or postponed by the Borrowers (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of any Revolving Credit Commitment pursuant to this Section 2.09 shall be permanent. Upon any reduction of any Revolving Credit Commitment, the Revolving Credit Commitment of each Revolving Lender of the relevant Class shall be reduced by such Revolving Lender's Applicable Revolving Percentage of such reduction amount.

Section 2.10 Repayment of Loans; Evidence of Debt

(a) [Reserved].

(b)

(i) The Borrowers hereby unconditionally promise to pay (A) to the Administrative Agent for the account of each Initial Revolving Lender, the then-unpaid principal amount of the Initial Revolving Loans of such Lender on the Initial Revolving Credit Maturity Date, (B) to the Administrative Agent for the account of each Additional Revolving Lender, the then-unpaid principal amount of each Additional Revolving Loan of such Additional Revolving Lender on the Maturity Date applicable thereto and (C) to the Swingline Lender, the then unpaid principal amount of each Swingline Loan on the earlier of (x) the date that is fifteen (15) Business Days after such Swingline Loan is made and (y) the Latest Revolving Credit Maturity Date.

(ii) On the Maturity Date applicable to the Revolving Credit Commitments of any Class, the Borrowers shall (A) cancel and return outstanding Letters of Credit (or alternatively, with respect to each outstanding Letter of Credit, furnish to the Administrative Agent a Cash deposit (or if reasonably satisfactory to the Issuing Bank, a "backstop" letter of credit or otherwise have it deemed issued under documentation governing a refinancing of the Obligations) equal to 100% of the amount of the LC Exposure (minus any amount then on deposit in any Cash collateral account established for the benefit of the Issuing Bank) as of such date, in each case to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class shall not exceed the Revolving Credit Commitments of such other Class then in effect), (B) prepay Swingline Loans to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class shall not exceed the Revolving Credit Commitments of such other Class in effect and (C) make payment in full in Cash of all accrued and unpaid fees and all reimbursable expenses and other Obligations with respect to the Revolving Facility of the applicable Class then due, together with accrued and unpaid interest (if any) thereon.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder and the Class and Type thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the accounts of the Lenders or the Issuing Bank and each Lender's or Issuing Bank's share thereof.

(e) The entries made in the accounts maintained pursuant toparagraphs (c) and (d) of this Section 2.10 shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement; *provided, further*, that in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to paragraph (d) of this Section 2.10 and any Lender's records, the accounts of the Administrative Agent shall govern absent manifest error.

(f) Any Lender may reasonably request that any Loan made by it be evidenced by a Promissory Note. In such event, the Borrowers shall, promptly following such reasonable request, prepare, execute and deliver to such Lender a Promissory Note that is payable to such Lender and its registered permitted assigns; it being understood and agreed that such Lender (and/or its applicable permitted assign) shall be required to return such Promissory Note to the Borrowers in accordance with Section 9.05(g) and upon the occurrence of the Termination Date (or as promptly thereafter as practicable). If any Lender loses the original copy of its Promissory Note, it shall execute an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrowers. The obligation of each Lender to execute an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrowers shall survive the Termination Date.

Section 2.11 Prepayment of Loans.

(a) Optional Prepayments.

(i) [Reserved].

(ii) Upon prior notice in accordance with Section 2.11(a)(iii), the Borrowers shall have the right at any time and from time to time to voluntarily prepay any Borrowing of Revolving Loans of any Class or any Borrowing of Swingline Loans, in whole or in part without premium or penalty (but subject to Section 2.16); *provided* that (A) after the establishment of any Additional Revolving Loans, any such prepayment of any Borrowing of Revolving Loans of any Class shall be subject to the provisions set forth in Sections 2.22, 2.23 and/or 9.02 and (B) no Borrowing of Revolving Loans may be prepaid unless all Swingline Loans then outstanding, if any, are prepaid concurrently therewith, as applicable. Each such prepayment shall be paid to the Revolving Lenders in accordance with their respective Applicable Percentages of the relevant Class.

(iii) The Lead Borrower shall notify the Administrative Agent (and Swingline Lender, as applicable) in writing of any prepayment under this Section 2.11(a) in the form of a Notice of Loan Prepayment in the case of any prepayment of (i) a BSBY Rate Borrowing, not later than 4:00 p.m. three Business Days before the date of prepayment or (ii) a Base Rate Loan Borrowing, not later than 1:00 p.m. on the day of prepayment or (iii) in the case of any prepayment of a Swingline Loan, not later than one Business Day before the date of prepayment (or, in each case, such later time as to which the Administrative Agent may reasonably agree). Each such Notice of Loan Prepayment shall be irrevocable (except as set forth in the proviso to this sentence) and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that any Notice of Loan Prepayment delivered by the Lead Borrower may be conditioned upon the effectiveness of other transactions, in which case such Notice of Loan Prepayment may be revoked or postponed by the Lead Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such Notice of Loan Prepayment relating to any Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount at least equal to the amount that would be permitted in the case of a Borrowing of the same Type and Class as provided in Section 2.02, or such lesser amount that is then outstanding with respect to such Borrowing being repaid (and in increments of $100,000 in excess thereof or such lesser incremental amount that is then outstanding with respect to such Borrowing being repaid).

(b) Mandatory Prepayments.

(i) [Reserved].

(ii) [Reserved].

(iii) [Reserved].

(iv) [Reserved].

(v) [Reserved].

(vi) Prepayments made under this Section 2.11(b) shall be (A) accompanied by accrued interest as required by Section 2.13, (B) subject to Section 2.16 and (C) applied to the Revolving Credit Exposure as follows: first, shall be applied ratably to the LC Disbursements and the Swingline Loans, and second, shall be applied to the outstanding Revolving Loans.

(vii) (A) In the event that the Revolving Credit Exposure of any Class exceeds the amount of the Revolving Credit Commitment of such Class then in effect, the Borrowers shall, promptly following receipt of written notice from the Administrative Agent, prepay the Revolving Loans or Swingline Loans and/or reduce LC Exposure in an aggregate amount sufficient to reduce such Revolving Credit Exposure as of the date of such payment to an amount not to exceed the Revolving Credit Commitment of such Class then in effect by taking any of the following actions as it shall determine at its sole discretion: (x) prepaying Revolving Loans or Swingline Loans or (y) with respect to any excess LC Exposure, depositing Cash in a Cash collateral account established for the benefit of the Issuing Bank or "backstopping" or replacing the relevant Letters of Credit, in each case, in an amount equal to 100% of such excess LC Exposure (minus any amount then on deposit in any Cash collateral account established for the benefit of the Issuing Bank).

(B) Each prepayment of any Revolving Loan Borrowing under this Section 2.11(b)(vii) shall be paid to the Revolving Lenders in accordance with their respective Applicable Revolving Percentages of the applicable Class.

Section 2.12 Fees.

(a) The Borrowers agree to pay to the Administrative Agent and the Lead Arranger, for their own account, the fees described in the Fee Letter.

(b) All fees payable hereunder shall be paid on the dates due, in Dollars and in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to the Issuing Bank). Fees paid shall not be refundable under any circumstances except as otherwise provided in the Fee Letter (or as otherwise agreed by the Lead Borrower and the Administrative Agent).

(c) [Reserved].

(d) Unless otherwise indicated herein, all computations of fees shall be made on the basis of a360-day year and shall be payable for the actual days elapsed (including the first day but excluding the last day). The determination by the Administrative Agent of the amount of any fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(e) The Borrowers agree to pay to the Administrative Agent for the account of each Revolving Lender of any Class (other than any Defaulting Lender) a commitment fee (the "Commitment Fee"), which shall accrue at a rate equal to the Applicable Rate per annum applicable to the Revolving Credit Commitments of such Class on the actual daily amount of the unused Revolving Credit Commitment of such Class of such Revolving Lender during the period from and including the Closing Date to the date on which such Lender's Revolving Credit Commitment of such Class terminates. Accrued Commitment Fees shall be payable in arrears on the last Business Day of each March, June, September and December (commencing with December 31, 2021) for the quarterly period then ended (and, in the case of the initial payment, amounts accruing since the Closing Date), and on the date on which the Revolving Credit Commitments of the applicable Class terminate. For purposes of calculating the Commitment Fee only, the Revolving Credit Commitment of any Class of any Revolving Lender shall be deemed to be used to the extent of Revolving Loans of such Class of such Revolving Lender and the LC Exposure of such Revolving Lender attributable to its Revolving Credit Commitment of such Class and no portion of the Revolving Credit Commitment of any Class shall be deemed used as a result of outstanding Swingline Loans.

(f) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender of any Class a participation fee with respect to its participations in Letters of Credit, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Revolving Loans of such Class that are BSBY Rate Loans on such Lender's LC Exposure attributable to its Revolving Credit Commitment of such Class (excluding any portion thereof that is attributable to unreimbursed LC Disbursements), during the period from and including the Closing Date to the earlier of (A) the later of the date on which such Revolving Lender's Revolving Credit Commitment of such Class terminates and the date on which such Revolving Lender ceases to have any LC Exposure attributable to its Revolving Credit Commitment of such Class and (B) the Termination Date, and (ii) to the Issuing Bank, for its own account, a fronting fee, in respect of each Letter of Credit issued by the Issuing Bank (for the period from the date of issuance of such Letter of Credit to the earlier of (A) the expiration date of such Letter of Credit (*provided* that if on

any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn), (B) the date on which such Letter of Credit terminates or (C) the Termination Date), computed at a rate equal to the rate agreed by the Issuing Bank and the Borrowers (but in any event not to exceed the amount set forth in the Fee Letter) of the Outstanding Amount of such Letter of Credit, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees are payable in arrears on the last Business Day of each March, June, September and December (commencing, if applicable, with December 31, 2021) for the quarterly period then ended; *provided* that all such fees shall be payable on the date on which the Revolving Credit Commitments of the applicable Class terminate, and any such fees accruing after the date on which the Revolving Credit Commitments of the applicable Class terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 30 days after receipt of a written demand (accompanied by reasonable back-up documentation) therefor.

Section 2.13 Interest.

(a) The Revolving Loans and Swingline Loans comprising each Base Rate Loan Borrowing shall bear interest at the Base Rate plus the Applicable Rate.

(b) The Revolving Loans comprising each BSBY Rate Borrowing shall bear interest at the BSBY Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) During the continuance of an Event of Default under Sections 7.01(a) (with respect to principal, interest or fees) ornon-payment after acceleration pursuant to Section 7.01(g) (in each case unless otherwise waived or consented to by the Required Lenders), the Borrowers shall pay interest on past due amounts owing by it under the Revolving Loans at a fluctuating interest rate per annum at all times thereafter equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on such amounts shall be due and payable upon written demand.

(d) Accrued interest on each Revolving Loan and Swingline Loan shall be payable in arrears on each Interest Payment Date for such Revolving Loan or Swingline Loan and (i) on the Maturity Date applicable to such Loan, (ii) in the case of a Revolving Loan of any Class, upon termination of the Revolving Credit Commitments of such Class and (iii) in the case of any Swingline Loan, upon termination of all of the Revolving Credit Commitments, as applicable; *provided* that (A) interest accrued pursuant to Section 2.13(c) shall be payable on demand, (B) in the event of any repayment or prepayment of any Revolving Loan (other than a Swingline Loan of any Class prior to the termination of the Revolving Credit Commitments of such Class), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any BSBY Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Revolving Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate and BSBY Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Interest shall accrue on each Loan for the day on which the Loan is made and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

(f) The Borrowers shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each BSBY Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrowers shall have received at least ten (10) Business Days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) Business Days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) Business Days from receipt of such notice.

Section 2.14 Inability to Determine Rates.

(a) If in connection with any request for a BSBY Rate Loan or a conversion to or continuation thereof, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 2.14(b), and the circumstances under clause (i) of Section 2.14(b) or the Scheduled Unavailability Date has occurred (as applicable) or (B) adequate and reasonable means do not otherwise exist for determining BSBY for any requested Interest Period with respect to a proposed BSBY Rate Loan or in connection with an existing or proposed Base Rate Loan or (ii) the Administrative Agent or the Required Lenders determine that for any reason that the BSBY Rate for any requested Interest Period with respect to a proposed BSBY Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended (to the extent of the affected BSBY Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the BSBY Rate component of the Base Rate, the utilization of the BSBY Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 2.14(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of BSBY Rate Loans (to the extent of the affected BSBY Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding BSBY Rate Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but without limiting Section 2.14(a) above and this Section 2.14(b), if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Borrowers or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrowers) that the Borrowers or Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(i) adequate and reasonable means do not exist for ascertaining one (1), three (3) and six (6) month interest periods of BSBY including, without limitation, because the BSBY Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) Bloomberg or any successor administrator of the BSBY Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or Bloomberg or such administrator with respect to its publication of BSBY, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of BSBY or the BSBY Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, *provided* that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide such interest periods of BSBY after such specific date (the latest date on which one month, three month and six month interest periods of BSBY or the BSBY Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent (any such date, the "BSBY Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, BSBY will be replaced hereunder and under any Loan Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Successor Rate"):

(x) Term SOFR *plus* the SOFR Adjustment; and

(y) Daily Simple SOFR *plus* the SOFR Adjustment;

provided that, if initially BSBY is replaced with the rate contained in clause (y) above (Daily Simple SOFR plus the SOFR Adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its reasonable discretion, and the Administrative Agent notifies each Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Successor Rate shall be Term SOFR *plus* the SOFR Adjustment.

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a quarterly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that neither of the alternatives set forth in clauses (x) and (y) above is available on or prior to the BSBY Replacement Date or (ii) if the events or circumstances of the type described in Section 2.14(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrowers may amend this Agreement solely for the purpose of replacing BSBY or any then current Successor Rate in accordance with this Section 2.14 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmarks which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrowers unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrowers and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice;*provided* that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent (with notice to the Lead Borrower).

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time (with notice to the Lead Borrower) and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrowers and the Lenders reasonably promptly after such amendment becomes effective.

For purposes of this Section 2.14, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in Dollars shall be excluded from any determination of Required Lenders.

Section 2.15 Increased Costs

(a) If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or Issuing Bank;

(ii) subjects the Administrative Agent, any Lender or Issuing Bank to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (e) of the definition of "Excluded Taxes" and (C) Connection Income Taxes) on or with respect to its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) imposes on any Lender or Issuing Bank any other condition (other than Taxes) affecting this Agreement or BSBY Rate Loans made by any Lender or any Letter of Credit or participation therein,

and the result of any of the foregoing is to increase the cost to the relevant Lender of making or maintaining any BSBY Rate Loan (or in the case of a Change in Law with respect to Taxes, any Loan) (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise) in respect of any BSBY Rate Loan or Letter of Credit in an amount deemed by such Lender or Issuing Bank to be material (in such Lender's or Issuing Bank's good faith determination), then, within 30 days after the Lead Borrower's receipt of the written certificate contemplated by Section 2.15(c), the Borrowers will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; *provided* that the Borrowers shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) such Lender invokes Section 2.20 or (z) in the case of any request for reimbursement under Section 2.15(a)(iii) resulting from a market disruption, the relevant circumstances do not generally affect the banking market.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law other than due to Taxes (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy or liquidity), then within 30 days of receipt by the Lead Borrower of the written certificate contemplated by Section 2.15(c) the Borrowers will pay to such Lender or the Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) Any Lender or Issuing Bank requesting compensation under this Section 2.15 shall be required to deliver a written certificate to the Lead Borrower that (i) sets forth the amount or amounts necessary to compensate such Lender or Issuing Bank or the holding company thereof, as applicable, as specified in Sections 2.15(a) or (b), (ii) sets forth, in reasonable detail, the manner in which such amount or amounts were determined (as determined in good faith by such Lender) and (iii) certifies that such Lender or Issuing Bank is generally charging such amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided, however* that the Lead Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or

reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; *provided, further*, 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.

Section 2.16 Break Funding Payments. Subject to Section 9.05, in the event of (a) the conversion or prepayment of any principal of any BSBY Rate Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration or otherwise), (b) the failure to borrow, convert, continue or prepay any BSBY Rate Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any BSBY Rate Loan of any Lender other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrowers pursuant to Section 2.19, then, in any such event, the Borrowers shall, promptly following written demand from such Lender, compensate each Lender for the amount of any actual out-of-pocket loss, actual expense and/or liability (including any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund or maintain BSBY Rate Loans, but excluding loss of anticipated profit) that such Lender may incur or sustain as a result of such event. Any Lender requesting compensation under this Section 2.16 shall be required to deliver a written certificate to the Lead Borrower that (A) sets forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, the basis therefor and, in reasonable detail, the manner in which such amount or amounts were determined (as determined in good faith by such Lender) and (B) certifies that such Lender is generally charging the relevant amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

Section 2.17 Taxes.

(a) All payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Requirements of Law. If any applicable Requirement of Law requires the deduction or withholding of any Tax from any such payment, then (i) if such Tax is an Indemnified Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after all required deductions or withholdings have been made (including deductions or withholdings applicable to additional sums payable under this Section 2.17), each Recipient receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent shall be entitled to make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Without duplication of any obligation under Section 2.17(a), the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Requirements of Law, any Other Taxes imposed on them, or, in the case of any Other Taxes imposed on the Administrative Agent, promptly following receipt by the Loan Parties of a certificate from the Administrative Agent evidencing the imposition of Other Taxes on the Administrative Agent, timely reimburse the Administrative Agent for the payment of any Other Taxes.

(c) Without duplication of its obligations pursuant to Section 2.17(a) and Section 2.17(b), the Loan Parties shall indemnify the Administrative Agent and each Lender within 10 days after receipt by the Loan Parties of a certificate from the Administrative Agent evidencing the imposition of Indemnified Taxes on the Administrative Agent or the Lenders, for the full amount of any Indemnified Taxes payable or paid by the Administrative Agent or such Lender, as

applicable (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and, in each case, any reasonable expenses arising therefrom or with respect thereto, whether or not correctly or legally imposed or asserted, other than any penalties determined by a final and non-appealable judgment of a court of competent jurisdiction (or document in any settlement agreement) to have resulted from the gross negligence, bad faith, material breach or willful misconduct of the Administrative Agent or such Lender, and, in each case, any reasonable expenses arising therefrom or with respect thereto, whether or not correctly or legally imposed or asserted. In connection with any request for reimbursement under this Section 2.17(c), the relevant Lender or the Administrative Agent, as applicable, shall deliver a certificate to the Borrowers (with a copy to the Administrative Agent, if delivered by a Lender) setting forth, in reasonable detail, the manner in which such payment or liability was determined, and such certificate shall be conclusive absent manifest error. Notwithstanding anything to the contrary contained in this Section 2.17(c), the Loan Parties shall not be required to indemnify the Administrative Agent or any Lender pursuant to thisSection 2.17(c) for any amount to the extent the Administrative Agent or such Lender fails to notify the Loan Parties of such possible indemnification claim within 180 days after the Administrative Agent or such Lender receives written notice from the applicable taxing authority of the specific tax assessment giving rise to such indemnification claim.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes imposed on or with respect to any payment under any Loan Document that is attributable to such Lender (but only to the extent that no Loan Party has already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.05 relating to the maintenance of a Participant Register and (iii) any Taxes not described in clauses (i) or (ii) that are attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender under any Loan Document or otherwise payable by the Administrative Agent to any Lender from any other source against any amount due to the Administrative Agent under this clause (d).

(e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to thisSection 2.17, the Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment that is reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender (which shall include the Administrative Agent for purposes of thisSection 2.17(f)) that is entitled to an exemption from or reduction of any withholding Tax with respect to any payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation as the Borrowers or the Administrative Agent may reasonably request to permit such payments to be made without withholding or at a reduced rate of withholding.

In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (f)(ii)(A), (ii)(B), (ii)(D) and (iii)) 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. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrowers and to any Successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.17(f).

(ii) Without limiting the generality of the foregoing:

(A) each Lender that is not a Foreign Lender shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), two executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) each Foreign Lender shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

(1) in the case of any Foreign Lender claiming the benefits of an income tax treaty to which the U.S. is a party (x) with respect to payments of interest under any Loan Document, two executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) two executed copies of IRS Form W-8ECI;

(3) in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) a certificate substantially in the form of Exhibit L-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrowers within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and that with respect to its Loans, such Lender is not a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code (a "U.S. Tax Compliance Certificate") and (y) two executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent any Foreign Lender is not the beneficial owner (e.g., where the Foreign Lender is a partnership or participating Lender), two executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2, or Exhibit L-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if such Foreign Lender is a partnership (and not a participating Lender) 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 L-4 on behalf of each such direct or indirect partner;

(C) each Foreign Lender shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), two executed copies of any other form prescribed by applicable Requirements of 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 Requirements of Law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to any Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by applicable Requirements of Law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation as is prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA, and to determine whether such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment; *provided* that solely for the purposes of this paragraph, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) In the event that a successor to the Administrative Agent (a 'Successor Administrative Agent") is not an "exempt recipient" (within the meaning of Treas. Reg. 1.6049-4(c)(1)(ii)), on or before the date such Successor Administrative Agent becomes a party to this Agreement, such Successor Administrative Agent shall deliver to the Borrowers whichever of the following is applicable: (i) if the Successor Administrative

Agent is a "United States person" within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Successor Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Successor Administrative Agent is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (B) with respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Successor Administrative Agent is a U.S. branch and may be treated as a United States person for purposes of applicable U.S. federal withholding Tax. At any time thereafter, the Successor Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of a Borrower.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Borrowers and the Administrative Agent in writing of its legal ineligibility to do so.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender's owner and, as applicable, such Lender.

Notwithstanding anything to the contrary in this Section 2.17(f), no Lender shall be required to provide any documentation that such Lender is not legally eligible to deliver.

(g) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by a Loan Party or with respect to which the Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Party under this Section 2.17 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Loan Party, upon the request of the Administrative Agent or such Lender, agree to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the Loan Party pursuant to this paragraph (g) to the extent that the payment thereof would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the position that the Administrative Agent or such Lender would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the relevant Loan Party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Definition of Lender. For the avoidance of doubt, the term "Lender" shall, for all purposes of this Section 2.17, include the Issuing Bank and the Swingline Lender.

Section 2.18 Payments Generally; Allocation of Proceeds; Sharing of Payments.

(a) Unless otherwise specified, the Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest or fees, reimbursements of LC Disbursements, or of amounts payable under Sections 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m. on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the reasonable discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated by the Administrative Agent to the Borrowers, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Person or Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Sections 2.19(b) and 2.20, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans of a given Class and each conversion of any Borrowing or continuation of any Borrowing as a Borrowing of any Type (and of the same Class) shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Class. All payments (including accrued interest) hereunder shall be made in Dollars. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole Dollar amount. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) All proceeds of Collateral received by the Administrative Agent while an Event of Default exists and all or any portion of the Loans have been accelerated hereunder pursuant to Section 7.01, shall be applied, *first*, to the payment of all costs and expenses then due that have been incurred by the Administrative Agent in connection with any collection, sale or realization on Collateral or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all court costs and the fees and expenses of agents and legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document (in each case, to the extent such costs and expenses of the Administrative Agent are required to be reimbursed pursuant to Section 9.03 of this Agreement), *second*, on a pro rata basis, to pay any fees, indemnities or expense reimbursements then due to the Administrative Agent (other than those covered in clause first above) or to the Swingline Lender or the Issuing Bank from the Borrowers constituting Secured Obligations (in each case, to the extent such indemnities and expenses are required to be reimbursed pursuant to Section 9.03 of this Agreement), *third*, on a pro rata basis in accordance with the amounts of the Secured Obligations (other than contingent indemnification obligations for which no claim has yet been made) owed to the Secured Parties on the date of any such distribution, to the payment in full of the Secured Obligations (including, with respect to LC

Exposure, an amount to be paid to the Administrative Agent equal to 100% of the LC Exposure (minus the amount then on deposit in the LC Collateral Account) on such date, to be held in the LC Collateral Account as Cash collateral for such Obligations); *provided* that if any Letter of Credit expires undrawn, then any Cash collateral held to secure the related LC Exposure shall be applied in accordance with this Section 2.18(b), beginning with clause first above, and ***fourth***, to, or at the direction of, the Lead Borrower or as a court of competent jurisdiction may otherwise direct. Notwithstanding the foregoing, Secured Obligations consisting of Banking Services Obligations and Secured Hedging Obligations shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Banking Services Bank or Hedge Bank, as the case may be. Each Banking Services Bank or Hedge Bank not a party to this Agreement that has delivered a Secured Party Designation Notice shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article 8 for itself and its Affiliates as if a "Lender" party hereto.

(c) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right ofset-off or otherwise) in respect of any principal of or interest on any of its Loans of any Class or participations in LC Disbursements or Swingline Loans held by it resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and participations in LC Disbursements or Swingline Loans and accrued interest thereon than the proportion received by any other Lender with Loans of such Class and participations in LC Disbursements or Swingline Loans, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of such Class and sub-participations in LC Disbursements or Swingline Loans of other Lenders of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class and participations in LC Disbursements or Swingline Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or Disqualified Institution), (y) the application of any Cash collateral provided for in Section 2.21, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in Letter of Credit or Swingline Loans to any assignee or participant (as to which the provisions of this Section 2.18 shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.18(c) and will, in each case, notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.18(c) shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

(d) Unless the Administrative Agent has received notice from the Lead Borrower or any Lender prior to the date on which any payment is due to the Administrative Agent for the account of any Lender or the Issuing Bank hereunder that the Borrowers or such Lender will not make such payment, the Administrative Agent may assume that the Borrowers or such Lender, as the case may be, has timely made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lender or Issuing Bank the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the Issuing Bank hereunder as to which the Administrative Agent reasonably determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each Lender or the Issuing Bank severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender fails to make any payment required to be made by it pursuant to Section 2.07(b) or Section 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.19 Mitigation Obligations; Replacement of Lenders

(a) If any Lender requests compensation under Section 2.15 or such Lender determines it can no longer make or maintain BSBY Rate Loans pursuant to Section 2.20, or any Loan Party is required to pay any additional amount to or indemnify any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or its participation in any Letter of Credit affected by such event, or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or Section 2.17, as applicable, in the future or mitigate the impact of Section 2.20, as the case may be, and (ii) would not subject such Lender to any unreimbursed out-of-pocket cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrowers hereby agree to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15 or such Lender determines it can no longer make or maintain BSBY Rate Loans pursuant to Section 2.20, (ii) any Loan Party is required to pay any additional amount to or indemnify any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) any Lender is a Defaulting Lender, (iv) in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender", "each Revolving Lender" or "each Lender directly affected thereby" (or any other Class or group of Lenders other than the Required Lenders) with respect to which Required Lender consent (or the consent of Lenders holding loans or commitments of such Class or lesser group representing more than 50% of the sum of the total loans and unused commitments of such Class or lesser group at such time or 50.1% of the Loans affected thereby) has been obtained, as applicable, any Lender is a Non-Consenting Lender (each such Lender described in this clause (iv), a "Non-Consenting Lender") or (v) a Lender rejects a request to extend the maturity of its commitments and Loans under Section 2.23 or otherwise (a "Non-Extending

Lender"), then the Lead Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (x) terminate the applicable Commitments of such Lender, and repay all Obligations of the Borrowers owing to such Lender relating to the applicable Loans and participations held by such Lender as of such termination date on a non-pro rata basis (*provided* that, if, after giving effect such termination and repayment, the aggregate amount of the Revolving Credit Exposure of any Class exceeds the aggregate amount of the Revolving Credit Commitments of such Class then in effect, then the Borrowers shall, not later than the next Business Day, prepay one or more Revolving Loan Borrowings of the applicable Class or Swingline Loans (and, if no Revolving Loan Borrowings of such Class are outstanding, deposit Cash collateral in the LC Collateral Account) in an amount necessary to eliminate such excess) or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), 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 any Lender accepts such assignment); *provided* that (A) such Lender has received payment of an amount equal to the outstanding principal amount of its Loans and, if applicable, participations in LC Disbursements or Swingline Loans, in each case of such Class of Loans and/or Commitments, accrued interest thereon, accrued fees and all other amounts payable to it under any Loan Document with respect to such Class of Loans and/or Commitments, (B) in the case of any assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment would result in a reduction in such compensation or payments and (C) such assignment does not conflict with applicable Requirements of Law. No Lender (other than a Defaulting Lender) shall be required to make any such assignment and delegation, and the Borrowers may not repay the Obligations of such Lender or terminate the Commitments, in each case if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each Lender agrees that if it is replaced pursuant to this Section 2.19, it shall execute and deliver to the Administrative Agent an Assignment and Assumption to evidence such sale and purchase and shall deliver to the Administrative Agent any Promissory Note (if the assigning Lender's Loans are evidenced by one or more Promissory Notes) subject to such Assignment and Assumption (*provided* that the failure of any Lender replaced pursuant to this Section 2.19 to execute an Assignment and Assumption or deliver any such Promissory Note shall not render such sale and purchase (and the corresponding assignment) invalid), such assignment shall be recorded in the Register and any such Promissory Note shall be deemed cancelled. Each Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Lender's attorney-in-fact, with full authority in the place and stead of such Lender and in the name of such Lender, from time to time in the Administrative Agent's discretion, with prior written notice to such Lender, to take any action and to execute any such Assignment and Assumption or other instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this clause (b).

Section 2.20 Illegality.

(a) If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to the BSBY Rate or to determine or charge interest rates based upon the BSBY Rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on written notice thereof by such Lender to the Lead Borrower through the Administrative Agent:

(i) any obligation of such Lender to make or continue BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended,

(ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the BSBY Rate component of the Base Rate, the interest rate of such Lender's Base Rate Loans, shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the BSBY Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist (which notice such Lender agrees to give promptly),

(iii) the Borrowers shall, promptly upon written demand from such Lender (with a copy to the Administrative Agent), prepay or if applicable, convert all of such Lender's BSBY Rate Loans to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the BSBY Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such BSBY Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such BSBY Rate Loans (in which case the Borrowers shall not be required to make payments pursuant to Section 2.16 in connection with such payment),

(iv) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the BSBY Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the BSBY Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the BSBY Rate.

(b) Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

(c) Each Lender agrees to designate a different lending office if such designation will avoid the need for such notice and will not, in the determination of such Lender, otherwise be materially disadvantageous to such Lender.

Section 2.21 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) (i) Fees shall cease to accrue on the unfunded portion of any Commitment of such Defaulting Lender pursuant to Section 2.12(a) and, subject to clause (d)(iv) below, on the participation of such Defaulting Lender in Letters of Credit pursuant to Section 2.12(b) and pursuant to any other provisions of this Agreement or other Loan Document and (ii) the Defaulting Lender shall not be entitled to interest at the Default Rate.

(b) The Loans and the Commitments and the Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders, each affected Lender, the Required Lenders or such other number of Lenders as may be required hereby or under any other Loan Document have taken or may take any action hereunder (including any consent to any waiver, amendment or modification pursuant to Section 9.02); *provided* that any waiver, amendment or modification requiring the consent of all Lenders or each directly and adversely affected Lender which affects such Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of any Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.11, Section 2.15, Section 2.16, Section 2.17, Section 2.18, Article 7, Section 9.05 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent and, where relevant, the Lead Borrower as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank and/or Swingline Lender hereunder; *third*, if so reasonably determined by the Administrative Agent or reasonably requested by the 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*, so long as no Default or Event of Default exists, as the Lead Borrower may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; *fifth*, as the Administrative Agent or the Lead Borrower may elect, to be held in a deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to thenon-Defaulting Lenders, Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender, the Issuing Bank or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers 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 Loan or LC Exposure in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loan or LC Exposure was made or created, as applicable, at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Exposure owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Exposure owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to any Defaulting Lender that are applied (or held) to pay amounts owed by any Defaulting Lender or to post Cash collateral pursuant to this Section 2.21(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) If any LC Exposure or Swingline Exposure exists at the time any Lender becomes a Defaulting Lender then:

(i) the LC Exposure or Swingline Exposure of such Defaulting Lender shall be reallocated among thenon-Defaulting Lenders under the Revolving Facility (the "Non-Defaulting Revolving Lenders") in accordance with their respective Applicable Revolving Percentages but only to the extent that (A) the sum of the Revolving Credit Exposures of all non-Defaulting Lenders attributable to the Revolving Credit Commitments of any Class does not exceed the total of the Revolving Credit Commitments of all Non-Defaulting Revolving Lenders of such Class and (B) the Revolving Credit Exposure of any non-Defaulting Lender that is attributable to its Revolving Credit Commitment of such Class does not exceed such non-Defaulting Lender's Revolving Credit Commitment of such Class;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Lead Borrower shall, without prejudice to any other right or remedy available to it hereunder or under applicable Requirements of Law, promptly following written notice of the Administrative Agent, Cash collateralize 100% of such Defaulting Lender's LC Exposure and any obligations of such Defaulting Lender to fund participations in any Swingline Loans (after giving effect to any partial reallocation pursuant to clause (i) above and any Cash collateral provided by such Defaulting Lender or pursuant to Section 2.21(c) above) or make other arrangements reasonably satisfactory to the Administrative Agent and to the Issuing Bank and/or Swingline Lender with respect to such LC Exposure and/or Swingline Loans and obligations to fund participations. Cash collateral (or the appropriate portion thereof) provided to reduce LC Exposure or other obligations shall be released promptly following (A) the elimination of the applicable LC Exposure or other obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 2.19)) or (B) the Administrative Agent's good faith determination that there exists excess Cash collateral (including as a result of any subsequent reallocation of Swingline Loans and LC Exposure among non-Defaulting Lenders described in clause (i) above);

(iii) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.21(d), then the fees payable to the Revolving Lenders pursuant to Sections 2.12(a) and (b), as the case may be, shall be adjusted to give effect to such reallocation; and

(iv) if any Defaulting Lender's LC Exposure is not Cash collateralized, prepaid or reallocated pursuant to this Section 2.21(d), then, without prejudice to any rights or remedies of the Issuing Bank or any Revolving Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until such Defaulting Lender's LC Exposure is Cash collateralized or reallocated.

(e) So long as any Revolving Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loans, and the Issuing Bank shall not be required to issue, extend, create, incur, amend or increase any Letter of Credit unless it is reasonably satisfied that the related exposure will be 100% covered by the Revolving Credit Commitments of the non-Defaulting Lenders, Cash collateral provided pursuant to Section 2.21(c) and/or Cash collateral provided in accordance with Section 2.21(d), and participating interests in any such or newly issued, extended or created Letter of Credit or newly made Swingline Loan shall be allocated among Non-Defaulting Revolving Lenders in a manner consistent with Section 2.21(d)(i) (it being understood that Defaulting Lenders shall not participate therein).

(f) In the event that the Administrative Agent and the Lead Borrower agree that any Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Applicable Revolving Percentage of Swingline Exposure and LC Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment, and on such date such Revolving Lender shall purchase at par such of the Revolving Loans of the applicable Class of the other Revolving Lenders or participations in Revolving Loans of the applicable Class as the Administrative Agent determine as necessary in order for such

Revolving Lender to hold such Revolving Loans or participations in accordance with its Applicable Percentage of the applicable Class or its Applicable Revolving Percentage, as applicable. Notwithstanding the fact that any Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, (x) no adjustments will be made retroactively with respect to fees or default interest accrued or payments made by or on behalf of the Lead Borrower while such Lender was a Defaulting Lender and (y) 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.

Section 2.22 Incremental Credit Extensions.

(a) *Incremental Commitments.* The Borrowers may at any time or from time to time after the Closing Date, request one or more increases in the amount of the Revolving Credit Commitments (any such increase, an "Incremental Revolving Facility"; and the loans thereunder, "Incremental Revolving Loans"), whereupon the Administrative Agent shall promptly notify each of the Lenders. On any Incremental Facility Closing Date, subject to the satisfaction (or waiver) of the terms and conditions in this Section 2.22, (i) each Incremental Revolving Lender shall make its Commitment available to the Borrowers in an amount equal to its commitment of Incremental Revolving Loans, and (ii) each Incremental Revolving Lender shall become a Lender hereunder with respect to the Incremental Revolving Loans made pursuant thereto. Notwithstanding the foregoing, Revolving Loans under any Incremental Revolving Facility shall have identical terms to the Revolving Credit Commitments and the Revolving Loans, subject to the proviso to clause (d)(ii) below.

(b) *Incremental Request*. Each request from the Lead Borrower pursuant to this Section 2.22 shall set forth the requested amount and proposed terms of the relevant Incremental Revolving Facility. Incremental Revolving Facilities may be provided by any existing Lender (but each existing Lender will not have an obligation to make any Incremental Revolving Loan) or by any other bank or other financial institution (any such other bank or other financial institution being called an "Additional Lender") (each such existing Lender or Additional Lender providing such, an "Incremental Revolving Lender"); *provided* that the Administrative Agent (and, in the case of any Incremental Revolving Facility, the Issuing Bank and Swingline Lender) shall have consented (not to be unreasonably withheld, conditioned, denied or delayed) to such Lender's or Additional Lender's providing such Incremental Revolving Facility to the extent such consent, if any, would be required under Section 9.05 for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Lender or Additional Lender.

(c) *Effectiveness of Incremental Facility Agreement.* The effectiveness of any Incremental Facility Agreement, and the Incremental Revolving Loans thereunder, shall be subject to the satisfaction (or waiver) on the date of such Incremental Facility Agreement (the "Incremental Facility Closing Date") of each of the following conditions:

(i) (x) no Event of Default exists or shall exist after giving effect to such Incremental Revolving Loans; *provided*, that in the case of Incremental Revolving Loans incurred in connection with a Limited Condition Transaction, no Event of Default shall exist on the date of execution of the definitive documentation or binding commitment (or notice, as applicable) with respect to such Limited Condition Transaction and no Specified Event of Default shall exist on such Incremental Facility Closing Date and (y) the representations and warranties of the Loan Parties contained in Article 3 or any other Loan Document shall be true and correct in all material respects on and as of the date of such

Incremental Facility Agreement (*provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date); *provided*, that the conditions in clause (y) shall only be required to the extent requested by the Persons providing more than 50.0% of the applicable Incremental Revolving Loans; *provided*, *further,* that in the case of Incremental Revolving Loans incurred in connection with a Limited Condition Transaction, if required, only certain customary specified representations (conformed as necessary for such acquisition, investment or other transaction) shall be true and correct in all material respects;

(ii) each Incremental Revolving Facility shall be in an aggregate principal amount that is not less than $5,000,000 and shall be in an increment of $1,000,000 (*provided* that such amount may be less than $5,000,000 if (x) approved by the Administrative Agent (such approval not to be unreasonably withheld, delayed, denied or conditioned) or (y) such amount represents all remaining availability under the limit set forth in clause (iii) below); and

(iii) the aggregate amount of Incremental Revolving Facilities shall not exceed (A) an amount equal to the greater of (x) $18,800,000 and (y) 100% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis) *minus* the aggregate principal amount of Indebtedness incurred pursuant to clause (i)(A) of the definition of "Permitted Ratio Debt", *plus* (B) an amount equal to the sum, without duplication, of all (i) voluntary commitment reductions and voluntary prepayments of the Loans under the Revolving Facility or any other *pari passu* revolving facility to the extent accompanied by a permanent commitment reduction *plus* (C) an unlimited amount so long as, in the case of this clause (C) only, such amount at such time could be incurred without causing the Secured Net Leverage Ratio (calculated on a Pro Forma Basis) to exceed 2.75 to 1.00 (or in the case of Indebtedness incurred in connection with a Permitted Acquisition or permitted Investment, the Secured Net Leverage Ratio (on a Pro Forma Basis) is no worse than the Secured Net Leverage Ratio in effect immediately prior to such Permitted Acquisition or permitted Investment), after giving effect to any acquisition consummated in connection therewith and all other appropriate pro forma adjustments (including giving effect to the prepayment of Indebtedness in connection therewith), and assuming for purposes of this calculation that (i) the full committed amount of any Incremental Revolving Facility then being made or incurred shall be treated as fully drawn and outstanding for such purpose and (ii) cash proceeds of any such Incremental Revolving Facility or other Indebtedness permitted hereunder then being incurred shall not be netted from Secured Net Debt for purposes of calculating such Secured Net Leverage Ratio, as applicable; *provided*, *however*, that if amounts incurred under this clause (C) are incurred concurrently with the incurrence of Incremental Revolving Loans in reliance on clause (A) and/or clause (B) above or any other fixed dollar basket, the Secured Net Leverage Ratio shall be permitted to exceed the Secured Net Leverage Ratio set forth in clause (C) above to the extent of such amounts incurred in reliance on clause (A) and/or clause (B) (solely for the purpose of determining whether such concurrently incurred amounts incurred under this clause (C) are permissible) (it being understood that (I) if the Secured Net Leverage Ratio, as applicable, incurrence test is met, then, at the election of the Lead Borrower, any Incremental Revolving Facility or other Indebtedness permitted hereunder may be incurred under clause (C) above regardless of whether there is capacity under clause (A) and/or clause (B) above and (II) any portion of any Incremental Revolving Facility or other Indebtedness permitted hereunder incurred in reliance on clause (A) and/or clause (B) shall be reclassified (as the Lead Borrower may elect from time to time) as incurred under clause (C) if the Borrowers meet the applicable leverage ratio under clause (C) at such time on a Pro Forma Basis).

(d) *Required Terms.* The terms, provisions and documentation of the Incremental Revolving Loans and Incremental Revolving Facilities of any Class, except as otherwise set forth herein, shall be as agreed between the Lead Borrower and the applicable Incremental Revolving Lenders or Persons providing such Incremental Commitment. In any event:

(i) the Incremental Revolving Loans (except as otherwise specified below in this clause (i)) (A) shall not at any time be guaranteed by any Subsidiary other than a Loan Party (unless the Required Lenders have declined or otherwise permitted a guarantee from such other Person and except as otherwise permitted under this Agreement) and (B) are not secured by a Lien on any property or asset of the Loan Parties that does not constitute Collateral (unless the Required Lenders have declined or otherwise permitted a Lien on such Collateral and except as otherwise permitted under this Agreement);

(ii) All terms of any Incremental Revolving Facilities and Incremental Revolving Loans thereunder shall be identical to the Revolving Credit Commitments and the Revolving Loans; *provided*, that underwriting, arrangement, structuring, ticking, commitment, upfront or similar fees, and other fees payable in connection therewith that are not shared with all relevant lenders providing such Incremental Revolving Facilities and related Incremental Revolving Loans, that may be agreed to among the Lead Borrower and the lender(s) providing and/or arranging Incremental Revolving Facilities and related Incremental Revolving Loans may be paid in connection with Incremental Revolving Facilities.

(iii) The terms, provisions and documentation of the Incremental Revolving Loans and Incremental Revolving Facilities may at the option of the Lead Borrower in consultation with the Administrative Agent, incorporate terms that would be favorable to existing Lenders of the applicable Class or Classes for the benefit of such existing Lenders of the applicable Class or Classes. In addition, if required to consummate any Incremental Revolving Loans and Incremental Revolving Facilities, the pricing, interest rate margins, rate floors, undrawn fees and premiums on the applicable Loan being increased may be increased or extended but additional upfront fees, original issue discount or similar fees may be payable to the Lenders participating in any such Incremental Revolving Loans and Incremental Revolving Facilities without any requirement to pay such amounts to any existing Lenders.

(iv) Upon the implementation of any Incremental Revolving Facility pursuant to this Section 2.22: (A) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each relevant Incremental Revolving Lender, and each relevant Incremental Revolving Lender will automatically and without further act be deemed to have assumed a portion of such existing Revolving Lender's participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each deemed assignment and assumption of participations, all of the Revolving Lenders' (including each Incremental Revolving Lender's) (1) participations hereunder in Letters of Credit and (2) participations hereunder in Swingline Loans shall be held ratably on the basis of their respective Revolving Credit Commitments (after giving effect to any increase in the Revolving Credit Commitment pursuant to this Section 2.22) and (ii) the existing Revolving Lenders of the applicable Class shall assign Revolving Loans to certain other Revolving Lenders of such Class

(including the Incremental Revolving Lenders providing the relevant Incremental Revolving Facility), and such other Revolving Lenders (including the Incremental Revolving Lenders providing the relevant Incremental Revolving Facility) shall purchase such Revolving Loans, in each case to the extent necessary so that all of the Revolving Lenders of such Class participate in each outstanding Borrowing of Revolving Loans of such Class pro rata on the basis of their respective Revolving Credit Commitments of such Class (after giving effect to any increase in the Revolving Credit Commitment pursuant to this Section 2.22); it being understood and agreed that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this clause (iv); and

(e) *Incremental Facility Agreement.* Commitments in respect of Incremental Revolving Facilities hereunder shall become Commitments (or in the case of an increase in Revolving Credit Commitments to be provided by an existing Revolving Lender, an increase in such Lender's applicable Revolving Credit Commitment), under this Agreement pursuant to an amendment (an "Incremental Facility Agreement") to this Agreement and, as appropriate, the other Loan Documents, executed by the Lead Borrower, each Incremental Revolving Lender providing such Commitments and the Administrative Agent. The Incremental Facility Agreement may, without the consent of any other Loan Party, Administrative Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Lead Borrower and the Administrative Agent, to effect the provisions of this Section 2.22. The Borrowers will use the proceeds of the Incremental Revolving Loans as determined by the Lead Borrower and the Lenders providing such Incremental Revolving Loans, subject to such use otherwise being permitted under the terms of this Agreement. No Lender shall be obligated to provide any Incremental Revolving Loans, unless it so agrees.

(i) As conditions precedent to the effectiveness of any Incremental Revolving Facility or the making of any Incremental Revolving Loans under an Incremental Facility Agreement, (i) the Administrative Agent shall receive customary resolutions adopted by the governing body of the Borrowers and the Guarantors approving the Incremental Revolving Facility or Incremental Revolving Loans and customary written opinions of counsel, (ii) the Administrative Agent shall be entitled to receive, from each Additional Lender, an administrative questionnaire, in the form provided to such Additional Lender by the Administrative Agent (the "Administrative Questionnaire") and such other documents as it shall reasonably require from such Additional Lender, (iii) the Administrative Agent and the relevant Additional Lenders shall be entitled to receive all fees required to be paid in respect of such Incremental Revolving Facility or Incremental Revolving Loans and (iv) with respect to the making of any Incremental Revolving Loans, the Administrative Agent shall have received a Loan Notice as if the relevant Incremental Revolving Loans were subject to Section 2.03 or another written request the form of which is reasonably acceptable to the Administrative Agent (it being understood and agreed that the requirement to deliver a Loan Notice shall not result in the imposition of any additional condition precedent to the availability of the relevant Incremental Revolving Loans).

(ii) The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Incremental Facility Agreement and/or any amendment to any other Loan Document as may be necessary in order to establish new Classes or sub-Classes in respect of Loans or commitments pursuant to this Section 2.22 and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrowers in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.22, and as may be necessary or advisable in order to create a fungible tranche of loans (including by increasing the amortization on existing tranches of loans) so long as any such amendments do not adversely affect Lenders holding the existing loans.

(f) Notwithstanding anything to the contrary in this Section 2.22 or in any other provision of any Loan Document, if the proceeds of any Incremental Revolving Facility are intended to be applied to finance an acquisition or other Investment and the lenders providing such Incremental Revolving Facility so agree, the availability thereof shall be subject to customary "SunGard" or "certain funds" conditionality (including the making and accuracy of the Specified Representations as conformed for such acquisition).

(g) This Section 2.22 shall supersede any other provisions hereof, including Sections 2.18 or 9.02, to the contrary.

(h) On the date of effectiveness of any Incremental Revolving Facility, the maximum amount of LC Exposure and/or Swingline Loans, as applicable, permitted hereunder shall increase by an amount, if any, agreed upon by Administrative Agent, the Issuing Bank and/or Swingline Lender, as applicable, and the Borrowers.

Section 2.23 Extensions of Loans and Revolving Credit Commitments.

(a) *[Reserved]*.

(b) *Extension of Revolving Credit Commitments.* The Lead Borrower may at any time and from time to time request that all or a portion of the Revolving Credit Commitments of any Class, each existing at the time of such request (each, an "Existing Revolving Credit Commitment" and any related Revolving Loans thereunder, "Existing Revolving Loans"; each Existing Revolving Credit Commitment and related Existing Revolving Loans together being referred to as an "Existing Revolving Credit Facility") be converted to extend the termination date thereof and the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of Revolving Loans related to such Existing Revolving Credit Commitments (any such Existing Revolving Credit Commitments which have been so extended, "Extended Revolving Credit Commitments") and to provide for other terms consistent with this Section 2.23(b). In order to establish any Extended Revolving Credit Commitments, the Lead Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Class of Existing Revolving Credit Commitments which such request shall be offered equally to all such Lenders) (a "Revolving Credit Loan Extension Request") setting forth the proposed terms of the Extended Revolving Credit Commitments to be established, which, if not consistent with the terms of the applicable Existing Revolving Credit Commitments, (i) shall not be materially more favorable to the Lenders providing such facility (as determined in good faith by the Lead Borrower), when taken as a whole, than the terms of such Existing Revolving Credit Commitments, (ii) shall be reasonably satisfactory to the Administrative Agent (such approval not to be unreasonably withheld, delayed, denied or conditioned) or (iii) be on market terms and conditions (as determined by the Lead Borrower in good faith) reasonably acceptable to the Administrative Agent (such approval not to be unreasonably withheld, delayed, denied or conditioned) (the "Specified Existing Revolving Credit Commitment") unless (x) the Lenders providing Existing Revolving Loans receive the benefit of such more restrictive terms or (y) any such provisions apply after the latest maturity date of any Revolving Credit Commitments then outstanding under this Agreement, in each case, to the extent provided in the applicable Extension Amendment; *provided*, *however*, that (w) all or any of the final maturity dates of such Extended Revolving Credit Commitments may be delayed to later dates than the final maturity dates of the

Specified Existing Revolving Credit Commitments, (x)(A) the interest margins and floors with respect to the Extended Revolving Credit Commitments may be higher or lower than the interest margins and floors for the Specified Existing Revolving Credit Commitments and/or (B) additional fees and premiums may be payable to the Lenders providing such Extended Revolving Credit Commitments in addition to or in lieu of any increased margins and floors contemplated by the preceding clause (A) and (y) the commitment fee rate with respect to the Extended Revolving Credit Commitments may be higher or lower than the commitment fee rate for the Specified Existing Revolving Credit Commitment; *provided*, that, notwithstanding anything to the contrary in this Section 2.23(b) or otherwise, (1) the borrowing and repayment (other than in connection with a permanent repayment and termination of commitments) of Loans with respect to any Existing Revolving Credit Commitments shall be made on a *pro rata* basis with all other Existing Revolving Credit Commitments and (2) assignments and participations of Extended Revolving Credit Commitments and Extended Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and the Revolving Loans related to such Commitments set forth in Section 9.05. No Lender shall have any obligation to agree to have any of its Revolving Loans or Revolving Credit Commitments of any Existing Revolving Credit Facility converted into Extended Revolving Loans or Extended Revolving Credit Commitments pursuant to any Revolving Credit Loan Extension Request. Any Extended Revolving Credit Commitments amended pursuant to any Revolving Credit Loan Extension Request shall be designated a series (each, a "Revolving Credit Loan Extension Series") for all purposes of this Agreement and shall constitute a separate Class of revolving credit commitments from the Specified Existing Revolving Credit Commitments; *provided*, that any Extended Revolving Credit Commitments converted from an Existing Revolving Credit Commitment Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any then outstanding Class of Revolving Credit Commitments other than the Existing Revolving Credit Commitment Class from which such Extended Revolving Credit Commitments were converted).

(c) *Extension Request.* The Lead Borrower shall provide the Revolving Credit Loan Extension Request at least three Business Days prior to the date on which Lenders under the Existing Revolving Credit Commitment are requested to respond (or such shorter period as agreed by the Administrative Agent), and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent and the Lead Borrower, in each case acting reasonably to accomplish the purposes of this Section 2.23. Subject to Section 2.19, no Lender shall have any obligation to agree to have any of its Revolving Credit Commitments amended into Extended Revolving Credit Commitments, as applicable, pursuant to any Revolving Credit Loan Extension Request. Any Revolving Lender (each, an "Extending Revolving Lender") wishing to have all or a portion of its Revolving Credit Commitments under the Existing Revolving Credit Commitment subject to such Revolving Credit Loan Extension Request amended into Extended Revolving Credit Commitments shall notify the Administrative Agent (each, an "Extension Election") on or prior to the date specified in such Revolving Credit Loan Extension Request of the amount of its Revolving Credit Commitments under the Existing Revolving Credit Commitment which it has elected to request be amended into Extended Revolving Credit Commitments (subject to any minimum denomination requirements imposed by the Administrative Agent). In the event that the aggregate principal amount of Revolving Credit Commitments under the Existing Revolving Credit Commitment in respect of which applicable Revolving Lenders shall have accepted the relevant Revolving Credit Loan Extension Request exceeds the amount of Extended Revolving Credit Commitments requested to be extended pursuant to the Revolving Credit Loan Extension Request, Revolving Credit Commitments subject to Extension Elections shall be amended to Revolving Credit Commitments on a *pro rata* basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Revolving Credit Commitments included in each such Extension Election.

(d) *Extension Amendment.* Extended Revolving Credit Commitments shall be established pursuant to an amendment (each, an "Extension Amendment") to this Agreement among the Lead Borrower, the Administrative Agent and each Extending Revolving Lender providing an Extended Revolving Credit Commitment, which shall be consistent with the provisions set forth in Section 2.23(b) above (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject to the satisfaction (or waiver) on the date thereof of each of the conditions set forth in Section 4.02 and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of (i) customary legal opinions, board resolutions and officers' certificates certifying such resolutions and (ii) reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extended Revolving Credit Commitments are provided with the benefit of the applicable Loan Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Revolving Credit Commitments incurred pursuant thereto, (ii) [reserved], (iii) [reserved], (iv) make such other changes to this Agreement and the other Loan Documents consistent with the provisions and intent of the third paragraph of Section 9.01 (without the consent of the Required Lenders called for therein) and (v) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of this Section 2.23, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension Amendment in accordance with thisSection 2.23 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement. This Section 2.23 shall supersede any provisions herein to the contrary.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

The Borrowers hereby represent and warrant to the Lenders that:

Section 3.01 Organization; Powers. Each Loan Party and each other Restricted Subsidiary that is a Material Subsidiary (a) is (i) duly organized and validly existing and (ii) in good standing (to the extent such concept exists in the relevant jurisdiction) under the Requirements of Law of its jurisdiction of organization, (b) has all requisite organizational power and authority to, in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted and (d) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except, in each case referred to in this Section 3.01 (other than (x) clause (a)(i) and (y) clause (b), in each case with respect to each Borrower) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is a party thereto in accordance with its terms, except as such enforceability may be limited by the Legal Reservations.

Section 3.03 Governmental Approvals; No Conflicts. The execution and delivery of each Loan Document by each Loan Party party thereto and the performance by such Loan Party thereof (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), (ii) such consents, approvals, registrations, filings or other actions by, or notice to, or filing necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties (or release existing Liens) under applicable U.S. law and (iii) such consents, approvals, registrations, filings or other actions the failure to obtain or make which could not be reasonably expected to have a Material Adverse Effect, and (b) will not (i) contravene any terms of such Loan Party's Organizational Documents or (ii) violate any Requirement of Law applicable to such Loan Party which violation, in the case of this clause (b)(ii), could reasonably be expected to have a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Effect.

(a) The Closing Date Financial Statements (including any notes thereto) present fairly the financial position of BigBear.ai Holdings, LLC, PCI STRATEGIC MANAGEMENT, LLC (d/b/a BigBear.ai Cyber and Engineering, LLC), NuWave Solutions, L.L.C. (d/b/a BigBear.ai Analytics, LLC), Open Solutions Group, LLC and ProModel Government Solutions, Inc. as and at the dates and for the periods set forth therein, and are complete and correct in all material respects and present fairly in all material respects the cash flows, combined financial position, changes in stockholders' equity and results of operations as and at the dates and for the periods set forth therein and, except as otherwise disclosed, have been prepared in accordance with GAAP in all material respects and, to the extent consistent with GAAP, the historical policies of BigBear.ai Holdings, LLC, PCI STRATEGIC MANAGEMENT, LLC (d/b/a BigBear.ai Cyber and Engineering, LLC), NuWave Solutions, L.L.C. (d/b/a BigBear.ai Analytics, LLC), Open Solutions Group, LLC and ProModel Government Solutions, Inc., as applicable, without modification of the accounting principles used in the preparation thereof throughout the periods presented, applied on a consistent basis throughout the periods set forth therein, subject, in the case of unaudited financial statements, to the absence of footnote disclosures and normal year-end adjustments.

(b) The unaudited *pro forma* consolidated balance sheet and related pro forma consolidated statement of income of the Lead Borrower as of and for the twelve-month period ending March 31, 2021, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income) (including the notes thereto) (the "Pro Forma Financial Statements"), copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith, based on assumptions believed by the Lead Borrower to be reasonable as of the date of delivery thereof and adjusted as agreed by the Lead Borrower, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Lead Borrower and its Subsidiaries as of March 31, 2021.

(c) The financial statements most recently provided pursuant to Section 5.01(a) or (b), as applicable, present fairly in all material respects the financial position of Lead Borrower and its Restricted Subsidiaries as and at the dates and for the periods set forth therein in accordance with GAAP, and are complete and correct in all material respects and present fairly in all material respects the cash flows, combined financial position, changes in stockholders' equity and results of operations as and at the dates and for the periods set forth therein and, except as otherwise disclosed, have been prepared in accordance in all material respects with GAAP, subject, in the case of financial statements provided pursuant to Section 5.01(a), to the absence of footnote disclosures and normal year-end adjustments and other notes therein.

(d) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

Section 3.05 Properties.

(a) As of the Closing Date, Schedule 3.05 sets forth the address of each fee owned Real Estate Asset (or each set of such assets that collectively comprise one operating property) by any Loan Party.

(b) The Lead Borrower and each of its Restricted Subsidiaries has good record title to, or valid leasehold interests in, or easements or other limited property interests in, all Real Estate Assets necessary in the ordinary conduct of its business, free and clear of all Liens except (a) minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes, (b) Liens permitted by Section 6.02 or (c) where the failure to have such title could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) The Borrowers and their Restricted Subsidiaries own or otherwise have, free and clear of all Liens other than Liens permitted by Section 6.02, a license or right to use all rights in Patents, Trademarks, Copyrights, trade names,know-how database rights and other intellectual property rights ("IP Rights") that are used in the operation of their respective businesses as currently conducted, except to the extent the absence of such IP Rights or the existence of such Liens, in each case, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrowers, no IP Rights, advertising, product, process, method, substance, part or other material used by any Loan Party or any of its Restricted Subsidiaries in the operation of their respective businesses as currently conducted infringes upon, dilutes, misappropriates or otherwise violates any rights held by any Person except for such infringement, dilution, misappropriation or other violation individually or in the aggregate, which would not reasonably be expected to have a Material Adverse Effect. To the knowledge of Borrowers, there is no infringement, dilution, misappropriation or other violation by any Person of any IP Rights of any Loan Party or any of its Restricted Subsidiaries except as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.06 Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrowers, threatened in writing against the Lead Borrower or any of its Restricted Subsidiaries which has a reasonable likelihood of adverse determination and such adverse determination would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect,

(i) neither the Lead Borrower nor any of its Restricted Subsidiaries is subject to or has received notice of any Environmental Claim or Environmental Liability or knows of any fact or circumstance that would give rise to any Environmental Claim or Environmental Liability,

(ii) neither the Lead Borrower nor any of its Restricted Subsidiaries has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, and

(iii) neither the Lead Borrower nor any of its Restricted Subsidiaries has treated, stored, transported, arranged for the transport of, or released any Hazardous Materials or conducted any other Hazardous Materials Activity to, on, at, under or from any real estate or facility currently or formerly owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries, or any third party waste disposal facility, in a manner that would reasonably be expected to have a Material Adverse Effect.

Section 3.07 Compliance with Laws. Each of the Lead Borrower and each of its Restricted Subsidiaries is in compliance with all Requirements of Law, including, without limitation, applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; it being understood and agreed that this Section 3.07 shall not apply to any Requirements of Law specifically referenced in Section 3.17.

Section 3.08 Investment Company Status. No Loan Party is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.09 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrowers and the Restricted Subsidiaries (i) have timely filed all Tax returns required to be filed and (ii) have paid all Taxes levied or imposed upon them or their properties, income, profits or assets, that are due and payable (including in their capacity as a withholding agent), except 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.

Section 3.10 ERISA.

(a) Each Pension Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable Requirements of Law, except where any failure to comply would not reasonably be expected to result in a Material Adverse Effect.

(b) In the five-year period prior to the date on which this representation is made or deemed made, no ERISA Event has occurred and is continuing or is reasonably expected to occur that, when either individually or taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

(c) As of the Closing Date, the Borrowers are not and will not be using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to the Borrowers' entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

Section 3.11 Disclosure.

(a) No report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information, budgets, estimates and information of a general economic or industry nature) to the Administrative Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document (when taken as a whole) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading.

(b) With respect to projected financial information and pro forma financial information, the Borrowers represent that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information is furnished, it being understood that such projected financial information and pro forma financial information are not to be viewed as facts or as a guarantee of performance or achievement of any particular results, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Lead Borrower and its Subsidiaries, and that actual results may vary from such forecasts and that such variations may be material and that no assurance can be given that the projected results will be realized.

(c) As of the Closing Date, to the knowledge of the Borrowers, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 3.12 Solvency. On the Closing Date, immediately after giving effect to the Transactions to occur on the Closing Date and the incurrence of Indebtedness and obligations on the Closing Date in connection with this Agreement and the Transactions, the Lead Borrower and its Restricted Subsidiaries, on a consolidated basis, are Solvent.

Section 3.13 Capitalization and Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of each Subsidiary of the Lead Borrower and the ownership interest therein held by the Lead Borrower or its applicable Subsidiary and (b) the type of entity (corporation, limited liability company or equivalent) of the Lead Borrower and each of its Subsidiaries.

Section 3.14 Security Interest in Collateral. Subject to the terms of the last paragraph of Section 4.01, the Legal Reservations, the provisions, limitations and/or exceptions set forth in this Agreement and the other relevant Loan Documents, the provisions of the Collateral Documents are effective to create a legal, valid and enforceable Lien on all right, title and interest of the respective Loan Parties in the Collateral described therein in favor of the Administrative Agent, for the benefit of itself and the other Secured Parties, and, except as otherwise contemplated hereby or under any other Loan Document, upon the filings and other actions required to be taken hereby or by the applicable Collateral Documents, such Liens of the Collateral Agent constitute perfected Liens on all right, title and interest of the respective Loan Parties (with the priority that such Liens are expressed to have under the relevant Collateral Documents, unless otherwise permitted hereunder or under any Collateral Document) on the Collateral (to the extent such Liens are required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein, other than Liens permitted by Section 6.02.

For the avoidance of doubt, notwithstanding anything herein or in any other Loan Document to the contrary, neither the Borrowers nor any other Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Capital Stock of any Foreign Subsidiary, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under foreign Requirements of Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or

priority is not required pursuant to the Collateral and Guarantee Requirement or (C) on the Closing Date and until required pursuant to Section 5.12, Section 5.15 or the last paragraph of Section 4.01, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent the same is not required on the Closing Date pursuant to the final paragraph of Section 4.01.

Section 3.15 [Reserved].

Section 3.16 Federal Reserve Regulations. No proceeds of any Loan or any Letter of Credit will be used, directly or indirectly, for any purpose that violates Regulation T, U or X of the Board of Governors of the United States Federal Reserve System.

Section 3.17 OFAC; USA PATRIOT Act, Anti-Corruption Laws.

(a) (i) None of the Lead Borrower or any of its Restricted Subsidiaries or any director, officer or employee of any of the foregoing is, or is owned or controlled by any individual or entity that is, the target of any U.S. sanctions administered by the United States government, including the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") (collectively, "Sanctions"); and (ii) the Borrowers will not, nor shall it permit any Restricted Subsidiary to, directly or, to its knowledge, indirectly, (A) use the proceeds of any Credit Extension or (B) otherwise make available such proceeds to any Person for the purpose of financing the activities of any Person that is the target of Sanctions, or in any country or territory that is the target of any comprehensive Sanctions, except to the extent licensed or otherwise authorized or exempted under U.S. law.

(b) To the extent applicable, each Loan Party is in compliance with the USA PATRIOT Act.

(c) (i) None of the Lead Borrower or any of its Restricted Subsidiaries or any director, officer, or to the knowledge of the Borrowers, agent (solely to the extent acting in its capacity as an agent for the Lead Borrower or any of its subsidiaries) or employee of any Borrower or any Restricted Subsidiary, has taken any action, directly or knowingly indirectly, that would result in a material violation by any such Person of applicable Anti-Corruption Laws, including, without limitation, making any offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any "foreign official" (as such term is defined in the Foreign Corrupt Practices Act) or any foreign political party or official thereof or any candidate for foreign political office, in each case in contravention of any applicable Anti-Corruption Law; and (ii) none of the Lead Borrower and its Restricted Subsidiaries has in the past five years used and will not directly or, to its knowledge, indirectly, (A) use the proceeds of the Loans or Letters of Credit or (B) otherwise make available such proceeds to any governmental official or employee, political party, official of a political party, candidate for public office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of any applicable Anti-Corruption Law.

Section 3.18 Affected Financial Institution. No Loan Party is an Affected Financial Institution.

Section 3.19 Covered Entity. No Loan Party is a Covered Entity.

Section 4.01 Closing Date. The obligations of (i) each Lender to make a Credit Extension hereunder on the Closing Date and (ii) the Issuing Bank to issue Letters of Credit hereunder on the Closing Date shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02), except as otherwise agreed between the Lead Borrower and the Administrative Agent:

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from each Loan Party party thereto (i) a counterpart signed by such Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (A) this Agreement, (B) the Security Agreement, (C) the Loan Guaranty, (D) any Intellectual Property Security Agreement and (E) any Promissory Note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Loan Notice as required by Section 2.03.

(b) Legal Opinions. The Administrative Agent (or its counsel) shall have received, on behalf of itself, the Lenders and the Issuing Bank on the Closing Date a customary written opinion from each of Kirkland & Ellis LLP and Ballard Spahr LLP, as counsel to the Loan Parties, dated the Closing Date and addressed to the Administrative Agent, the Lenders, the Swingline Lender and the Issuing Bank on the Closing Date.

(c) Financial Statements. The Administrative Agent shall have received (i) the Closing Date Financial Statements and (ii) the Pro Forma Financial Statements.

(d) Secretary's Certificate and Good Standing Certificates. The Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by a secretary, assistant secretary or other Responsible Officer thereof, which shall (A) certify that attached thereto are (x) a true and complete copy of the certificate or articles of incorporation, formation or organization of such Loan Party certified by the relevant authority of its jurisdiction of organization, which certificate or articles of incorporation, formation or organization have not been amended (except as attached thereto) since the date reflected thereon, (y) a true and correct copy of the by-laws or operating, management, partnership or similar agreement of such Loan Party, together with all amendments thereto as of the Closing Date, which by-laws or operating, management, partnership or similar agreement are in full force and effect, and (z) a true and complete copy of the resolutions or written consent, as applicable, of its board of directors, board of managers, sole member or other applicable governing body authorizing the execution and delivery of the Loan Documents, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of such Loan Party authorized to sign the Loan Documents to which such Loan Party is a party on the Closing Date and (ii) a good standing (or equivalent) certificate for such Loan Party from the relevant authority of its jurisdiction of organization, dated as of a recent date.

(e) Representations and Warranties. The Specified Representations shall be true and correct in all material respects on and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case, as of such date).

(f) Fees. Prior to or substantially concurrently with the funding of the Initial Revolving Loans hereunder, the Administrative Agent shall have received (i) all fees required to be paid by the Borrowers on the Closing Date pursuant to the Fee Letter and (ii) all expenses required to be paid by the Borrowers for which invoices have been presented at least one Business Day prior to the Closing Date or such later date to which the Borrowers may agree (including the reasonable fees and expenses of legal counsel relating to the credit facilities), in each case on or before the Closing Date, which amounts may be offset against the proceeds of the Loans.

(g) Mergers. Prior to or substantially concurrently with the initial Credit Extensions on the Closing Date: the Mergers shall have been consummated in all material respects in accordance with the Merger Agreement (without giving effect to any modifications, amendments, requests or approvals, waivers or consent thereto that are materially adverse to the Lenders in their capacity as such without the consent of the Lead Arranger (such consent not to be unreasonably withheld, delayed, denied or conditioned and provided that the Lead Arranger shall be deemed to have consented to such waiver, amendment, consent or other modification unless it shall object thereto within three (3) Business Days after written notice of such waiver, amendment, supplement, consent or other modification)), it being understood and agreed that any modification, amendment, consent, waiver or determination in respect of the definition of Holdings Material Adverse Effect (as defined in the Merger Agreement as of the date hereof) shall be deemed to be material and adverse to the Lenders. On the Closing Date, immediately after giving effect to the Mergers and the other Transactions contemplated hereby, the Sponsor shall control a majority of the voting equity interests in the Lead Borrower.

(h) Solvency. The Administrative Agent shall have received a certificate in form reasonably acceptable to the Administrative Agent from the chief financial officer (or other officer with reasonably equivalent responsibilities) of the Lead Borrower dated as of the Closing Date and certifying as to the Solvency of the Lead Borrower and its Restricted Subsidiaries on a consolidated basis.

(i) Evidence of Insurance. Subject to Section 5.15, the Administrative Agent shall have received copies of insurance policies, declaration pages, certificates, and endorsements of insurance evidencing liability and property meeting the requirements set forth herein or in the Collateral Documents.

(j) Pledged Stock and Pledged Notes. Subject to the final paragraph of this Section 4.01, the Administrative Agent (or its counsel) shall have received (i) the certificates representing any Capital Stock required to be pledged pursuant to the Security Agreement, together with an undated stock power or similar instrument of transfer for each such certificate endorsed in blank by a duly authorized officer of the pledgor thereof, and (ii) any Material Debt Instrument required to be pledged pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by an transfer form endorsed in blank) by the pledgor thereof.

(k) Filings Registrations and Recordings. Subject to the last paragraph of this Section 4.01, each document (including any UCC financing statement) required by any Collateral Document to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered pursuant to such Collateral Document, shall be in proper form for filing, registration or recordation.

(l) Minimum Liquidity. Immediately after giving effect to the Mergers and the other Transactions occurring on the Closing Date, the Lead Borrower and its Subsidiaries shall have unrestricted and unencumbered domestic Cash and Cash Equivalents of at least $50 million on the Closing Date.

(m) Refinancing. The Refinancing shall have been consummated and all security interests and guarantees in connection therewith shall have been terminated and released.

(n) USA PATRIOT Act. The Administrative Agent shall have received at least three (3) Business Days prior to the Closing Date (x)the documentation and other information about the Lead Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act, that has been reasonably requested by the Administrative Agent in writing at least ten (10) Business Days prior to the Closing Date and (y) in respect of any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification to the extent reasonably requested by the Administrative Agent in writing at least ten (10) Business Days prior to the Closing Date.

(o) Officer's Certificate. The Administrative Agent shall have received a customary certificate from a Responsible Officer of the Lead Borrower certifying satisfaction of the conditions precedent set forth in Sections 4.02(b) and (c).

(p) Company Material Adverse Effect. Since June 4, 2021, there has occurred no Holdings Material Adverse Effect (as defined in the Merger Agreement).

Without limiting the generality of the provisions of Section 9.03(c), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Notwithstanding the foregoing, to the extent that the Lien on any Collateral is not or cannot be created or perfected on the Closing Date (other than (a) execution and delivery of the Security Agreement by each Loan Party, (b) a Lien on Collateral that is of the type that may be perfected by the filing of a financing statement under the UCC and (c) a Lien on the Capital Stock of the Borrowers and any Subsidiary Guarantor, that may be perfected on the Closing Date by the delivery to the Administrative Agent of a stock or equivalent certificate (together with a stock power or similar instrument endorsed in blank for the relevant certificate) (in the case of Subsidiaries of the Lead Borrower, to the extent in the Lead Borrower's possession after use of commercially reasonably efforts to obtain the same)) in each case after the Lead Borrower's use of commercially reasonably efforts to do so without undue burden or expense, then the creation and/or perfection of such Lien shall not constitute a condition precedent to the availability or initial funding of the Revolving Facility on the Closing Date, but shall instead be required to be delivered and/or satisfied after the Closing Date within ninety (90) days after the Closing Date (or such later date as may reasonably be agreed by the Administrative Agent and Lead Borrower).

Section 4.02 Each Credit Extension. After the Closing Date, the obligation of each Revolving Lender, Swingline Lender or Issuing Bank to make any Credit Extension is subject solely to the satisfaction of the following conditions:

(a) (i) In the case of any Borrowing, the Administrative Agent shall have received a Loan Notice as required bySection 2.03, (ii) in the case of the issuance of any Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit as required by Section 2.05(a)(i) or (iii) in the case of any Borrowing of Swingline Loans, the Swingline Lender and the Administrative Agent shall have received a Swingline Loan Notice as required by Section 2.04(a).

(b) The representations and warranties of the Lead Borrower and the other Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of any such Credit Extension with the same effect as though such representations and warranties had been made on and as of the date of such Credit Extension; *provided* that to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period; *provided*, *however*, that, any representation and warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Event of Default or Default has occurred and is continuing.

ARTICLE 5 AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all Revolving Credit Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than contingent indemnification obligations for which no claim or demand has been made) have been paid in full in Cash and all Letters of Credit have expired or have been terminated (or have been (x) collateralized or back-stopped by a letter of credit or otherwise in a manner reasonably satisfactory to the Issuing Bank or (y) deemed reissued under another agreement reasonably acceptable to the Issuing Bank and the Administrative Agent) and all LC Disbursements have been reimbursed (such date, the "Termination Date"), the Borrowers hereby covenant and agree with the Lenders that:

Section 5.01 Financial Statements and Other Reports. The Lead Borrower will deliver to the Administrative Agent for delivery by the Administrative Agent to each Lender:

(a) Quarterly Financial Statements. Within five (5) days after the date on which financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) with respect to each of the first three Fiscal Quarters of each Fiscal Year of the Lead Borrower (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 60 days after the end of each such Fiscal Quarter of each Fiscal Year (or, in the case of the first two Fiscal Quarters following the Closing Date, 90 days)), commencing with the Fiscal Quarter ending March 31, 2022, the unaudited consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of the Lead Borrower and its Restricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and, commencing with the Fiscal Quarter ending March 31, 2023, setting forth, in reasonable detail, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Responsible Officer Certification (which may be included in the applicable Compliance Certificate) with respect thereto;

(b) Annual Financial Statements. Within five (5) days after the date on which such financial statements are required to be filed with the SEC (after giving effect to any permitted extensions) (or, if such financial statements are not required to be filed with the SEC, on or before the date that is 120 days after the end of each Fiscal Year, (i) the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, changes in equity and cash flows of the Borrowers and their Restricted Subsidiaries for such Fiscal Year and, commencing with the Fiscal Year ending December 31, 2022, setting forth, in reasonable detail, in comparative form the corresponding

figures for the previous Fiscal Year and (ii) with respect to such consolidated financial statements, all in reasonable detail and prepared in accordance in all material respects with GAAP, audited and accompanied by a report and opinion of (A) one of the "Big Four" accounting firms, (B) an accounting firm of recognized national standing or (C) another independent registered public accounting firm approved by the Administrative Agent in its reasonable discretion (such consent not to be unreasonably withheld, delayed, denied or conditioned), which report and opinion shall be prepared in accordance in all material respects with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception (other than as a result of (w) an upcoming maturity date in respect of any Indebtedness, (x) changes in accounting principles or practices reflecting changes in GAAP, (y) a prospective or actual default in respect of any financial maintenance covenant in any agreement governing Indebtedness (including this Agreement), or (z) as a result of the activity, operations, financial results, assets or liabilities of any Unrestricted Subsidiaries) or any qualification or exception as to the scope of such audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Lead Borrower and its Restricted Subsidiaries as at the dates indicated and their income and cash flows for the periods indicated in conformity with GAAP;

(c) Compliance Certificate. No later than five (5) Business Days after the delivery of the financial statements of the Lead Borrower pursuant to Section 5.01(a) and Section 5.01(b), (i) a duly executed and completed Compliance Certificate (for the avoidance of doubt, it is understood that the Compliance Certificate for the fiscal period ended December 31, 2021 will not contain a calculation of the financial covenants set forth in Section 6.14(a)), (ii) (A) a summary of the pro forma adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements (which may be in footnote form) and (B) a list identifying each subsidiary of the Borrowers as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such Compliance Certificate or confirmation that there is no change in such information since the later of the Closing Date and the date of the last such list and (iii) a customary management's discussion and analysis;

(d) Notice of Default. Promptly after any Responsible Officer of the Lead Borrower obtains knowledge of (i) any Default or Event of Default (except to the extent the Administrative Agent shall have previously furnished to the Lead Borrower written notice of such Default or Event of Default) or (ii) the occurrence of any event or change that has resulted in or could reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect, a notice in reasonable detail setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and propose to take with respect thereto;

(e) Notice of Litigation. Promptly after any Responsible Officer of the Lead Borrower obtains knowledge of (i) the commencement of, or threat in writing of, any Adverse Proceeding not previously disclosed in writing by the Borrowers to the Administrative Agent or (ii) any material development in any Adverse Proceeding that, in the case of either of clauses (i) or (ii), has a reasonable likelihood of adverse determination and such determination could reasonably be expected to have a Material Adverse Effect, written notice thereof from the Lead Borrower together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders to evaluate such matters;

(f) ERISA. Promptly after any Responsible Officer of the Lead Borrower obtains knowledge of the occurrence of any ERISA Event that could reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof;

(g) [Reserved];

(h) Information Regarding Collateral. The Lead Borrower will furnish to the Administrative Agent prompt written notice (notice bye-mail is acceptable) of any change (i) in any Loan Party's legal name, (ii) in any Loan Party's type of organization, (iii) in any Loan Party's jurisdiction of organization or (iv) in any Loan Party's organizational identification number, in each case to the extent such information is necessary to perfect or maintain the perfection and priority of the Administrative Agent's security interest in the applicable Collateral;

(i) Certain Reports. Promptly upon their becoming available and without duplication of any obligations with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by the Lead Borrower to its public security holders acting in such capacity and (ii) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by the Lead Borrower or any of its Restricted Subsidiaries with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities; and

(j) Other Information. Such other certificates, reports and information (financial or otherwise, including information and documentation reasonably requested by a Lender to comply with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, and the Beneficial Ownership Regulation) as the Administrative Agent or any Lender may reasonably request from time to time in connection with the Lead Borrower's or its Restricted Subsidiaries' financial condition or business.

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrowers (or a representative thereof) post such documents (or provides a link thereto) at the website address listed on Schedule 5.01 (which such schedule may be updated from time to time); (ii) on which such documents are delivered by the Lead Borrower to the Administrative Agent for posting on behalf of the Lead Borrower on IntraLinks, SyndTrak or another relevant secure website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); (iii) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent); or (iv) with respect to any item required to be delivered pursuant to Section 5.01(i) above in respect of information filed by the Lead Borrower or any of its Subsidiaries with any securities commission or exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities, on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority or securities exchange.

Notwithstanding the foregoing, the obligations in Sections 5.01(a), (b), and (i) may be satisfied by furnishing (A) the applicable financial statements of the Lead Borrower (or any other Parent Company) or (B) the Lead Borrower's (or any other Parent Company's), as applicable, Form 8-K, Form 10-K or 10-Q, as applicable, filed with the SEC, in each case, within the time periods specified in such paragraphs;*provided* that, with respect to each of clauses (A) and (B), (i) to the extent such financial statements relate to any Parent Company, such financial statements shall be accompanied by consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company, on the one hand, and the information relating to the Lead Borrower on a standalone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Lead Borrower as having been fairly presented in all material respects and (ii) to the extent such statements are in lieu of statements required to be provided under Section 5.01(b), such statements shall be accompanied by a report and opinion of (A) one of the "Big Four" accounting firms, (B) an accounting firm of recognized national standing or

(C) another independent registered public accounting firm approved by the Administrative Agent in its reasonable discretion (such consent not to be unreasonably withheld, delayed, denied or conditioned), which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going-concern" or like qualification or exception (other than as a result of (w) an upcoming maturity date in respect of any Indebtedness, (x) changes in accounting principles or practices reflecting changes in GAAP, (y) a prospective or actual default in respect of any financial maintenance covenant in any agreement governing Indebtedness (including this Agreement), or (z) as a result of the activity, operations, financial results, assets or liabilities of any Unrestricted Subsidiaries) or any qualification or exception as to the scope of such audit.

The Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Lead Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive Material Non-Public Information and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Lead Borrower hereby agrees that so long as any Borrower or its Subsidiaries is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering, the Lead Borrower will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and agrees that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Lead Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arranger, the Collateral Agent and the Lenders to treat such Borrower Materials as not containing any Material Non-Public Information (although it may be sensitive and proprietary) (*provided*, *however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.01); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent and the Lead Arranger shall treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Lead Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC"; *provided*, *however*, that the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Lead Borrower notifies the Administrative Agent promptly that any such document contains Material Non-Public Information: (1) the Loan Documents, (2) any notification of changes in the terms of the Loan Documents and (3) all information delivered pursuant to Sections 5.01(a), 5.01(b) and 5.01(c).

In no event shall the requirements set forth in Section 5.01 require any Borrower or any of the Restricted Subsidiaries to provide any such information which (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Requirement of Law, fiduciary duty or Contractual Obligation (not created in contemplation thereof) or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product; *provided* that the Lead Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent that information is not disclosed or provided pursuant to clauses (i) through (iii) above.

Section 5.02 Existence. Except as otherwise permitted hereunder, the Lead Borrower will, and the Lead Borrower will cause each of its Restricted Subsidiaries to, at all times preserve and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization and take all reasonable action to maintain all rights, franchises, licenses and permits necessary in the normal conduct of its business except, other than with respect to the preservation of the existence of the Borrowers, to the extent (i) that the failure to do so could not reasonably be expected to result in a Material Adverse Effect

or (ii) pursuant to any merger, consolidation, liquidation, dissolution, Disposition or other transaction permitted by Article 6; *provided* that neither the Lead Borrower nor any of the Lead Borrower's Restricted Subsidiaries shall be required to preserve any such existence (other than with respect to the preservation of existence of the Borrowers), right, franchise, license or permit if a Responsible Officer of such Person or such Person's board of directors (or similar governing body) determines that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders (taken as a whole).

Section 5.03 Payment of Taxes. The Lead Borrower will, and the Lead Borrower will cause each of its Restricted Subsidiaries to, pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business, all its material obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.04 Maintenance of Properties. The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, maintain or cause to be maintained all of its material properties and equipment necessary in the operation of its business in satisfactory working order, repair and condition (ordinary wear and tear excepted and fire, casualty or condemnation excepted) except to the extent (i) that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) pursuant to any merger, consolidation, liquidation, dissolution, Disposition or other transaction permitted by Article 6.

Section 5.05 Insurance. Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Borrowers will maintain or cause to be maintained, with insurance companies that the Lead Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed, such insurance coverage with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Lead Borrower and its Restricted Subsidiaries as may customarily be carried or maintained by Persons engaged in the same or similar business and in similar locations, of such types and in such amounts (after giving effect to any self-insurance customary for similarly situated Persons engaged in the same or similar businesses and in similar locations as the Lead Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Each such policy of insurance (other than business interruption insurance, director and officer insurance, worker's compensation insurance and other insurance customarily excluded) shall, as appropriate, (i) name the Administrative Agent on behalf of the Secured Parties as a lender's loss payee or an additional insured, as applicable, thereunder as its interests may appear and (ii) to the extent available from the relevant insurance carrier, in the case of each casualty insurance policy, contain a lender's loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties, as the lender's loss payee thereunder and, to the extent available from the relevant insurance carrier after submission of a request by the applicable Loan Party to obtain the same, provide for at least 30 days' prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days' prior written notice in the case of the failure to pay any premiums thereunder).

Section 5.06 Inspections. The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, permit any authorized representative designated by the Administrative Agent to visit and inspect any of the properties of the Borrowers and any of their Restricted Subsidiaries at which the principal financial records and executive officers of the applicable Person are located, to inspect, copy and take extracts from its and their respective financial and accounting records, and to discuss its and their respective affairs, finances and accounts with its and their Responsible Officers and independent public accountants

(subject to such accountants' customary policies and procedures) (*provided* that the Borrowers (or any of their subsidiaries) may, if it so chooses, be present at or participate in any such discussion) at the reasonable expense of the Borrowers, all upon reasonable notice and at reasonable times during normal business hours; *provided* that (a) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06, (b) except as expressly set forth inclause (c) below during the continuance of an Event of Default, the Administrative Agent shall not exercise such rights more often than one time during any calendar year and such one time shall be at the expense of the Borrowers and their Restricted Subsidiaries, (c) when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the reasonable expense of the Borrowers at any time during normal business hours and upon reasonable advance notice and (d) notwithstanding anything to the contrary herein, neither the Lead Borrower nor any Restricted Subsidiary shall be required to disclose, permit the inspection, examination or making of copies of or taking abstracts from, or discuss any document, information or other matter which (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Requirements of Law, fiduciary duty or Contractual Obligation (not created in contemplation thereof) or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product; *provided* that the Lead Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent that information is not disclosed or provided pursuant to this clause (d)(iii).

Section 5.07 Maintenance of Book and Records. The Lead Borrower will, and will cause their Restricted Subsidiaries to, maintain proper books of record and account containing entries of all material financial transactions and matters involving the assets and business of the Lead Borrower and its Restricted Subsidiaries that are full, true and correct in all material respects (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with general accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 5.08 Compliance with Laws. The Lead Borrower will comply, and will cause each of its Restricted Subsidiaries to comply, with the requirements of all applicable Requirements of Law (including applicable ERISA and all Environmental Laws, Sanctions, the USA PATRIOT Act and any applicable Anti-Corruption Law), except to the extent the failure of the Borrowers or the relevant Restricted Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect.

Section 5.09 [Reserved].

Section 5.10 Designation of Subsidiaries. Subject in all cases to the last paragraph ofSection 6.06, the Lead Borrower may at any time after the Closing Date designate (or redesignate) any subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (a) after giving effect to such designation, no Event of Default exists (including after giving effect to the reclassification of Investments in, Indebtedness of and Liens on the assets of, the applicable Restricted Subsidiary or Unrestricted Subsidiary), (b) before and after giving effect to such designation on a Pro Forma Basis, the Borrowers shall be in Pro Forma Compliance with the financial covenants set forth in Section 6.14(a), and (c) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Material Intellectual Property of the Borrowers and their Restricted Subsidiaries (other than pursuant to nonexclusive licenses made in the ordinary course of business on an arm's length basis so long as such non-exclusive license does not have a material adverse impact on the operation of business of the Lead Borrower and its Restricted Subsidiaries or the value of the Collateral). The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrowers (or its applicable Restricted Subsidiary) therein at the date of designation in an amount equal to the portion of the Fair Market Value of the net assets of such Restricted Subsidiary attributable to the Borrowers' (or its applicable Restricted

Subsidiary's) equity interest therein as determined by the Lead Borrower in good faith (and such designation shall only be permitted to the extent such Investment is permitted under Section 6.06). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a Return on any Investment by the Loan Parties in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the Fair Market Value as determined in good faith by the Lead Borrower at the date of such designation of such Loan Party's or its Subsidiary's (as applicable) Investment in such Subsidiary. As of the Closing Date, the subsidiaries listed on Schedule 5.10 hereto have been designated as Unrestricted Subsidiaries.

Section 5.11 Use of Proceeds. Borrower shall use the proceeds of the Revolving Loans (i) with respect to Revolving Loans made on the Closing Date, for Permitted Initial Revolving Credit Borrowing Purposes and (ii) after the Closing Date, to finance working capital needs and other general corporate purposes of the Borrowers and their Subsidiaries (including for capital expenditures, acquisitions, Investments, working capital and/or purchase price adjustments, Restricted Payments, Restricted Debt Payments and related fees and expenses and any other purpose not prohibited by the terms of the Loan Documents). The Borrowers shall use the proceeds of the Swingline Loans made after the Closing Date to finance working capital needs and other general corporate purposes of the Borrowers and any other purpose not prohibited by the terms of the Loan Documents. Letters of Credit may be issued (i) on the Closing Date to backstop, roll-over or replace letters of credit, guarantees and performance or similar bonds outstanding on the Closing Date and (ii) after the Closing Date, for general corporate purposes of the Borrowers and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

Section 5.12 Covenant to Guarantee Obligations and Provide Security.

At the Borrowers' expense, subject to the terms, conditions and provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document or herein, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement is satisfied in accordance herewith, including:

(a) Upon (1) the formation or acquisition (including, without limitation, by division) of any new direct or indirect Wholly-owned Material Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Loan Party or (2) the designation in accordance with Section 5.10 of any existing direct or indirect Wholly-owned Material Domestic Subsidiary as a Restricted Subsidiary or (3) any Subsidiary ceasing to be an Excluded Subsidiary (including, as a result of the election or designation of the Lead Borrower pursuant to the Collateral and Guarantee Requirement and the definitions of "Borrower" and "Guarantor", as applicable):

(i) within 60 days after such formation, acquisition, designation or cessation (or in the case of a Subsidiary ceasing to be an Excluded Subsidiary by virtue of becoming a Material Domestic Subsidiary, no later than 60 days after the date by which financial statements for such quarter are required to be delivered pursuant to the definitions thereof), or such longer period as the Administrative Agent may agree in writing in its reasonable discretion:

(A) cause each such Material Domestic Subsidiary that is required to become a Loan Party pursuant to the Collateral and Guarantee Requirement (and any Subsidiary that the Lead Borrower elects to become a Borrower or a Guarantor pursuant to the Collateral and Guarantee Requirement and the definitions of Borrower and Guarantor) to duly execute and deliver to the Administrative Agent, joinders to this Agreement and/or the Loan Guaranty as Borrowers or Guarantors,

as applicable, supplements to the Security Agreement, Intellectual Property security agreements and other security agreements and documents as reasonably requested by and in form and substance reasonably satisfactory to the Administrative Agent and the Lead Borrower (consistent, to the extent in effect on the Closing Date, with the Security Agreement, Intellectual Property Security Agreements and other security agreements in effect on the Closing Date (and, in the case of foreign law documents, consistent with the collateral market in such jurisdiction and this Agreement)), in each case providing guarantees and/or joining such Person as a Borrower hereunder, as applicable, and granting security interests required by the Collateral and Guarantee Requirement;

(B) cause each such Material Subsidiary that is required to make a pledge pursuant to the Collateral and Guarantee Requirement (and any Subsidiary that the Lead Borrower elects to become a Borrower or a Guarantor pursuant to the Collateral and Guarantee Requirement and the definitions of Borrower and Guarantor) (and the parent of each such Domestic Subsidiary and Foreign Subsidiary that is a Borrower or a Guarantor) to deliver any and all certificates representing Capital Stock (to the extent certificated) that are required (or elected) to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank;

(C) take and cause such Material Domestic Subsidiary that is required to become a Loan Party pursuant to the Collateral and Guarantee Requirement (and any Subsidiary that the Lead Borrower elects to become a Borrower or a Guarantor pursuant to the Collateral and Guarantee Requirement and the definitions of "Borrower" and "Guarantor") and each direct or indirect parent of such Person to take whatever action (including the filing of UCC financing statements and delivery of stock and membership interest certificates) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens to the extent required by the Collateral and Guarantee Requirement, and to otherwise comply with the requirements of the Collateral and Guarantee Requirement;

(D) if reasonably requested by the Administrative Agent or the Collateral Agent, deliver to the Administrative Agent a signed copy of a customary opinion, addressed to the Administrative Agent, the Collateral Agent and the Lenders, of counsel for the Loan Parties and customary board resolutions and officers' certificates certifying such resolutions;

(ii) if reasonably requested by the Administrative Agent or the Collateral Agent, within 60 days after such request (or such longer period as the Administrative Agent may agree in writing in its discretion), deliver to the Collateral Agent other items necessary from time to time to satisfy the Collateral and Guarantee Requirement with respect to perfection and existence of security interests with respect to property of any Loan Party acquired after the Closing Date and subject to the Collateral and Guarantee Requirement, but not specifically covered by the preceding clause (i).

Notwithstanding anything to the contrary herein or in any other Loan Document, it is understood and agreed that, unless otherwise decided by the Lead Borrower, in its sole discretion:

(i) no Loan Party or any Subsidiary (other than any Foreign Subsidiary that the Lead Borrower elects to become a Guarantor pursuant to the Collateral and Guarantee Requirement and the definition of Guarantor (and the parent of each such Foreign Subsidiary that is a Guarantor), solely with respect to the assets arising under the Law of the jurisdiction in which such Foreign Subsidiary is incorporated) shall be required to take any action outside the United States to guarantee the Obligations or grant, maintain or perfect any security interest in the Collateral (including the execution of any agreement, document or other instrument governed by the law of any jurisdiction other than the United States, any State thereof or the District of Columbia);

(ii) no control agreements or perfection by "control" with respect to any Collateral shall be required (including control agreements related to deposit accounts, securities accounts or commodities accounts or contracts) other than with respect to Capital Stock and securities and other instruments to the extent required by the Collateral Documents and the Collateral and Guarantee Requirement;

(iii) no landlord waivers, collateral access agreements, bailee waivers or other similar agreements with respect to the Collateral shall be required hereunder or under any other Loan Document;

(iv) no notice to obtain the consent of any Governmental Authority under the Federal Assignment of Claims Act (or any state equivalent thereof) shall be required; and

(v) no environmental reports shall be required to be obtained hereunder or under any other Loan Document;

(vi) no Loan Party or any Subsidiary shall be required to enter into any mortgages and fixture filings relating to any Real Estate Asset; and

(vii) no Loan Party or any Subsidiary shall be required to enter into any source code escrow arrangement (or be obligated to register or apply to register any intellectual property).

Section 5.13 Transactions with Affiliates. The Lead Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into any transaction with a value in excess of the greater of $1,880,000 and 10% of Consolidated Adjusted EBITDA with any Affiliate of the Borrowers, whether or not in the ordinary course of business, other than:

(a) any transaction between or among the Lead Borrower and/or one or more Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction) to the extent not prohibited by this Agreement;

(b) any issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body), or constituting directors' qualifying shares or other shares required by applicable Law, in each case, of any Parent Company or of the Lead Borrower or any Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement entered into by any Borrower or any of its Restricted Subsidiaries with their respective current or former officers, directors, members of

management, managers, employees, consultants or independent contractors or those of any Parent Company (including loans and advances in connection therewith), (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) transactions pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement;

(d) (i) transactions permitted by an express provision under this Article 5 or Article 6 other than by reference to this Section 5.13 and (ii) issuances of Capital Stock and issuances and incurrences of Indebtedness not restricted by this Agreement;

(e) transactions pursuant to any arrangement or agreement in existence on the Closing Date and set forth on Schedule 5.13 and any amendment, extension, renewal, modification or replacement of any such arrangement or agreement (so long as any such amendment, extension, renewal, modification or replacement is not materially adverse to the Lenders (in the good faith judgment of the Lead Borrower) when taken as a whole);

(f) (i) so long as no Event of Default has occurred and is continuing and after giving effect thereto on a Pro Forma Basis, the Borrowers are in Pro Forma Compliance with the financial covenants set forth in Section 6.14(a), the payment of Management Fees (including refinancing, transaction and termination and exit fees) to the Sponsor or any Investor in an amount not to exceed the amounts set forth in a management agreement, which such agreement shall be in form and substance reasonably acceptable to the Administrative Agent (such approval not to be unreasonably withheld, denied, delayed or conditioned); *provided* that, upon the occurrence and during the continuance of an Event of Default or failure to be in Pro Forma Compliance with the financial covenants set forth in Section 6.14(a) such amounts described in this clause (i) may accrue, but not be payable in cash during such period, but all such accrued amounts may be payable in cash upon the cure or waiver of such Event of Default; (ii) indemnifications and reimbursement expenses, in each case, owed to any Investor, and any of their respective directors, officers, members of management, managers, employees and consultants; (iii) the payment of indemnities and reasonable expenses of the Sponsor or applicable Investor related to the Lead Borrower and its Subsidiaries or any applicable management agreement; and (iv) advisory or consulting fees in connection with certain corporate events including, without limitation, with respect to refinancings, restructurings, equity or debt offerings, amounts paid by the Loan Parties and their Subsidiaries to repurchase any of their securities, acquisitions, mergers, consolidations, business combinations, sales and divestitures;

(g) the Transactions (including, for the avoidance of doubt, the payment of the Transaction Costs)

(h) customary payments (whether direct or indirect) to Affiliates (including the Sponsor) in connection with financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestures) and other transaction fees;

(i) Guarantees permitted by Section 6.01;

(j) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the board of directors (or similar governing body), officers, employees, members of management, managers, consultants and independent contractors of any Borrower and/or any of its Restricted Subsidiaries in the ordinary course of business and, in the case of payments to such Person in such capacity on behalf of any Parent Company, to the extent attributable to the operations of any Borrower or its Subsidiaries;

(k) transactions with customers, clients, suppliers, joint ventures, purchasers or sellers of goods or services or providers of employees or other labor entered into in the ordinary course of business, which are (i) fair to the Borrowers and/or the other Restricted Subsidiaries in the reasonable determination of the board of directors (or similar governing body) of the Borrowers or the senior management thereof or (ii) on terms at least as favorable (as reasonably determined by the Lead Borrower) to the Borrowers and/or the other Restricted Subsidiaries as might reasonably be obtained from a Person other than an Affiliate;

(l) the payment of reasonable out-of-pocket costs and expenses and indemnities related to registration rights and customary indemnities provided to shareholders under any shareholder agreement;

(m) (i) any purchase by the Lead Borrower of the Capital Stock of (or contribution to the equity capital of) a Borrower and (ii) any intercompany loan made by the Lead Borrower to a Borrower or any Restricted Subsidiary;

(n) any transaction in respect of which any Borrower or any of the other Restricted Subsidiaries of the Lead Borrower delivers to the Administrative Agent a letter addressed to the board of directors (or equivalent governing body) of such Borrower or Restricted Subsidiary from an accounting, appraisal or investment banking firm of nationally recognized standing stating that such transaction is fair to such Borrower or such other Restricted Subsidiary from a financial point of view or meets the requirements of Section 5.13(o);

(o) on terms (taken as a whole) substantially as favorable to such Borrower or such other Restricted Subsidiary as would be obtainable by such Borrower or such other Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate (as reasonably determined by the Lead Borrower in good faith);

(p) loans and other transactions made by any Borrower and any other Restricted Subsidiaries of the Lead Borrower to Unrestricted Subsidiaries and joint ventures (to the extent any such Subsidiary that is not a Restricted Subsidiary or any such joint venture is only an Affiliate as a result of Investments by the Lead Borrower and its Restricted Subsidiaries in such Subsidiary or joint venture) to the extent otherwise permitted under Section 6.02;

(q) payments by any Borrower or any of its Subsidiaries pursuant to any tax sharing agreements with any direct or indirect parent of the Borrowers to the extent attributable to the ownership or operation of the Borrowers and their Subsidiaries;

(r) the issuance or transfer of Capital Stock (other than Disqualified Capital Stock) of the Lead Borrower to any Investor or to any former, current or future manager, officer, director, consultant or employee (or any spouses, former spouses, successors, executors, administrators, heirs, legatees, distributees or Affiliates of any of the foregoing) of the Borrowers, any of their Subsidiaries or any direct or indirect parent or any one of its Subsidiaries to the extent not otherwise prohibited by the Loan Documents;

(s) the existence and performance of agreements and transactions with any Unrestricted Subsidiary that were entered into prior to the designation of a Restricted Subsidiary as such Unrestricted Subsidiary to the extent that the transaction was permitted at the time that it was entered into with such Restricted Subsidiary and transactions entered into by an Unrestricted Subsidiary with an Affiliate of such Unrestricted Subsidiary (other than a Borrower or another Restricted Subsidiary of the Lead Borrower) prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that such transaction was not entered into in contemplation of such designation or redesignation, as applicable;

(t) Affiliate repurchases of (i) the Loans or Commitments to the extent permitted hereunder or (ii) Indebtedness that is secured by the Collateral on a *pari passu* or junior priority basis, and the holding of such Loans or Commitments or Indebtedness that is secured by the Collateral on a junior priority basis and, in the case of each of the foregoing, the payments and other transactions reasonably related thereto;

(u) (i) non-exclusive licenses and sublicenses of IP Rights in the ordinary course of business so long as suchnon-exclusive license does not have a material adverse impact on the operation of business of the Lead Borrower and its Restricted Subsidiaries or the value of the Collateral, or (ii) in connection with any Permitted Tax Restructuring not securing Indebtedness for borrowed money;

(v) Restricted Payments permitted under Section 6.04; and

(w) transactions that are approved by a majority of the disinterested members of the board of directors of the Lead Borrower in good faith.

Section 5.14 Further Assurances. Promptly upon the reasonable request of the Administrative Agent and subject to the limitations described in Section 5.12 and the other Loan Documents:

(a) the Lead Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, certificates, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements, fixture filings and/or amendments thereto and other documents relating to any Collateral), that may be required under any applicable Requirements of Law and which the Administrative Agent may reasonably request to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents, all at the expense of the relevant Loan Parties.

(b) the Lead Borrower will, and will cause each other Loan Party to, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts (including notices to third parties), deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents, subject to the terms and conditions of the Collateral Documents.

Section 5.15 **Post-Closing Covenant**. The Loan Parties shall comply with their obligations described inSchedule 5.15, in each case, within the applicable periods of time specified in such Schedule with respect to the relevant item (or such longer periods as the Administrative Agent may agree in its reasonable discretion).

Section 5.16 Principal Concentration Account. Within 365 days of the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), each Loan Party and its Restricted Subsidiaries shall maintain its principal cash management and treasury business with Bank of America.

ARTICLE 6 NEGATIVE COVENANTS

From the Closing Date and until the Termination Date, the Borrowers covenant and agree with the Lenders that:

Section 6.01 Indebtedness. The Borrowers shall not, nor shall it permit any of its Restricted Subsidiaries to create, incur, assume or otherwise become liable with respect to any Indebtedness, except:

(a) the Secured Obligations (including any Additional Revolving Loans);

(b) Indebtedness of any Borrower or any other Restricted Subsidiary owing to any Loan Party or any other Restricted Subsidiary (or issued or transferred to any direct or indirect parent of a Loan Party which is substantially contemporaneously transferred to a Loan Party or any Restricted Subsidiary that is a Loan Party); *provided* that in the case of Indebtedness of anon-Loan Party owing to a Loan Party such Indebtedness (x) is an Investment permitted by Section 6.06 or (y) consists of any part of a Permitted Tax Restructuring; *provided*, *further*, that no such Indebtedness owed to a Loan Party shall be evidenced by a promissory note unless such promissory note is pledged to the Administrative Agent in accordance with, and subject to, the terms of the Security Agreement;

(c) [reserved];

(d) (i) Indebtedness consisting of obligations of, or arising from any agreement of any Borrower or any of the other Restricted Subsidiaries providing for indemnification, adjustment of purchase price, deferred purchase price or similar obligations (including, without limitation, earn-out obligations and seller paper) or other similar adjustments incurred in connection with any Disposition permitted hereunder, any acquisition permitted hereunder, including Permitted Acquisitions, or consummated prior to the Closing Date, the Transactions or any other purchase of assets or Capital Stock permitted hereunder, any other Investment or merger permitted hereunder or transaction with Affiliates permitted hereunder and (ii) Indebtedness arising from guaranties, letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments securing the performance of the Borrowers or any such Restricted Subsidiary pursuant to any such agreement;

(e) Indebtedness of the Borrowers and/or any Restricted Subsidiary (i) pursuant to tenders, statutory obligations, bids, leases, governmental contracts, trade contracts, self-insurance, surety, stay, customs, appeal, performance and/or return of money bonds, performance and completion guarantees or other similar obligations incurred in the ordinary course of business or consistent with past practice or to the extent required by a Requirement of Law or pursuant to any statutory filing and (ii) in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items;

(f) Indebtedness of any Borrower and/or any Restricted Subsidiary in respect of commercial credit cards, stored value cards, purchasing cards, treasury management services, netting services, overdraft protections, check drawing services, automated payment services (including depository, overdraft, controlled disbursement, ACH transactions or arrangements,

return items and interstate depository network services), employee credit card programs, cash pooling services and any arrangements or services similar to any of the foregoing and/or otherwise in connection with Cash management and Deposit Accounts, including Banking Services Obligations and incentive, supplier finance or similar programs;

(g) (i) guaranties by any Borrower and/or any Restricted Subsidiary of the obligations of suppliers, customers, franchisees and licensees in the ordinary course of business, (ii) [reserved] and (iii) Indebtedness in respect of letters of credit, bankers' acceptances, bank guaranties or similar instruments supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(h) Guarantees by any Borrower and/or any Restricted Subsidiary in respect of Indebtedness or other obligations of any Borrower, any Restricted Subsidiary and/or any joint venture with respect to Indebtedness otherwise permitted to be incurred hereunder or other obligations not prohibited by this Agreement (and cross-guarantees of guarantees by the Lead Borrower of Indebtedness of any Borrower or any Restricted Subsidiary of Indebtedness otherwise permitted hereunder); *provided* that in the case of any Guarantee by any Loan Party of the obligations of anynon-Loan Party, the related Investment is permitted under Section 6.06;

(i) Indebtedness of any Borrower and/or any Restricted Subsidiary outstanding on the Closing Date (i) not in excess of $2,000,000 in the aggregate (when taken together with all other indebtedness outstanding in reliance on this clause (i)) or (ii) listed on Schedule 6.01;

(j) Indebtedness of a Subsidiary of the Lead Borrower (other than a Loan Party) in an amount outstanding not to exceed theNon-Loan Party Cap at any time outstanding;

(k) Indebtedness of the Borrowers and/or any Restricted Subsidiary consisting of obligations owing under supply, license or similar agreements entered into in the ordinary course of business;

(l) Indebtedness of the Borrowers and/or any Restricted Subsidiary consisting of (i) the financing of insurance premiums,(ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business;

(m) Indebtedness of the Borrowers and/or any Restricted Subsidiary with respect to Capital Leases and purchase money Indebtedness, or the financing (or refinancing) of an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by any Borrower or any Restricted Subsidiary prior to or within 270 days after the acquisition, lease or improvement of the applicable asset thereof, in each case, in an aggregate amount not to exceed the greater of $4,700,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis) at any time outstanding;

(n) so long as no Event of Default (or in the case of a Limited Condition Transaction, no Specified Event of Default) exists or would result therefrom, Indebtedness of any Borrower or any Restricted Subsidiary assumed in connection with any Permitted Acquisition or other Investment permitted by Section 6.03 or Consolidated Capital Expenditures (*provided* that such Indebtedness is not incurred in contemplation of such Permitted Acquisition or other Investment); *provided* that the aggregate amount of such Indebtedness does not exceed the greater of $3,760,000

and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis) at any time outstanding; *provided*, *further*, that the aggregate principal amount of any such Indebtedness assumed under this clause (n) by any Restricted Subsidiary that is not a Loan Party shall not exceed the Non-Loan Party Cap at any time outstanding;

(o) Indebtedness consisting of promissory notes issued by any Borrower or any Restricted Subsidiary to any stockholder of the Lead Borrower or any Parent Company or any current or former director, officer, employee, member of management, advisors, operating partners, manager or consultant of the Lead Borrower or any Parent Company, the Borrowers or any subsidiary (or their respective Immediate Family Members) to finance the purchase or redemption of Capital Stock of the Lead Borrower or any Parent Company permitted by Section 6.04;

(p) the Borrowers and their Restricted Subsidiaries may become and remain liable for any Indebtedness refinancing, refunding or replacing any Indebtedness permitted under clauses (i), (m), (n), (q), (r), (v), (w), (x), and (jj) of this Section 6.01 (in any case, including any refinancing Indebtedness incurred in respect thereof, "Refinancing Indebtedness") and any subsequent Refinancing Indebtedness in respect thereof; *provided* that:

(i) except as otherwise permitted, the principal amount of such Refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced, refunded or replaced, except by (A) an amount equal to unpaid accrued interest, fees and premiums (including tender premiums) thereon plus underwriting discounts and other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant refinancing, refunding or replacement and (B) an amount equal to any existing commitments unutilized thereunder and (C) if such additional Indebtedness is secured, the Lien securing such Refinancing Indebtedness satisfies the applicable requirements of Section 6.02),

(ii) such Refinancing Indebtedness has (A) a final maturity equal to or later than (and, in the case of revolving Indebtedness, does not require mandatory commitment reductions, if any, prior to) the final maturity of the Indebtedness being refinanced, refunded or replaced and (B) other than with respect to revolving Indebtedness or capital leases, a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being refinanced, refunded or replaced,

(iii) the terms of any Refinancing Indebtedness (excluding pricing, fees, premiums, rate floors, optional prepayment or redemption terms), are not, taken as a whole (as reasonably determined by the Borrowers), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than any covenants or any other provisions applicable only to periods after the Latest Revolving Credit Maturity Date as of such date or reflect market terms at the time of incurrence),

(iv) in the case of Refinancing Indebtedness (A) with respect to Indebtedness of a Restricted Subsidiary that is not a Loan Party, the incurrence thereof shall be without duplication of any amounts outstanding in reliance on (and such Refinancing Indebtedness shall constitute utilization of amounts set forth in) the applicable clause of this Section 6.01 and (B) with respect to Indebtedness permitted under clauses (i), (n), (r), (x) or (y) (with respect to the Incremental Revolving Loans) of this Section 6.01, the incurrence thereof shall be without duplication of any amounts outstanding in reliance on (and such Refinancing Indebtedness shall constitute utilization of amounts set forth in) the applicable clause of this Section 6.01,

(v) (A) such Indebtedness, if secured, is secured only by Permitted Liens at the time of such refinancing, refunding or replacement (it being understood that secured Indebtedness may be refinanced with unsecured Indebtedness), (B) such Refinancing Indebtedness is incurred by the obligor or obligors in respect of the Indebtedness being refinanced, refunded or replaced, except to the extent otherwise permitted pursuant to Section 6.01, and (C) if the Indebtedness being refinanced, refunded or replaced was originally contractually subordinated to the Obligations in right of payment (or the Liens securing such Indebtedness were originally contractually subordinated to the Liens on all or a portion of the Collateral securing the Initial Revolving Loans), such Refinancing Indebtedness is contractually subordinated to the Obligations in right of payment (or the Liens securing such Refinancing Indebtedness are subordinated to the Liens on the relevant Collateral securing the Initial Revolving Loans) on terms not materially less favorable (as reasonably determined by the Borrowers), taken as a whole, to the Lenders than those applicable to the Indebtedness (or Liens, as applicable) being refinanced, refunded or replaced, taken as a whole.

(vi) in the case of Refinancing Indebtedness incurred in respect of Indebtedness permitted under (w) or (y) of this Section 6.01, (A) such Refinancing Indebtedness is *pari passu* in right of payment and secured by the Collateral on a *pari passu* basis with respect to the remaining Obligations hereunder, constitutes Junior Indebtedness or Junior Lien Indebtedness or is unsecured; *provided* that any such Refinancing Indebtedness that is *pari passu* with respect to the Collateral, is *pari passu* in right of payment or constitutes Junior Indebtedness or Junior Lien Indebtedness, shall be subject to an Acceptable Intercreditor Agreement, (B) if the Indebtedness being refinanced, refunded or replaced is secured, it is not secured by any assets other than the Collateral except as otherwise permitted, (C) if the Indebtedness being refinanced, refunded or replaced is Guaranteed, it shall not be Guaranteed by any Person other than one or more Loan Parties except as otherwise permitted and (D) such Refinancing Indebtedness is incurred under (and pursuant to) documentation other than this Agreement.

(q) the Convertible Notes, including any Guarantees by any Subsidiary of the Lead Borrower; provided that the Convertible Notes are not (i) Guaranteed by any Subsidiary that is not a Loan Party or (ii) secured by a Lien on any assets of the Lead Borrower and its Subsidiaries;

(r) Indebtedness in an amount not to exceed at any time outstanding the Available Excluded Contribution Amount;

(s) Indebtedness of the Borrowers and/or any Restricted Subsidiary under any Derivative Transaction not entered into for speculative purposes;

(t) Indebtedness of the Borrowers and/or any Restricted Subsidiary representing deferred compensation or similar arrangements to current or former directors, officers, employees, members of management, operating partners, managers and consultants of any Parent Company, any Borrower and/or any Restricted Subsidiary in the ordinary course of business and any Permitted Acquisition or any other Investment permitted hereby;

(u) Indebtedness of any Borrower and/or any Restricted Subsidiary in an aggregate outstanding principal amount not to exceed the greater of $4,700,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis) (which indebtedness may be secured on a *pari passu* basis);

(v) Permitted Ratio Debt;

(w) Indebtedness of any Borrower and/or any Restricted Subsidiary incurred in connection with Sale and Lease-Back Transactions permitted pursuant to Section 6.07;

(x) Incremental Revolving Loans;

(y) Indebtedness (including obligations in respect of letters of credit, bank guaranties, bankers' acceptances, warehouse receipts, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by any Borrower and/or any Restricted Subsidiary in respect of workers compensation claims, unemployment insurance (including premiums related thereto), other types of social security, or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(z) Indebtedness of the Borrowers and/or any Restricted Subsidiary in respect of any letter of credit or bank guarantee issued in favor of the Issuing Bank or the Swingline Lender to support any Defaulting Lender's participation in Letters of Credit issued, or Swingline Loans made, hereunder;

(aa) Indebtedness of the Borrowers or any Restricted Subsidiary (i) supported by any Letter of Credit, (ii) that constitute letters of credit issued in currencies not available hereunder and (iii) constituting trade letters of credit in an aggregate amount at any time outstanding for clauses (ii) and (iii) not to exceed the greater of $2,820,000 and 15% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis);

(bb) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrowers and/or any Restricted Subsidiary to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 7.01(i);

(cc) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;

(dd) Indebtedness of any Borrower and any other Restricted Subsidiaries in respect of any Supplier Financing Facility in the ordinary course of business;

(ee) obligations in respect of Disqualified Capital Stock and preferred Capital Stock in an amount not to exceed the greater of $2,820,000 and 15% of Consolidated Adjusted EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) outstanding at any time;

(ff) Indebtedness consisting of Management Fees paid to the Sponsor;

(gg) Indebtedness to the seller of any business or assets permitted to be acquired by any Borrower or any Restricted Subsidiary under this Agreement in an amount not to exceed the greater of $2,820,000 and 15% of Consolidated Adjusted EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) outstanding at any time;

(hh) Indebtedness constituting Investments permitted by Section 6.06 (other than Section 6.06(j));

(ii) Indebtedness incurred or deemed to be incurred in connection with a Permitted Tax Restructuring; and

(jj) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness of the Borrowers and/or any Restricted Subsidiary hereunder.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased, plus the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including OID) incurred in connection with such refinancing.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

This Agreement will not treat (1) unsecured Indebtedness as subordinated or junior to secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior in right of payment to any other senior Indebtedness merely because it has a junior priority with respect to the same Collateral.

Section 6.02 Liens. The Borrowers shall not, nor shall they permit any of their Restricted Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens (i) created pursuant to any Loan Document and (ii) on the Collateral securing the Secured Obligations;

(b) Liens for taxes, assessments or other governmental charges that are (i) not overdue for a period of more than any applicable grace period related thereto, (ii) that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, (iii) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (iv) for property taxes on property a Borrower or any Subsidiary thereof has determined to abandon if the sole recourse for such tax, assessment, charge, levy, or claim is to such property;

(c) statutory Liens or common law Liens (and rights ofset-off) of landlords, sub-landlords, banks, carriers, warehousemen, mechanics, repairmen, construction contractors, workmen and materialmen, and other Liens imposed by applicable Requirements of Law, in each case such Liens (i) secure amounts not yet overdue by more than 30 days, (ii) secure amounts that are overdue by more than 30 days and that are being contested in good faith by appropriate proceedings, so long as any reserves or other appropriate provisions required by GAAP have been made for any such contested amounts or (iii) with respect to which the failure to make payment or discharge would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(d) Liens incurred (i) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of bids, trade contracts, utilities, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case, other than Indebtedness for borrowed money, (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business securing (x) any liability for reimbursement or indemnification obligations (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrowers or any of the Restricted Subsidiaries or (y) leases or licenses of property otherwise permitted by this Agreement and (iv) to secure obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments posted with respect to the items described in clauses (i) through (iii) above;

(e) Liens consisting of survey exceptions, minor encumbrances, ground leases, easements, or reservations of, rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines, and other similar purposes, or zoning, building codes, or other restrictions (including, minor defects or irregularities in title and similar encumbrances) as to the use of a Real Estate Asset or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness for borrowed money and which do not individually or in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business as currently conducted or as contemplated to be conducted;

(f) Liens consisting of any (i) any interest or title of a lessor, sub-lessor, licensor or sub-licensor under leases, subleases, licenses or sublicenses entered into by the Borrowers or any of the Restricted Subsidiaries, (ii) landlord lien permitted by the terms of any lease, (iii) restriction or encumbrance to which the interest or title of such lessor or sub-lessor may be subject or (iv) subordination of the interest of the lessee orsub-lessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens (i) solely on any Cash earnest money deposits (including as part of any escrow arrangement) made by the Borrowers and/or any of their Restricted Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted (or reasonably expected to be permitted) hereunder, (ii) on cash advances or earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted (or reasonably expected to be permitted) hereunder to be applied against the purchase price for such Investment and (iii) consisting of (A) an agreement to Dispose of any property in a Disposition permitted (or reasonably expected to be permitted) under Section 6.07 and/or (B) the pledge of Cash as part of an escrow arrangement required in any Disposition permitted under Section 6.07;

(h) Liens arising from precautionary Uniform Commercial Code financing statements or similar filings securing obligations permitted to be incurred on a secured basis under Section 6.01 and elsewhere under this Section 6.02 for operating leases or consignment or bailee arrangements entered into in the ordinary course of business;

(i) Liens (i) 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 in the ordinary course of business or (ii) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(j) Liens in connection with any zoning, building, other land use regulations or similar Requirement of Law or right reserved to or vested in any Governmental Authority to control or regulate the use of any dimensions of real property or the structure thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(k) Liens securing Indebtedness permitted pursuant to Section 6.01(p); *provided* that (i) except as otherwise permitted, no such Lien extends to any asset not covered by the Lien securing the Indebtedness that is being refinanced (other than (A) after acquired property that is affixed or incorporated into the property covered by such Lien, (B) proceeds and products thereof, replacements, accessions or additional thereto and improvements thereon, (C) assets subject to any cross collateralization of obligations owed to the holder of such Lien with respect to any Capital Leases or purchase money Indebtedness listed on Schedule 6.02; and (D) the proceeds and products thereof and customary security deposits), (ii) if the Lien securing the Indebtedness being refinanced was subject to intercreditor arrangements, then (A) the Lien securing any Refinancing Indebtedness in respect thereof shall be subject to intercreditor arrangements that are not materially less favorable to the Secured Parties, taken as a whole, than the intercreditor arrangements governing the Lien securing the Indebtedness that is refinanced (as determined in good faith by the Lead Borrower) or (B) the intercreditor arrangements governing the Lien securing the relevant Refinancing Indebtedness shall be set forth in an Acceptable Intercreditor Agreement and (iii) no such Lien shall be senior in priority as compared to the Lien securing the Indebtedness being refinanced;

(l) Liens existing on the Closing Date (i) that secure Indebtedness or other obligations not in excess of $1,500,000 in the aggregate (when taken together with all other Liens securing obligations outstanding in reliance on this clause (l)(i)) or (ii) listed on Schedule 6.02 and any modifications, replacements, renewals, restructurings, refinancings or extensions thereof; *provided* that (I) except as otherwise permitted by another clause of this Section 6.02 (which shall constitute an incurrence thereunder), the Lien does not extend to any additional property (other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, (B) proceeds and products thereof, replacements, accessions or additional thereto and

improvements thereon, (C) assets subject to any cross-collateralization of obligations owed to the holder of such Lien with respect to any Capital Leases or purchase money Indebtedness listed on Schedule 6.02; and (D) the proceeds and products thereof and customary security deposits) and (II) the replacement, renewal, extension or refinancing of the obligations secured or benefited by such Liens, to the extent constituting Indebtedness, is permitted by Section 6.01;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 6.07;

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(m); *provided* that any such Lien shall encumber (A) only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, (B) after-acquired property that is affixed or incorporated into the property covered by such Lien, (C) proceeds and products thereof, replacements, accessions or additions thereto and improvements thereon and customary security deposits and (D) assets subject to any cross-collateralization of obligations owed to the holder of such Lien with respect to any Capital Leases or purchase money Indebtedness listed on Schedule 6.02;

(o) Liens securing Indebtedness permitted pursuant to Section 6.01(n) on the relevant acquired assets or on the Capital Stock and assets of the relevant newly acquired Restricted Subsidiary; *provided* that no such Lien (x) extends to or covers any other assets (other than the proceeds or products thereof, replacements, accessions or additions thereto and improvements thereon; it being understood that individual financings of the type permitted under Section 6.01(m) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) or (y) was created in contemplation of the applicable acquisition of assets or Capital Stock;

(p) (i) Liens relating to (A) the establishment of depositary relations with banks not granted in connection with the issuance of Indebtedness, (B) pooled deposit or sweep accounts of the Borrowers or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrowers or any Restricted Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrowers or any Restricted Subsidiary in the ordinary course of business and (D) commodity trading or other brokerage accounts incurred in the ordinary course of business, (ii) Liens encumbering reasonable customary initial deposits and margin deposits, (iii) bankers Liens and rights and remedies as to Deposit Accounts, (iv) Liens of a collection bank arising under Section 4-208 of the UCC on items in the ordinary course of business, (v) Liens in favor of banking or other financial institutions arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution's general terms and conditions and not granted in connection with the issuance of Indebtedness, and (vi) Liens on the proceeds of any Indebtedness incurred in connection with any transaction permitted hereunder, which proceeds have been deposited into an escrow account on customary terms to secure such Indebtedness pending the application of such proceeds to finance such transaction;

(q) (i) Liens on assets and Capital Stock of Foreign Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness or other obligations of Foreign Subsidiaries that are not Loan Parties permitted under this Agreement and (ii) with respect to any Foreign Subsidiary, other Liens and privileges arising mandatorily by any Law;

(r) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrowers and/or their Restricted Subsidiaries;

(s) additional Liens, so long as (i)(x) with respect to Indebtedness that is secured by Liens on a*pari passu* basis in right of security with the Secured Obligations (without regard to control of remedies), immediately after the incurrence thereof, on a Pro Forma Basis, the Senior Secured Net Leverage Ratio is no greater than 2.75 to 1.00 as of the most recently ended Test Period, and (y) with respect to Indebtedness that is secured by Liens that are junior in right of security to the Liens securing the Secured Obligations (without regard to control of remedies), immediately after the incurrence thereof, on a Pro Forma Basis, the Secured Net Leverage Ratio is no greater than 2.75 to 1.00 as of the most recently ended Test Period and (ii) the holder(s) of such Liens (or a representative thereof) shall have entered into an Acceptable Intercreditor Agreement; *provided* that, cash proceeds of any new Indebtedness then being incurred shall not be netted from the numerator for purposes of calculating the Senior Secured Net Leverage Ratio and Secured Net Leverage Ratio, as applicable under this clause (s) for purposes of determining whether such Liens can be incurred;

(t) Liens on assets that are not otherwise required to be Collateral so long as the Revolving Facility is equally and ratably secured thereby;

(u) Liens with respect to property of the Borrowers or any of the Restricted Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed the greater of $4,700,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis (which Lien may be granted on a *pari passu* basis));

(v) Liens (i) securing judgments, awards, attachments and/or decrees for the payment of money not constituting an Event of Default under Section 7.01(h), (ii) arising out of judgments or awards against the Borrowers or any of the Restricted Subsidiaries with respect to which an appeal or other proceeding for review is then being pursued and (iii) notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings for which adequate reserves have been made;

(w) (i) leases, licenses (including sublicenses), or subleases (including the provision of software or the licensing of other intellectual property rights) granted to others, (ii) assignments of IP Rights granted to a customer of the Borrowers or any Restricted Subsidiary, in each case in the ordinary course of business which do not secure any Indebtedness or (iii) with respect to IP Rights that may be Disposed of pursuant to Section 6.07;

(x) Liens deemed to exist in connection with Investments in repurchase agreements underSection 6.06;

(y) Liens securing obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments permitted under Sections 6.01(d), (e), (f), (g), (y), (z), (aa), (bb) and (cc);

(z) Liens arising (i) out of conditional sale, title retention, consignment or similar arrangements for the sale of any asset in the ordinary course of business and permitted by this Agreement or (ii) by operation of law under Article 2 of the UCC (and/or any similar Requirement of Law under any jurisdiction);

(aa) Liens (i) in favor of any Loan Party and/or (ii) granted by anynon-Loan Party in favor of any Restricted Subsidiary that is not a Loan Party, in each case of the foregoing clauses (i) and (ii), securing intercompany Indebtedness permitted under Section 6.01;

(bb) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty or liability insurance to the Lead Borrower or any Subsidiaries or any other insurance or self-insurance arrangements;

(cc) Liens on specific items of inventory or other goods and the proceeds thereof securing the relevant Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(dd) Liens on Supplier Financing Assets incurred in connection with a Supplier Financing Facility permitted hereby;

(ee) (i) Liens on Capital Stock of joint ventures or Unrestricted Subsidiaries securing capital contributions to, or obligations of, such Persons and (ii) purchase options, call, rights of refusal, rights of first offer, rights of tag and drag and similar rights of, and restrictions for the benefit of, a third party with respect to Capital Stock held by the Borrowers or any Restricted Subsidiary in joint ventures and with respect to non-Wholly-owned Subsidiaries;

(ff) Liens on cash and Cash Equivalents that are earmarked to be used to satisfy or discharge Indebtedness; *provided* (i) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be satisfied or discharged, (ii) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be satisfied or discharged and (iii) the satisfaction or discharge of such Indebtedness is expressly permitted hereunder;

(gg) Liens in connection with any Permitted Tax Restructuring;

(hh) Liens or rights of set-off against credit balances of the Borrowers or any of the Restricted Subsidiaries with credit card issuers or credit card processors or amounts owing by such credit card issuers or credit card processors to the Borrowers or any Restricted Subsidiaries in the ordinary course of business to secure the obligations of any Subsidiary to the credit card issuers or credit card processors as a result of fees and charges;

(ii) deposits of cash with the owner or lessor of premises leased and operated by a Borrower or any of its Subsidiaries to secure the performance of such Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(jj) the modification, replacement, renewal or extension of any Lien permitted by this Section 6.02; *provided* that (i) the Lien does not extend to any additional property, other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien, (B) proceeds and products thereof and customary security deposits and (C) assets subject to any cross collateralization of obligations owed to the holder of such Lien, and (ii) the renewal, extension, restructuring or refinancing of the obligations secured or benefited by such Liens is permitted by Section 6.01 (to the extent constituting Indebtedness);

(kk) Liens on property of any Restricted Subsidiary that is not a Loan Party, which Liens secure Indebtedness permitted to be incurred by such Restricted Subsidiary that is not a Loan Party under Section 6.01;

(ll) [reserved];

(mm) Liens securing Secured Hedging Obligations; and

(nn) Liens (i) consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business and (ii) Liens on equipment of the Borrowers or any Restricted Subsidiary granted in the ordinary course of business to such Borrower's or such Restricted Subsidiary's client at which such equipment is located.

Section 6.03 [Reserved].

Section 6.04 Restricted Payments; Restricted Debt Payments.

(a) The Borrowers shall not, nor shall it permit any of its Restricted Subsidiaries to, pay or make any Restricted Payment, except that:

(i) each Borrower and each other Restricted Subsidiary may make Restricted Payments to the extent necessary to permit any direct or indirect parent thereof:

(A) to pay general corporate, administrative costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and other benefits payable to any director, officer, employee, member of management, manager and/or consultant of any Parent Company) and franchise Taxes, and similar fees and expenses, required to maintain the corporate, legal and organizational existence of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus any reasonable and customary indemnification claim made by any director, officer, member of management, manager, employee and/or consultant of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company and/or its subsidiaries (including the Borrowers' and the Restricted Subsidiaries' proportionate share of such amount relating to such parent company being a public company);

(B) distributions to such direct or indirect parent's equity owners in proportion to their equity interests sufficient to allow each such equity owner to receive an amount at least equal to the aggregate amount of its out-of-pocket costs to any unaffiliated third parties directly attributable to creating (including any incorporation or registration fees) and maintaining the existence of the applicable equity owner (including doing business fees, franchise, excise and similar taxes and other fees and expenses), and legal and accounting and other costs directly attributable to maintaining its corporate, legal, or organizational existence and complying with applicable legal requirements, including such costs attributable to the preparation of tax returns or compliance with tax laws, so long as attributable to the operations of the Borrowers and the Restricted Subsidiaries and such taxes or expenses are incurred in the ordinary course of business;

(C) for any taxable period in which any Borrower and, if applicable, any of its Subsidiaries is a member of a consolidated, combined or similar income tax group (or a disregarded entity directly owned by a member of such a group) of which a direct or indirect parent of such Borrower is the common parent (a "Tax Group"), federal and applicable state and local income taxes of such Tax Group then due and payable to the extent attributable to the taxable income of such Borrower and its applicable Subsidiaries; *provided* that the amount of such distributions shall not be greater than the amount of such taxes that would have been due and payable by such Borrower and its applicable Subsidiaries had such Borrower filed a separate stand-alone corporate tax return (or the Borrowers and such Subsidiaries filed a consolidated, combined, unitary or similar type return with the Borrowers as the consolidated parent) for all relevant taxable periods (and in the case of taxes attributable to unrestricted subsidiaries, such distributions shall be limited to the extent of cash distributions received from such unrestricted subsidiaries);

(D) to pay audit and other accounting and reporting expenses of such Parent Company to the extent such expenses are attributable to any Parent Company and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such expenses, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrowers and/or their subsidiaries);

(E) to pay any insurance premium that is payable by, or attributable to, any Parent Company and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such premium, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrowers and/or their subsidiaries);

(F) to pay (x) fees and expenses related to any debt and/or equity offering, investment and/or acquisition (whether or not consummated) (but excluding, for the avoidance of doubt, the portion of any such fees and expenses, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrowers and/or their subsidiaries (which shall include any equity offering, investment and/or acquisition (whether or not consummated) by such other subsidiary)) and (y) after the consummation of an initial public offering or the issuance of public debt Securities, Public Company Costs;

(G) to finance any Investment by a parent entity that would be permitted to be made pursuant to Section 6.06 and Section 5.13 if such parent were subject to such Sections; *provided* that (A) such Restricted Payment shall be made substantially concurrently with the closing of such Investment, (B) such parent shall, promptly following the closing thereof, cause (1) all property acquired (whether assets or Capital Stock) to be contributed to the Borrowers or the other Restricted Subsidiaries or (2) the merger (to the extent permitted in Section 6.07) of the Person formed or acquired into the Borrowers or the other Restricted Subsidiaries in order to consummate such Permitted Acquisition or Investment, in each case, in accordance with the requirements of Section 5.12 and (C) such contribution shall constitute an Investment by the applicable Borrower or the applicable Restricted Subsidiaries, as the case may be, at the date of such contribution or merger, as applicable, in an amount equal to the amount of such Restricted Payment; and

(H) to pay customary salary, bonus, severance and other benefits payable to current or former directors, officers, operating partners, advisors, service providers, members of management, managers, employees or consultants of any Parent Company (or any Immediate Family Member of any of the foregoing) to the extent such salary, bonuses, severance and other benefits are attributable and reasonably allocated to the operations of the Borrowers and/or their subsidiaries, in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) each Borrower and each other Restricted Subsidiary may pay (or make Restricted Payments to allow any Parent Company) to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of such Borrower or such other Restricted Subsidiary, any Parent Company or any subsidiary held by any future, present or former employee, director, member of management, officer, manager, operating partner, advisor, service provider, or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, any Borrower or any subsidiary:

(A) with Cash and Cash Equivalents (and including, to the extent constituting a Restricted Payment, amounts paid in respect of promissory notes issued to evidence any obligation to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of any Parent Company or any subsidiary held by any future, present or former employee, director, member of management, officer, manager, operating partner, advisor, service provider, or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, any Borrower or any subsidiary) in an aggregate amount not to exceed the greater of $3,760,000 and 20% of Consolidated Adjusted EBITDA for the most recently ended Test Period (calculated on a Pro Forma Basis) in any calendar year (with unused amounts in any calendar year being carried over to the succeeding calendar year and increasing such amount);

(B) with the proceeds of any sale or issuance of the Qualified Capital Stock of the Borrowers or any Parent Company (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrowers or any Restricted Subsidiary) in each case, (1) other than any proceeds received from the sale of Capital Stock to, or contributions from, the Borrowers or any of their Restricted Subsidiaries, (2) to the extent the relevant proceeds have not otherwise been applied to make Investments, Restricted Payments or Restricted Debt Payments hereunder, (3) other than any Cure Amount or Available Excluded Contribution Amount and/or (4) other than amounts used to increase the Available Amount pursuant to clauses (c) and (d) of the definition of "Available Amount"; or

(C) with the net proceeds of any key-man life insurance policy;

(iii) each Borrower and each other Restricted Subsidiary may make additional Restricted Payments in an amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Lead Borrower elects to apply to this clause (iii)(A); *provided* that (x) no Event of Default exists or would result therefrom and (y) solely with respect to

amounts used to increase the Available Amount pursuant to clause (b) of the definition of "Available Amount" the Secured Net Leverage Ratio on a Pro Forma Basis shall not exceed the ratio that is 0.25x inside the maximum Secured Net Leverage Ratio permitted for the most recently ended Test Period pursuant to Section 6.14(a)(i), and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrowers elect to apply to this clause (iii)(B);

(iv) the Lead Borrower and each other Restricted Subsidiary may make Restricted Payments (i) to any Parent Company to enable such Parent Company to make Cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of such Parent Company and (ii) consisting of (A) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former officer, director, employee, operating partner, service provider, advisor, member of management, manager and/or consultant of the Borrowers, any Restricted Subsidiary or any Parent Company or any of their respective Immediate Family Members and/or (B) repurchases of Capital Stock in consideration of the payments described in sub-clause (A) above, including demand repurchases in connection with the exercise of stock options;

(v) the Lead Borrower and each other Restricted Subsidiary may repurchase (or make Restricted Payments to any Parent Company to enable it to repurchase) Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represents all or a portion of the exercise price of such warrants, options or other securities convertible into or exchangeable for Capital Stock as part of a "cashless" exercise;

(vi) Restricted Payments made (i) to consummate the Transactions (including to pay Transaction Costs with respect to the Transactions), including any related corporate tax restructuring, (ii) in respect of working capital adjustments or purchase price adjustments and other similar payments pursuant to the Merger Agreement, any Permitted Acquisition or other permitted Investments or Consolidated Capital Expenditures, (iii) in order to satisfy indemnity and other similar obligations, earn-outs and other deferred purchase price obligations under the Merger Agreement, any Permitted Acquisition or other permitted Investments or Consolidated Capital Expenditures, and (iv) to holders of Capital Stock of the Lead Borrower (immediately prior to giving effect to the Transactions) in connection with, or as a result of, their exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to the Transactions;

(vii) the payment of any Restricted Payment within 60 days after the date of declaration thereof, if at the date of declaration or the giving of such notice such payment would have complied with the provisions of this Section 6.04;

(viii) each Borrower and each other Restricted Subsidiary may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock ("Treasury Capital Stock") of any Borrower and/or any Restricted Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to a Borrower and/or any Restricted Subsidiary and other than in respect of any Cure Amount) of, Qualified Capital Stock of any Borrower or any Parent Company to the extent any such proceeds are contributed to the capital of any Borrower and/or any Restricted Subsidiary

in respect of Qualified Capital Stock ("Refunding Capital Stock") and (ii) declare and pay dividends on any Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Borrower or a Restricted Subsidiary and other than in respect of any Cure Amount) of any Refunding Capital Stock; *provided* that any amount applied to make a Restricted Payment pursuant to this clause (viii) shall not be applied or used to increase the Available Amount, the Available Excluded Contribution Amount or to make any other Restricted Payment or Restricted Debt Payment hereunder;

(ix) to the extent constituting a Restricted Payment, the Borrower may consummate any transaction permitted by Section 5.13 (other than Sections 5.13(a) and (d)), Section 6.06 (other than Sections 6.06(j) and (t)), Section 6.07 (other than Section 6.07(f) and Section 6.07(g)) and Section 6.09 (other than Section 6.09(a) or (d));

(x) (i) so long as no Event of Default has occurred and is continuing or would result therefrom, any Restricted Payment in an amount not to exceed during the term of this Agreement the greater of $3,760,000 and 20% of Consolidated Adjusted EBITDA as of the last day of most recently ended Test Period and on a Pro Forma Basis (less any amounts redesignated to the General Investments Basket or the General RJDP Basket) (the "General RP Basket") and (ii) on or after the date that is the two year anniversary of the Closing Date, additional Restricted Payments in an aggregate amount *per annum* not to exceed an amount equal to 6.0% of the net proceeds received by (or contributed to) the Borrowers and the other Restricted Subsidiaries of the Lead Borrower as a result of the Transactions;

(xi) unlimited Restricted Payments, *provided* that (i) no Event of Default (or in the case of a Limited Condition Transaction, no Specified Event of Default) shall have occurred and be continuing immediately prior to, or shall result from, such Restricted Payment and (ii) after giving Pro Forma Effect to such Restricted Payments, the Secured Net Leverage Ratio is equal to or less than 2.25 to 1.00 as of the most recently ended Test Period;

(xii) payments made or expected to be made by any Borrower or any other Restricted Subsidiary in respect of withholding, employment or similar taxes payable by any future, present or former employee, director, manager, operating partner or consultant of the Borrowers or any Restricted Subsidiary or any direct or indirect parent of the Borrowers or any other Restricted Subsidiary, and any repurchases of Capital Stock deemed to occur, in each case, upon exercise, vesting or settlement of, or payment with respect to, any equity or equity-based award, including, without limitation, stock or other equity options, stock or other equity appreciation rights, warrants, restricted equity units, restricted equity, deferred equity units or similar rights, if such Capital Stock are used by the holder of such award to pay a portion of the exercise price of such options, appreciation rights, warrants or similar rights or to satisfy any required withholding or similar taxes with respect to any such award;

(xiii) the distribution, by dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Borrowers or any other Restricted Subsidiary by, Unrestricted Subsidiaries unless such Unrestricted Subsidiary's sole asset is cash and Cash Equivalents;

(xiv) AHYDO Payments with respect to Indebtedness of the Borrowers and any other Restricted Subsidiaries;

(xv) the declaration and payment of Restricted Payments by the Borrowers or any other Restricted Subsidiaries to any direct or indirect parent of the Borrowers or any other Restricted Subsidiaries in amounts required for any such direct or indirect parent (or such parent's direct or indirect equity owners) to pay:

(A) to the extent constituting Restricted Payments, amounts that would be permitted to be paid directly by such Borrower or such Restricted Subsidiaries under Section 5.13;

(B) AHYDO Payments with respect to Indebtedness of any direct or indirect parent of the Borrowers;*provided* that the proceeds of such Indebtedness have been contributed to the Borrowers as a capital contribution;

(xvi) each Borrower and each other Restricted Subsidiary may declare and make Restricted Payments payable solely in the Capital Stock (other than Disqualified Capital Stock not otherwise permitted by Section 6.01) of such Person (and, in the case of such a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Lead Borrower and any other Restricted Subsidiary and to each other owner of Capital Stock of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Capital Stock); and

(xvii) each Restricted Subsidiary may make Restricted Payments to the Lead Borrower and other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-Wholly-owned Restricted Subsidiary, to the Lead Borrower and any other Restricted Subsidiary and to each other owner of Capital Stock of such Restricted Subsidiary based on their relative ownership interests of the relevant class of Capital Stock) ratably according to their respective holdings of the type of Capital Stock in respect of which such Restricted Payment is being made.

(b) Each Borrower and each other Restricted Subsidiary shall not voluntarily repay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (it being understood that payments of regularly scheduled principal, interest and fees and mandatory expense reimbursement obligations and customary mandatory prepayments and AHYDO Payments and, in connection with the amendment of any Restricted Debt, the payment of fees shall be permitted) any Restricted Debt (collectively, "Restricted Debt Payments"), except (*provided* that the following exceptions (other than clause (ii)) shall not apply to Indebtedness owed to the Sponsor and its Affiliates):

(i) with respect to any purchase, defeasance, redemption, repurchase, repayment or other acquisition or retirement thereof made by exchange for, or out of the proceeds of, Refinancing Indebtedness permitted by Section 6.01(p) and/or refinancing Indebtedness permitted by Section 6.01(x);

(ii) [reserved];

(iii) [reserved];

(iv) so long as no Event of Default has occurred and is continuing or would result therefrom, Restricted Debt Payments in an aggregate amount not to exceed during the term of this Agreement the greater of $4,700,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis) (plus any amount which the Lead Borrower may, from time to time, elect to be redesignated from the General RP Basket and less any amounts redesignated to the General Investments Basket or the General RP Basket) (the "General RJDP Basket");

(v) (A) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Qualified Capital Stock of the Borrowers and/or any Restricted Subsidiary and/or any capital contribution in respect of Qualified Capital Stock of the Borrowers or any Restricted Subsidiary (in each case, other than from the Borrowers or any Restricted Subsidiary and other than in respect of any Cure Amount), (B) Restricted Debt Payments as a result of the conversion of all or any portion of any Restricted Debt into Qualified Capital Stock of the Borrowers and/or any Restricted Subsidiary and (C) to the extent constituting a Restricted Debt Payment, payment-in-kind interest with respect to any Restricted Debt that is permitted under Section 6.01; *provided* that any amount applied to make a Restricted Debt Payment pursuant to this clause (v) shall not be applied or used to increase the Available Amount, the Available Excluded Contribution Amount or to make any other Restricted Payment or Restricted Debt Payment hereunder;

(vi) the prepayment, redemption, purchase, defeasement or satisfaction of Indebtedness of any Borrower or any other Restricted Subsidiary to any Borrower or any other Restricted Subsidiary;

(vii) Restricted Debt Payments so long as (x) no Event of Default (or in the case of a Limited Condition Transaction, no Specified Event of Default) has occurred and is continuing or would result therefrom and (y) after giving Pro Forma Effect to such Restricted Debt Payments, the Secured Net Leverage Ratio is equal to or less than 2.50 to 1.00 as of the most recently ended Test Period; and

(viii) Restricted Debt Payments in an aggregate amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrowers elect to apply to this clause (viii)(A); *provided* that (x) no Event of Default exists or would result therefrom and (y) the Secured Net Leverage Ratio on a Pro Forma Basis shall not exceed the ratio that is 0.25x inside the Secured Net Leverage Ratio permitted for the most recently ended Test Period pursuant to Section 6.14(a)(i), and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrowers elect to apply to this clause (viii)(B).

Section 6.05 Burdensome Agreements. Except as provided herein or in any other Loan Document (as defined herein and/or in any agreement with respect to any refinancing, renewal or replacement of such Indebtedness that is permitted by Section 6.01), the Lead Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into or cause to exist any agreement restricting the ability of (x) any Restricted Subsidiary to pay dividends or other distributions to any Borrower or any Loan Party, (y) any Restricted Subsidiary to make cash loans or advances to any Borrower or any Loan Party or (z) any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured Obligations, except restrictions:

(a) set forth in any agreement evidencing (i) Indebtedness of a Restricted Subsidiary that is not a Loan Party permitted by Section 6.01, (ii) Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if the relevant restriction applies only to the Person obligated under such Indebtedness and its Restricted Subsidiaries or the assets intended to secure such Indebtedness and (iii) Indebtedness permitted pursuant to clauses (m), (p) (as it relates to Indebtedness in respect of clauses (m), (q), (r), (v) and/or (y) of Section 6.01), (q), (r), (w) and/or (y) of Section 6.01;

(b) (i) arising under customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses (including sublicenses), and joint venture agreements and (ii) arising under customary provisions restricting assignments or transfers of any agreement entered into in the ordinary course of business;

(c) that are or were created by virtue of any Lien granted upon transfer of, agreement to transfer or grant of, any option or right with respect to any assets or Capital Stock not otherwise prohibited under this Agreement;

(d) that are assumed in connection with any acquisition of property or the Capital Stock of any Person, so long as the relevant encumbrance or restriction relates solely to the Person and its subsidiaries (including the Capital Stock of the relevant Person or Persons) and/or property so acquired and was not created in connection with or in anticipation of such acquisition;

(e) set forth in any agreement for any Disposition of any Restricted Subsidiary (or all or substantially all of the assets thereof) that restricts the payment of dividends or other distributions or the making of cash loans or advances by such Restricted Subsidiary pending such Disposition;

(f) set forth in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(g) in the case of Restricted Subsidiaries that are not wholly-owned, imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements or arrangements;

(h) on Cash, other deposits or net worth or similar restrictions imposed by any Person under any contract entered into in the ordinary course of business or for whose benefit such Cash, other deposits or net worth or similar restrictions exist;

(i) (x) exist on the Closing Date and (to the extent not otherwise permitted by this Section 6.05) are listed on Schedule 6.05 and (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing (taken as a whole) does not materially expand the scope of such Contractual Obligation (as reasonably determined by the Lead Borrower);

(j) comprise restrictions imposed by any agreement governing Indebtedness entered into on or after the Closing Date and permitted under Section 6.01 that are, taken as a whole, in the good faith judgment of the Lead Borrower, no more restrictive with respect to any Borrower or any other Restricted Subsidiary than customary market terms for Indebtedness of such type (and, in any event, taken as a whole, are not more restrictive than the restrictions contained in this Agreement), so long as the Lead Borrower shall have determined in good faith that such restrictions will not affect in any material respect its obligation or ability to make any payments required hereunder;

(k) arising under or as a result of applicable Requirements of Law or the terms of any license, authorization, concession or permit;

(l) arising in any Hedge Agreement and/or any agreement relating to Banking Services;

(m) relating to any asset (or all of the assets) of and/or the Capital Stock of the Borrowers and/or any Restricted Subsidiary which is imposed pursuant to an agreement entered into in connection with any Disposition of such asset (or assets) and/or all or a portion of the Capital Stock of the relevant Person that is permitted or not restricted by this Agreement;

(n) are customary restrictions (as reasonably determined by the Lead Borrower) that arise in connection with (x) any Lien permitted by Section 6.02 and relate to the property subject to such Lien or (y) arise in connection with any Disposition permitted by Section 6.07 and relate solely to the assets or Person subject to such Disposition;

(o) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary;

(p) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 6.01 but solely to the extent any negative pledge relates to (i) the property financed by such Indebtedness and the proceeds, accessions and products thereof or (ii) the Indebtedness secured by such property and the proceeds, accessions and products thereof so long as the agreements governing such Indebtedness permit the Liens securing the Obligations;

(q) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the property interest, rights or the assets subject thereto;

(r) (i) arise in connection with cash or other deposits permitted under Sections 6.02 and 6.06 and limited to such cash or deposit and (ii) are restrictions on cash earnest money deposits in favor of sellers in connection with acquisitions not prohibited hereunder;

(s) are restrictions in the documentation governing any Supplier Financing Facility that in the good faith determination of Lead Borrower are necessary or advisable to effect such Supplier Financing Facility;

(t) restrictions or encumbrances imposed by other Indebtedness of Restricted Subsidiaries permitted to be incurred subsequent to the Closing Date pursuant to the provisions of Section 6.02;

(u) constitute a license or sublicense that is a Permitted Lien;

(v) are restrictions that will not materially impair the Borrowers' ability to make payments under the Loan Documents (as determined in good faith by the Lead Borrower); and/or

(w) imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of any contract, instrument or obligation referred to in clauses (a) through (v) above; *provided* that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Lead Borrower, materially more restrictive with respect to such restrictions, taken as a whole, than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

provided that (x) the priority of any preferred Capital Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to any Borrower or any Restricted Subsidiary that is a Guarantor to other Indebtedness incurred by any Borrower or any Restricted Subsidiary that is a Guarantor shall not be deemed to constitute such an encumbrance or restriction.

Section 6.06 Investments. The Lead Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, make or hold any Investment except:

(a) Cash or Investments that were Cash Equivalents at the time made;

(b) Investments (i) by any Borrower or any Restricted Subsidiary in any Loan Party, (ii) by any Restricted Subsidiary that is not a Loan Party in any other Restricted Subsidiary that is not a Loan Party and (iii) by any Loan Party in any Restricted Subsidiary that is not a Loan Party; *provided* that (A) no such Investments made pursuant to this clause (iii) in the form of intercompany loans shall be evidenced by a promissory note unless such promissory note is pledged to the Collateral Agent to the extent required by the Security Agreement and subordinated to the Obligations and (B) the aggregate amount of Investments at any time outstanding made pursuant to this clause (iii) shall not exceed the Non-Loan Party Investment Amount;

(c) Investments (i) constituting deposits, prepayments and/or other credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts and/or (iii) in the form of loans or advances made to distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to the Borrowers or any Restricted Subsidiary;

(d) Investments made in respect of joint ventures or other similar agreements or partnerships or Unrestricted Subsidiaries not to exceed at any time outstanding the greater of $3,760,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended last Test Period (calculated on a Pro Forma Basis);

(e) (i) Permitted Acquisitions and (ii) any Investment in any Restricted Subsidiary that is not a Loan Party in an amount required to permit such Restricted Subsidiary to consummate a Permitted Acquisition (subject to the limitation on Permitted Acquisitions by Loan Parties of Restricted Subsidiaries that are non-Loan Parties and assets that are not owned by Loan Parties), which amount is actually applied by such Restricted Subsidiary to consummate such Permitted Acquisition;

(f) (i) Investments existing on, or contractually committed to as of, the Closing Date (A) in an amount not to exceed $1,000,000 in the aggregate (when taken together with all other Investments outstanding in reliance on this clause (f)(i)(A)) or (B) and set forth on Schedule 6.06 and (ii) and any modification, replacement, renewal, reinvestment or extension thereof so long as the amount of any Investment subject to any such modification, replacement, renewal, reinvestment or extension does not exceed the amount outstanding (plus any (x) unused commitments, accrued interest, fees and expenses and premiums incurred in connection therewith and (y) amounts permitted to otherwise be incurred under this Section 6.06) on the Closing Date;

(g) Investments (including, without limitation, promissory notes, securities and other non-cash consideration) received in lieu of Cash in connection with any Disposition permitted by Section 6.07 or any other disposition of assets not constituting a Disposition;

(h) loans or advances (or guarantees) to present and former officers, directors, managers, consultants, advisors, service providers or employees of any Borrower or any Restricted Subsidiary that is a Loan Party (or any direct or indirect parent thereof) or any of its Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's cashless purchase of Capital Stock of the Lead Borrower or any applicable Parent Company, (iii) to permit the payment of taxes with respect to any such Capital Stock purchase described in clause (ii); and (iv) for any other purposes not described in the foregoing clauses (i), (ii) and (iii); *provided* that the aggregate principal amount outstanding at any time under this clause (iv) shall not exceed the greater of (x) $1,880,000 and (y) 10% of Consolidated Adjusted EBITDA as of the last day of the last Test Period (calculated on a Pro Forma Basis);

(i) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(j) Investments consisting of (or resulting from) Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b), (h) and (hh)), Permitted Liens, Restricted Payments permitted under Section 6.04 (other than Section 6.04(a)(ix)), Restricted Debt Payments permitted by Section 6.04 and mergers, consolidations, amalgamations, liquidations, windings up, dissolutions or Dispositions permitted by Section 6.07 (other than Section 6.07(b), Section 6.07(c)(ii) and Section 6.07(g));

(k) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(m) loans and advances of payroll payments or other compensation to present or former employees, directors, operating partners, advisors, service providers, members of management, officers, managers or consultants of any Parent Company (to the extent such payments or other compensation relate to services provided to such Parent Company (but excluding, for the avoidance of doubt, the portion of any such amount, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrowers and/or their subsidiaries)), the Borrowers and/or any subsidiary in the ordinary course of business;

(n) Investments to the extent that payment therefor is made solely with Capital Stock of any Parent Company to the extent not resulting in a Change of Control;

(o) (i) Investments of any Restricted Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrowers or any Restricted Subsidiary after the Closing Date, in each case as part of an Investment otherwise permitted by this Section 6.06 to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of the relevant acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 6.06(o) so long as no such modification, replacement, renewal or extension thereof increases the amount of such Investment (other than by an amount equal to unutilized commitments, accrued fees, expenses and interest) except as otherwise permitted by this Section 6.06;

(p) Loans made to the Lead Borrower in lieu of any Restricted Payment otherwise permitted to be made to the Lead Borrower under Section 6.04; *provided* if such Restricted Payment is subject to a dollar limit then such Loans shall reduce the availability under such dollar limit;

(q) Investments (including Permitted Acquisitions) made after the Closing Date by any Borrower and/or any of its Restricted Subsidiaries in an aggregate amount outstanding pursuant to this Section 6.06(q) at any time not to exceed the sum of:

(i) the greater of (x) $5,640,000 and (y) 30% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis); *provided* that in the event that (A) any Borrower or any of its Restricted Subsidiaries makes any Investment after the Closing Date under this Section 6.06(q) in any Person that is not a Restricted Subsidiary and (B) such Person subsequently becomes a Loan Party, such Investment shall thereafter be deemed permitted under Section 6.06(b)(i), plus

(ii) any amount which the Lead Borrower may, from time to time, elect to be redesignated from the General RP Basket and the General RJDP Basket (the "General Investments Basket");

(r) Investments made after the Closing Date by the Borrowers and/or any of its Restricted Subsidiaries in an aggregate outstanding amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrowers elect to apply to this clause (r)(A), *provided* that, (x) no Event of Default exists or would result therefrom and (y) solely with respect to amounts used pursuant to clause (b) of the definition of "Available Amount", after giving effect thereto on a Pro Forma Basis, the Borrowers shall be in Pro Forma Compliance with the financial covenants set forth in Section 6.14(a) and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrowers elect to apply to this clause (r)(B);

(s) (i) Guarantees by any Borrower or any of the other Restricted Subsidiaries in the ordinary course of business of leases (other than Capital Leases), contracts or of other obligations of any other Borrower or any other Restricted Subsidiary that do not constitute Indebtedness and (ii) guarantee obligations of any Borrower or any other Restricted Subsidiary in respect of letters of support, bank guarantees or similar obligations issued, made or incurred for the benefit of any Restricted Subsidiary to the extent required by law or in connection with any statutory filing or the delivery of audit opinions performed in jurisdictions other than within the United States;

(t) Investments in any Parent Company in amounts and for purposes for which Restricted Payments to such Parent Company are permitted under Section 6.04(a); *provided* that any Investment made as provided above in lieu of any such Restricted Payment shall reduce availability under the applicable Restricted Payment basket under Section 6.04(a);

(u) Investments made by any Restricted Subsidiary that is not a Loan Party with the proceeds received by such Restricted Subsidiary from an Investment permitted to be made by any Loan Party in such Restricted Subsidiary pursuant to this Section 6.06 (other than Investments made pursuant to Section 6.06(e)(ii)); *provided* that such Investments shall not be permitted to be made into any Unrestricted Subsidiaries;

(v) Investments in connection with a Permitted Tax Restructuring;

(w) Investments arising under or in connection with (i) any Derivative Transaction of the type permitted under Section 6.01(s) and (ii) Banking Services;

(x) Investments consisting of (i) the licensing of IP Rights pursuant to joint marketing or other similar arrangements with other Persons entered into in the ordinary course of business and (ii) licensing arrangements in the ordinary course of business;

(y) Investments made in joint ventures as required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture agreements and similar binding arrangements entered into in the ordinary course of business;

(z) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that the same are permitted to remain unfunded under applicable Requirements of Law and would not constitute an Event of Default;

(aa) Investments in the Lead Borrower and any Restricted Subsidiary in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(bb) Investments made in connection with any nonqualified deferred compensation plan or arrangement for any present or former employee, director, member of management, officer, manager or consultant or independent contractor (or any Immediate Family Member thereof) of any Parent Company, the Borrowers, their subsidiaries and/or any joint venture;

(cc) any Investment made by any Unrestricted Subsidiary prior to the date on which such Unrestricted Subsidiary is designated as a Restricted Subsidiary so long as the relevant Investment was not made in contemplation of the designation of such Unrestricted Subsidiary as a Restricted Subsidiary;

(dd) Investments made to effect, or otherwise in connection with, the Transactions;

(ee) asset purchases (including purchases of inventory, supplies and materials) pursuant to joint marketing arrangements with other Persons;

(ff) Investments in (i) deposit accounts, commodities and securities accounts opened in the ordinary course of business and (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business of the Borrowers and the Restricted Subsidiaries in the ordinary course of business;

(gg) (i) Loans and (ii) Refinancing Indebtedness, in each case, repurchased by any Borrower or any other Restricted Subsidiary pursuant to and in accordance with the terms of this Agreement, as applicable; and

(hh) any additional Investments other than in Unrestricted Subsidiaries; *provided* that (x) no Event of Default (or in the case of a Limited Condition Transaction, no Specified Event of Default) has occurred and is continuing or would result from such Investments and (y) after giving Pro Forma Effect to such Investments, (A) the Secured Net Leverage Ratio is equal to or less than 2.75 to 1.00 as of the most recently ended Test Period.

Notwithstanding anything herein to the contrary, in no event shall any Loan Party or Restricted Subsidiary Dispose of or contribute any Material Intellectual Property to any Unrestricted Subsidiary outside the ordinary course of business; *provided*, that the foregoing shall not prohibit non-exclusive licenses and sublicenses made in the ordinary course of business on an arm's length basis so long as such non-exclusive license does not have a material adverse impact on the operation of business of the Lead Borrower and its Restricted Subsidiaries or the value of the Collateral.

Section 6.07 Fundamental Changes; Disposition of Assets. The Lead Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, merge, consolidate or amalgamate, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any Disposition, except:

(a) (i) any Restricted Subsidiary may merge, amalgamate or consolidate with (x) the Lead Borrower (including a merger, the purpose of which is to reorganize the Lead Borrower into a new U.S. jurisdiction); *provided* that the Lead Borrower shall be the continuing or surviving Person or (y) one or more other Restricted Subsidiaries; *provided* that when any Person that is a Loan Party is merging with a Restricted Subsidiary, a Loan Party shall be the continuing or surviving Person unless otherwise permitted, and (ii) so long as no Event of Default has occurred and is continuing or would result therefrom, the Lead Borrower may merge or consolidate with any other Person; *provided* that (i) the Lead Borrower shall be the continuing or surviving Person or (ii) if the Person formed by or surviving any such merger or consolidation is not the Lead Borrower (any such Person, the "Successor Borrower"), (A) the Successor Borrower shall be an entity organized or existing under the Laws of the United States, any state thereof, the District of Columbia or any territory thereof, (B) the Successor Borrower shall expressly assume all the obligations of the Lead Borrower under this Agreement and the other Loan Documents to which the Lead Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Lead Borrower (including with respect to the satisfaction of customary USA Patriot Act and Beneficial Ownership Regulation requirements), (C) each Guarantor, unless it is the other party to such merger or consolidation, shall have confirmed that its Guarantee shall apply to the Successor Borrower's obligations under the Loan Documents, (D) each Guarantor, unless it is the other party to such merger or consolidation, shall have by a supplement to the Security Agreement and other applicable Collateral Documents confirmed that its obligations thereunder shall apply to the Successor Borrower's obligations under the Loan Documents, and (E) the Lead Borrower shall have delivered to the Administrative Agent an officer's certificate and, if reasonably requested by the Administrative Agent, a customary opinion of counsel, each stating that such merger or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement; *provided*, *further*, that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Lead Borrower under this Agreement;

(b) any Restricted Subsidiary may Dispose (including of Capital Stock) of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Lead Borrower or to any another Restricted Subsidiary; *provided* that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or a Borrower or (ii) to the extent constituting an Investment, such Investment must be a permitted Investment in a Restricted Subsidiary which is not a Loan Party in accordance with Sections 6.06 (other than in reliance on clause (j) thereof);

(c) (i) (A) any Restricted Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party, (B) any Subsidiary (other than the Lead Borrower) may liquidate or dissolve and (C) any Subsidiary of the Lead Borrower may change its legal form if, with respect to clauses (B) and (C), the Lead Borrower determines in good faith that such action is in the best interest of the Lead Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders (in their capacity as such) (it being understood that in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor unless such Guarantor is otherwise permitted to cease being a Guarantor hereunder); (ii) any merger, amalgamation, dissolution, liquidation or consolidation, the purpose of which is to effect (or otherwise is consummated in connection with) (A) any Disposition otherwise permitted under this Section 6.07 (other than Sections 6.07(a) or (b) or this Section 6.07(c)), (B) a Permitted Tax Restructuring or (C) any Investment permitted under Section 6.06 (other than in reliance on clause (j) thereof); and (iii) the conversion of the Borrowers or any Restricted Subsidiary into another form of entity, so long as such conversion does not adversely affect the value of the Loan Guaranty or the Collateral, taken as a whole;

(d) (x) Dispositions of inventory, equipment, goods held for sale in the ordinary course of business and immaterial assets (including termination of leases and licenses in the ordinary course of business, and a voluntary or mandatory recall of any product) (including on an intercompany basis) and (y) the leasing or subleasing of real property in the ordinary course of business;

(e) Dispositions of (i) negligible, obsolete, damaged, worn out, aged, immaterial, used or surplus tangible property, whether now owned or hereafter acquired, in the ordinary course of business and (ii) property (including any leasehold property interest) that is no longer (x) economical in its business or (y) commercially desirable or commercially reasonable to maintain or used or useful in the conduct of the business of the Borrowers or any of the Restricted Subsidiaries;

(f) Dispositions of Cash and/or Cash Equivalents and/or other assets that were Cash Equivalents when the relevant original Investment was made;

(g) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute (w) Investments permitted pursuant to Section 6.06 (other than Section 6.06(j)), (x) Permitted Liens and (y) Restricted Payments permitted by Section 6.04(a) (other than Section 6.04(a)(ix)) and (z) Liens permitted by Section 6.02;

(h) Dispositions of property not otherwise permitted under this Section 6.07; *provided* that (i) (x) at the time of such Disposition (other than any such Disposition made pursuant to a commitment entered into at a time when no Event of Default exists), no Event of Default shall exist or would result from such Disposition and (y) after giving effect thereto on a Pro Forma Basis, the Borrowers shall be in Pro Forma Compliance with the financial covenants set forth in Section 6.14(a), (ii) (1) if the property sold or otherwise disposed of has a Fair Market Value in excess of $2,000,000, such Borrower or such Restricted Subsidiary, as the case may be, receives consideration at least equal to the Fair Market Value (as determined at the time of contractually agreeing to such Disposition) of the assets sold or otherwise disposed of and (2) at least 75% of the consideration therefor received by such Borrower or such Restricted Subsidiary, as the case may be, is in the form of Cash or Cash Equivalents; *provided*, *however*, that for the purposes of this clause (h)(ii), the amount of:

(i) any liabilities (as reflected on such Borrower's or such Restricted Subsidiary's most recent consolidated balance sheet provided hereunder or in the footnotes thereto, or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Lead Borrower's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Lead Borrower), other than liabilities that are by their terms subordinated to the Loans or any guarantee of the Loans, that (A) are assumed by the transferee of any such assets or (B) are otherwise cancelled, extinguished or terminated in connection with the transactions relating to such asset sale and, in the case of clause (A) only, for which the Borrowers and all such Restricted Subsidiaries have been validly released by all applicable creditors in writing;

(ii) any securities, notes or other obligations or assets received by such Borrower or such Restricted Subsidiary from such transferee that are converted by such Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days following the closing of such Disposition; and

(iii) any Designated Non-Cash Consideration received by such Borrower or such Restricted Subsidiary in such Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D) that is at that time outstanding, not to exceed the greater of $2,820,000 and 15% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis) at the time of the receipt of such Designated Non-Cash Consideration, with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be cash for purposes of this clause (h) and for no other purposes;

(i) to the extent that (i) the relevant property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of the relevant Disposition are promptly applied to the purchase price of such replacement property;

(j) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements;

(k) Dispositions of notes receivable or accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof not in the nature of a financing or pursuant to a program) or any sale, transfer and other Disposition of accounts receivable (including write-offs, discounts and compromises) in connection with the compromise, settlement or collection thereof;

(l) Dispositions and/or terminations in the ordinary course of business of leases, subleases or licenses (including sublicenses) (including the provision of software under any open source license), (i) the Disposition or termination of which will not materially interfere with the business of the Borrowers and their Restricted Subsidiaries or (ii) which relate to closed facilities or the discontinuation of any product line;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(o) Dispositions or consignments of equipment, inventory or other assets (including leasehold interests in real property) with respect to facilities that are temporarily not in use, held for sale or closed;

(p) the Borrowers and the Restricted Subsidiaries may consummate the transactions contemplated by the Merger Agreement (and documents related thereto) and the Transactions;

(q) Dispositions (i) of non-core assets acquired in connection with Permitted Acquisitions or other Investments in each case for Fair Market Value or (ii) made to obtain the approval of an anti-trust authority;

(r) Dispositions of property to any Borrower or any other Restricted Subsidiary; *provided* that if the transferor of such property is a Loan Party, (i) the transferee thereof must be a Loan Party or (ii) such Dispositions to non-Loan Parties do not exceed in the aggregate during the term of this Agreement the greater of $2,820,000 and 15% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis);

(s) Dispositions of assets that do not constitute Collateral for Fair Market Value in an aggregate amount not to exceed the greater of $1,880,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period (calculated on a Pro Forma Basis);

(t) (i) non-exclusive leases, subleases, licenses or sublicenses (including the provision of software under an open source license or the non-exclusive licensing of other intellectual property rights) and terminations thereof, in each case, in the ordinary course of business and which do not materially interfere with the business of the Borrowers and the Restricted Subsidiaries (taken as a whole) and other licenses and sublicenses that are Permitted Liens, and (ii) Dispositions, including the lapse and abandonment, of IP Rights, and of inbound and outbound licenses to IP Rights, that do not materially interfere with the business of the Borrowers and the Restricted Subsidiaries (taken as a whole) to the extent permitted by the Security Agreement or are with respect to immaterial IP Rights;

(u) terminations or unwinds of Derivative Transactions, any Swap Contract, cash management obligations or Banking Services Obligations;

(v) Dispositions of Capital Stock of, or sales of Indebtedness or other Securities of, Unrestricted Subsidiaries;

(w) Dispositions of Real Estate Assets and related assets in the ordinary course of business in connection with relocation activities for directors, officers, employees, members of management, managers or consultants of any Parent Company, the Borrowers and/or any Restricted Subsidiary;

(x) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law;

(y) any merger, consolidation, Disposition or conveyance the sole purpose of which is to reincorporate or reorganize (i) any Domestic Subsidiary in another jurisdiction in the U.S. and/or (ii) any Foreign Subsidiary in the U.S. or any other jurisdiction;

(z) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter;

(aa) Dispositions of assets or any issuance or sale of Capital Stock of any Restricted Subsidiary with a Fair Market Value in the aggregate for all such Dispositions or issuances or sales during the term of this Agreement of not more than the greater of $3,760,000 and 20% of Consolidated Adjusted EBITDA (calculated on a Pro Forma Basis) for the most recently ended Test Period;

(bb) Dispositions contemplated on the Closing Date and described on Schedule 6.07 hereto;

(cc) any swap of assets in exchange for services or other assets in the ordinary course of business of comparable or greater value or usefulness to the business of the Borrowers and their Subsidiaries as a whole, as determined in good faith by the Lead Borrower;

(dd) to the extent allowable under Section 1031 of the Code, or any comparable or successor provision, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(ee) sales or dispositions of Supplier Financing Assets in connection with Supplier Financing Facilities;

(ff) any Borrower and any other Restricted Subsidiary may (i) convert any intercompany Indebtedness to Capital Stock otherwise permitted hereunder, (ii) discount, write off, forgive or cancel any intercompany Indebtedness or other obligation owing by such Borrower or any Subsidiary Guarantor to a Restricted Subsidiary that is not, in each case, a Loan Party or to another Loan Party, (iii) settle, discount, write-off, forgive or cancel any Indebtedness owing by any present or former consultants, managers, directors, officers, employees of any Borrower or any Subsidiary or any of their successors or assigns, in the ordinary course of business or (iv) surrender or waive contractual rights and settle, release, surrender or waive contractual or litigation claims, in the case of clause (iv), in the ordinary course of business (and other than with respect to Indebtedness among the Borrowers and their Restricted Subsidiaries);

(gg) any Disposition in connection with a Permitted Tax Restructuring;

(hh) Dispositions constituting licensing agreements to third parties in the ordinary course of business; and

(ii) Sale and Lease-Back Transactions, the consideration for which consists of cash or Cash Equivalents (*provided* that for purposes of this requirement, (w) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to the Borrowers or any Restricted Subsidiary) of the Borrowers or any Restricted Subsidiary (as shown on such Person's most recent balance sheet (or in the notes

thereto)) that are assumed by the transferee of any such assets and for which the Borrowers and/or their applicable Restricted Subsidiary have been validly released by all relevant creditors in writing, (x) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition, (y) any Securities received by the Borrowers or any Restricted Subsidiary from the transferee that are converted by such Person into Cash or Cash Equivalents (to the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition and (z) any Designated Non-Cash Consideration received in respect of the relevant Sale and Lease-Back Transaction having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (z) and Section 6.07(h)(iii) that is at that time outstanding, not in excess of the greater of $3,760,000and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, shall be deemed to be Cash).

To the extent that any Collateral is Disposed of as expressly permitted by thisSection 6.07 to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition; it being understood and agreed that the Administrative Agent shall be authorized to take, and shall take, any actions reasonably requested by the Borrowers in order to effect the foregoing in accordance with Article 8 hereof.

Section 6.08 [Reserved].

Section 6.09 [Reserved].

Section 6.10 Conduct of Business. From and after the Closing Date, the Lead Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, engage in material lines of business that are not substantially similar to those lines of business conducted by the Borrowers or any of the other Restricted Subsidiaries of the Lead Borrower on the Closing Date or any business or any other activities that are materially different from the foregoing or that are not reasonably similar, ancillary, incidental, complementary, synergistic, corollary or related to, or a reasonable extension, development or expansion of, the businesses conducted or proposed to be conducted by the Borrowers or any of the other Restricted Subsidiaries of the Lead Borrower on the Closing Date (and non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment), in each case as reasonably determined by the Lead Borrower in good faith.

Section 6.11 Amendments of or Waivers with Respect to Restricted Debt. The Lead Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, amend or otherwise modify (a) the terms of any Restricted Debt (or the documentation governing any Restricted Debt) in violation of any Acceptable Intercreditor Agreement related to such debt entered into with the Administrative Agent or the subordination terms set forth in the definitive documentation governing any Restricted Debt or (b) the Note Financing Documents or the terms of the Convertible Notes (i) if the effect of such amendment or modification, together with all other amendments or modifications made thereto, is to shorten the maturity date of the Convertible Notes to a date that is on or prior to 181 days following the Latest Revolving Credit Maturity Date, or (ii) except to the extent any such amendment could not reasonably be expected to have a Material Adverse Effect; *provided* that, for purposes of clarity, it is understood and agreed that the foregoing limitations shall not otherwise prohibit any Refinancing Indebtedness or any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement or refunding of any Restricted Debt, in each case, that is permitted under the Loan Documents in respect thereof.

Section 6.12 Fiscal Year. The Lead Borrower shall not, and shall cause each of its Restricted Subsidiaries not to, make any change in its Fiscal Year; *provided*, *however*, that the Lead Borrower may, with the consent of the Administrative Agent (not to be unreasonably withheld, denied, delayed or conditioned) change its Fiscal Year, in which case the Lead Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary or advisable in order to reflect such change in financial reporting.

Section 6.13 Use of Proceeds. No Borrower shall, nor shall it permit any Restricted Subsidiary to, use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose.

Section 6.14 Financial Covenants.

(a) Financial Covenants.

(i) Secured Net Leverage Ratio. On the last day of any Test Period (commencing with the Fiscal Quarter ending March 31, 2022), the Lead Borrower shall not permit the Secured Net Leverage Ratio to be greater than the 3.00 to 1.00.

(ii) Fixed Charge Coverage Ratio. On the last day of any Test Period (commencing with the Fiscal Quarter ending March 31, 2022), the Lead Borrower shall not permit the Fixed Charge Coverage Ratio to be less than 1.10 to 1.00; *provided*, that commencing with each Test Period ending on or after September 30, 2023, the Lead Borrower shall not permit the Fixed Charge Coverage Ratio to be less than 1.25 to 1.00 in the event that the Outstanding Amount of all Revolving Loans as of the last day of such Test Period exceeds 30% of the Total Revolving Credit Commitments.

(b) Financial Cure.

(i) For the purpose of determining whether an Event of Default under Section 6.14(a) has occurred, the Lead Borrower may (the "Cure Right") on one or more occasions issue Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) for Cash or otherwise receive Cash contributions in respect of its Qualified Capital Stock or any cash contribution to the common equity capital of the Lead Borrower (the "Cure Amount") as an increase to Consolidated Adjusted EBITDA for the applicable Fiscal Quarter; *provided*, that (A) such amounts to be designated (i) are actually received by the Lead Borrower after the end of the applicable Fiscal Quarter and on or prior to the fifteenth (15th) Business Day after the date on which financial statements are required to be delivered pursuant to Section 5.01(a) (with respect to the first three Fiscal Quarters of any Fiscal Year) or Section 5.01(b) (with respect to the fourth Fiscal Quarter of any Fiscal Year) (such date, the "Cure Expiration Date") and (ii) do not exceed the aggregate amount necessary to cure any Event of Default under Section 6.14(a) as of such date and (B) the Lead Borrower shall have provided notice (the "Notice of Intent to Cure") to the Administrative Agent that such amounts are designated as a "Cure Amount" (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under Section 6.14(a) is less than the full amount of such originally designated amount). The Cure Amount used to calculate Consolidated Adjusted EBITDA for one Fiscal Quarter shall be used and included when calculating Consolidated Adjusted EBITDA for each Test Period that includes such Fiscal Quarter solely for purposes of determining actual compliance with Section 6.14(a).

(ii) The parties hereby acknowledge that this Section 6.14(b) may (A) not be relied on for purposes of calculating any financial ratios or Consolidated Adjusted EBITDA other than for determining actual compliance with Section 6.14(a) (and not Pro Forma Compliance with the financial covenants set forth in Section 6.14(a) that is required by any other provision of this Agreement) and (B) shall not result in any adjustment to any amounts (including the amount of Indebtedness or Consolidated Total Net Debt or any other calculation of net leverage or Indebtedness hereunder (including any cash netting of the proceeds thereof) and shall not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article 6) other than the amount of the Consolidated Adjusted EBITDA referred to in Section 6.14(b)(i) above; *provided*, that the prepayment of Indebtedness with the proceeds of such Cure Amount shall be given effect in each applicable Fiscal Quarter following the Fiscal Quarter in respect of which the Cure Amount was received.

(iii) In furtherance of Section 6.14(b)(i) above, (A) prior to the Cure Expiration Date, the covenants under Section 6.14(a) shall be deemed retroactively cured with the same effect as though there had been no failure to comply with the covenants under such Section 6.14(a) and any Default, Event of Default or potential Event of Default under Section 6.14(a) (or any notice required by Section 5.01(d) as a result thereof) shall be deemed not to have occurred for purposes of the Loan Documents, and (B)(x) for purposes hereof, no Default, Event of Default or potential Event of Default shall exist with respect to a breach of Section 6.14(a) until and unless the Cure Expiration Date has occurred without the Cure Amount having been received, and (y) none of the Administrative Agent, any Lender or any other Secured Party may exercise any rights or remedies under Section 7.01 (or under any other Loan Document) on the basis of any actual or purported Default or Event of Default under the relevant clause of Section 6.14(a) until and unless the Cure Expiration Date has occurred without the Cure Amount having been received unless such Event of Default shall have been waived in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Lenders shall not be required to make any borrowing of Revolving Loans and no Issuing Bank shall be required to issue any Letter of Credit until receipt by the Lead Borrower of the Cure Amount on or prior to the Cure Expiration Date. None of the Administrative Agent, any Lender or any other Secured Party shall take any action to foreclose on, or take possession of, the Collateral, accelerate any Obligations, terminate any Commitments or otherwise exercise any remedies under any Loan Document or any applicable laws on the basis of a breach of the relevant clause of Section 6.14(a) (or as a direct result of consummation of any transaction pursuant to Article 6 that would be not permitted hereunder solely due to the continuance of a Default or Event of Default under Section 6.14(a) or the failure to deliver a notice of default, solely in respect of a Default or Event of Default under Section 6.14(a) as required pursuant to Section 5.01(d)), unless and until the Cure Expiration Date has occurred and the Lead Borrower has not received the Cure Amount.

(iv) (A) In each period of four consecutive Fiscal Quarters, there shall be at least two Fiscal Quarters in which no cure right set forth in this Section 6.14 is exercised and (B) there shall be no pro forma reduction in Indebtedness with the Cure Amount for determining compliance with Section 6.14(a) for the Fiscal Quarter with respect to which such Cure Amount was made.

(v) There can be no more than four Fiscal Quarters in which the cure rights set forth in this Section 6.14(b) are exercised during the term of the Revolving Facility.

Section 6.15 Amendments of Organizational Documents. The Lead Borrower shall not, and shall cause each of its Restricted Subsidiaries not to, amend any of its Organizational Documents, except to the extent any such amendment could not reasonably be expected to have a Material Adverse Effect.

ARTICLE 7 EVENTS OF DEFAULT

Section 7.01 Events of Default. If any of the following events (each, an "Event of Default") occurs:

(a) Failure to Make Payments When Due. Failure by any Borrower to pay (i) when and as required to be paid herein, any amount of principal of any Loan; (ii) any interest on any Loan within five (5) Business Days after the date due; or (iii) any fee or any other amount due hereunder within ten (10) Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure by the Lead Borrower or any of its Restricted Subsidiaries to pay when due beyond the applicable grace or cure period, if any, and following all required notices whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount of not less than the Threshold Amount; or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts and not as a result of any default thereunder by any Loan Party or Restricted Subsidiary), the effect of which default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause (after delivery of any notice if required and after giving effect to any waiver, amendment, cure or grace period), such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; *provided* that this clause (ii) shall not apply to (A) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness, if such sale or transfer is permitted hereunder, (B) any Indebtedness if (x) the sole remedy of the holder thereof in the event of the non-payment of such Indebtedness or the non-payment or non-performance of obligations related thereto or (y) sole option is to elect, in each case, to convert such Indebtedness into Qualified Capital Stock and cash in lieu of fractional shares, (C) in the case of Indebtedness which the holder thereof may elect to convert into Qualified Capital Stock, such Indebtedness from and after the date, if any, on which such conversion has been effected and (D) any breach or default that is (I) contested in good faith, (II) remedied by the applicable Loan Party or the applicable Restricted Subsidiary or (III) waived (including in the form of amendment) by the required holders of the applicable item of Indebtedness, in either case, prior to any termination of the Commitments or the acceleration of Loans pursuant to this Section 7.01(b); or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with any term or condition contained in Section 5.01(d)(i), Section 5.02 (as it applies to the preservation of the existence of any Borrower), or Article 6; it being understood and agreed that any breach of Section 6.14(a) is subject to cure as provided in Section 6.14(b), and, an Event of Default under Section 6.14(a) shall be deemed not to have occurred until the Cure Expiration Date; or

(d) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate required to be delivered in connection herewith or therewith being untrue in any material respect (without duplication of any materiality or Material Adverse Effect qualifiers) as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article 7, which default has not been remedied or waived within 30 days after receipt by the Lead Borrower of written notice thereof from the Administrative Agent; or

(f) Insolvency Proceedings, Etc. Other than to the extent otherwise permitted hereunder, any Loan Party or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or substantially all of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 consecutive calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or substantially all of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 consecutive calendar days, or an order for relief is entered in any such proceeding; or

(g) [Reserved].

(h) Judgments and Attachments. There is entered against any Loan Party or any Material Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by either (i) independent third-party insurance as to which the insurer does not deny coverage or (ii) another creditworthy (as reasonably determined by the Lead Borrower in good faith) indemnitor)); and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of 60 consecutive days; or

(i) Employee Benefit Plans. The occurrence of one or more ERISA Events, which individually or in the aggregate result in liability of any Loan Party or any Restricted Subsidiary in an aggregate amount that would reasonably be expected to result in a Material Adverse Effect; or

(j) Change of Control. The occurrence of a Change of Control; or

(k) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery thereof, (i) any material Loan Guaranty for any reason, other than the occurrence of the Termination Date, shall cease to be in full force and effect (other than in accordance with its terms, including as a result of a transaction not prohibited under this Agreement) or is declared to be null and void or any Guarantor shall repudiate in writing its obligations thereunder (other than as a result of the discharge of such Guarantor in accordance with the terms thereof), (ii) this Agreement or any material Collateral Document ceases to be in full force and effect or shall be declared null and void or any Lien on Collateral created under any Collateral Document ceases to be perfected with respect to a material portion of the Collateral in an aggregate value exceeding the Threshold Amount (other than by reason of (x) the failure of the

Administrative Agent to maintain possession of any Collateral actually delivered to it or the failure of the Administrative Agent to file UCC (or equivalent) continuation statements or any other action or inaction by the Administrative Agent or Lender, (y) a release of Collateral in accordance with the terms hereof or thereof or (z) the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof) or (iii) other than in any bona fide, good faith dispute as to the scope of Collateral or whether any Lien has been, or is required to be released, any Loan Party shall contest in writing the validity or enforceability of any material provision of any Loan Document (or any Lien purported to be created by the Collateral Documents or any Loan Guaranty) or denies in writing that it has any further liability (other than by reason of the occurrence of the Termination Date), including with respect to future advances by the Lenders, under any Loan Document to which it is a party; it being understood and agreed that the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or file any UCC (or equivalent) continuation statement shall not result in an Event of Default under this clause (k) or any other provision of any Loan Document; or

(l) Subordination. The Obligations ceasing or the assertion in writing by any Loan Party that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any Restricted Debt in excess of the Threshold Amount, or any such subordination provision being invalidated or otherwise ceasing, for any reason, to be valid, binding and enforceable obligations of the parties thereto (other than as a result of the action or inaction of the Administrative Agent or any Lender);

then, subject to Section 6.14(b), and in every such event (other than an event with respect to the Lead Borrower described in clause (f) of this Article 7), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Lead Borrower, take any of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments, and thereupon such Revolving Credit Commitments shall terminate immediately and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers and (iii) require that the Borrowers deposit in the LC Collateral Account an additional amount in Cash as reasonably requested by the Issuing Bank (not to exceed 100% of the relevant face amount) of the then outstanding LC Exposure (minus the amount then on deposit in the LC Collateral Account); *provided* that upon the occurrence of an event with respect to the Borrowers described in clause (f) of this Article 7, any such Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and the obligation of the Borrowers to Cash collateralize the outstanding Letters of Credit as aforesaid shall automatically become effective, in each case without further action of the Administrative Agent or any Lender. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC, or equivalent applicable Requirement of Law, as applicable.

Each of the Lenders and the Issuing Bank hereby, each, on behalf of itself and its applicable Affiliates and in their respective capacities as such and as Secured Parties in respect of any Secured Hedging Obligations or Banking Services Obligations, as applicable, irrevocably appoints Bank of America (or any successor appointed pursuant hereto) as Administrative Agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Except as expressly set forth below with respect to (x) the Lead Borrower's rights in connection with actions taken to realize upon the Collateral or to enforce the Loan Guaranty, (y) the Lead Borrower's rights in the Collateral upon the Termination Date and (z) the Lead Borrower's consent rights in connection with the resignation of the Administrative Agent, the provisions of this Article 8 are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

The Administrative Agent shall also act as the Collateral Agent under the Loan Documents, and each of the Lenders and the Issuing Bank hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Bank for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article 8 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article 8 and Article 9 as if set forth in full herein with respect thereto.

Any Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, unless the context otherwise requires or unless such Person is in fact not a Lender, include each Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any subsidiary of any Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Administrative Agent shall not be under any obligation to provide such information to them.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents, including, without limitation, the Collateral Documents and any documents or instruments executed in connection therewith, and its duties shall be administrative in nature only, whether or not a Default has occurred and is continuing. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duty, regardless of whether any Default or Event of Default exists, and the use of the term "agent" herein and in the other Loan Documents (or any other similar term) with reference to the Administrative Agent does not connote (and is not intended to connote) any fiduciary or other implied (or express) obligation arising under agency doctrine of any applicable Requirements of Law; it being understood that such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent

contracting parties, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary power, except discretionary rights and powers that are expressly contemplated by the Loan Documents and which the Administrative Agent is required to exercise only so long as so directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the relevant circumstances as provided in Section 9.02); *provided*, that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document (including any Collateral Document) or applicable Requirements of Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay or that may effect a forfeiture, modification or termination of a property interest in violation of any applicable Debtor Relief Law, and the Administrative Agent shall, in all cases, be justified in failing or refusing to act under this Agreement or any other Loan Document, unless it first receives further assurances of its indemnification from the Lenders that the Administrative Agent reasonably believes it may require, including, without limitation, prepayment of any related expenses and protection against any and all costs, expenses and liabilities it may incur in taking or continuing to take any discretionary action at the direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the relevant circumstances as provided in Section 9.02), (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Lead Borrower or any of its Restricted Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity and (d) the powers conferred on the Administrative Agent under the Agreement and the Collateral Documents are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. The Administrative Agent shall not be liable to the Lenders or any other Secured Party for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith shall be necessary, under the relevant circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by the Lead Borrower or any Lender. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any covenant, agreement or other term or condition set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of any Lien on the Collateral or the existence, value or sufficiency of the Collateral or to assure that the Liens granted to the Administrative Agent or the Collateral Agent pursuant to any Loan Document have been or will continue to be properly or sufficiently or lawfully created, perfected or enforced or are entitled to any particular priority, (vi) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or the Collateral Agent, as applicable, or (vii) any property, book or record of any Loan Party or any Affiliate thereof.

Each Lender agrees that, except with the written consent of the Administrative Agent (at the direction of the Required Lenders), it will not take any enforcement action hereunder or under any other Loan Document, accelerate the Obligations under any Loan Document, or exercise any right that it might otherwise have under applicable Requirements of Law or otherwise to credit bid at any foreclosure sale, UCC sale, any sale under Section 363 of the Bankruptcy Code or any other similar Disposition of Collateral. Notwithstanding the foregoing, any Lender may take action to preserve or enforce its rights against a Loan Party where a deadline or limitation period is applicable that would, absent such action, bar enforcement of the Obligations held by such Lender, including the filing of a proof of claim in a case under the Bankruptcy Code.

Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, the Lead Borrower, the Administrative Agent and each Secured Party agree that (x) (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Loan Guaranty; it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms hereof, and all powers, rights and remedies under the other Loan Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or in the event of any other Disposition (including pursuant to Section 363 of the Bankruptcy Code), (A) the Administrative Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply all or any portion of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such Disposition and (B) the Administrative Agent or any Lender may be the purchaser or licensor of all or any portion of such Collateral at any such Disposition and (y) upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall, subject to the other provisions of this Agreement, take such enforcement action with respect to such Event of Default as shall be directed by the Required Lenders in accordance with the Loan Documents; *provided, however*, that, in the absence of such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable and in the best interests of the Lenders and Issuing Bank and solely to the extent permitted hereunder or pursuant to the other Loan Documents. Upon receipt by the Administrative Agent of a direction by the Required Lenders, the Administrative Agent shall seek to enforce the Collateral Documents and to realize upon the Collateral in accordance with such direction; *provided, however*, that the Administrative Agent shall not be obligated to follow any direction by Required Lenders if the Administrative Agent reasonably determines that such direction is in conflict with any provisions of any applicable law or any Collateral Document, and the Administrative Agent shall not, under any circumstances, be liable to any Lenders, Issuing Bank, the Lead Borrower or any other person or entity for following the direction of the Required Lenders. At all times, if the Administrative Agent acting at the direction of the Required Lenders advises the Lenders that it wishes to proceed in good faith with respect to any enforcement action, each of the Lenders will cooperate in good faith with respect to such enforcement action and will not unreasonably delay the enforcement of the Collateral Documents.

No holder of any Secured Hedging Obligation or Banking Services Obligation in its respective capacity as such shall have any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under this Agreement.

Each of the Lenders hereby irrevocably authorizes (and by entering into a Hedge Agreement with respect to any Secured Hedging Obligation and/or by entering into documentation in connection with any Banking Services Obligation, each of the other Secured Parties hereby authorizes and shall be deemed to authorize) the Administrative Agent, on behalf of all Secured Parties, to take any of the following actions upon the instruction of the Required Lenders:

(a) consent to the Disposition of all or any portion of the Collateral free and clear of the Liens securing the Secured Obligations in connection with any Disposition pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(b) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(c) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any Disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(d) credit bid all or any portion of the Secured Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other Disposition conducted in accordance with applicable Requirements of Law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or

(e) estimate the amount of any contingent or unliquidated Secured Obligations of such Lender or other Secured Party;

it being understood that (i) no Lender shall be required to fund any amount in connection with any purchase of all or any portion of the Collateral by the Administrative Agent pursuant to the foregoing clauses (b), (c) or (d) without its prior written consent and (ii) the Administrative Agent shall have no duties or responsibilities on behalf of all Secured Parties except those expressly set forth in the Collateral Documents to which it is a party as Collateral Agent, and no implied covenants or obligations shall be read into any such Collateral Documents against the Administrative Agent. Notwithstanding any other provision of the Collateral Documents, in no event shall the Administrative Agent be required to foreclose on, or take possession of, the Collateral, if, in the judgment of the Administrative Agent, such action would be in violation of Requirements of Law, or if the Administrative Agent reasonably believes that such action would result in the incurrence of liability by the Collateral Agent for which it is not fully indemnified by the Secured Parties. The Administrative Agent may at any time request instructions from the Required Lenders as to a course of action to be taken by it hereunder and under any of the Collateral Documents or in connection herewith and therewith or any other matters relating hereto and thereto.

Upon the Termination Date, all rights to the Collateral as shall not have been sold or otherwise applied, in each case, pursuant to the terms hereof shall revert to the Lead Borrower, its successors or assigns, or otherwise as a court of competent jurisdiction may direct. Upon any such termination, the Administrative Agent will, at the Lead Borrower's expense, execute and deliver to the Lead Borrower such documents as the Lead Borrower shall reasonably request to evidence such termination.

Each Secured Party agrees that the Administrative Agent is under no obligation to credit bid any part of the Secured Obligations or to purchase or retain or acquire any portion of the Collateral; *provided* that, in connection with any credit bid or purchase described under clauses (b), (c) or (d) of the preceding paragraph, the Secured Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by the Administrative Agent on a ratable basis.

With respect to any contingent or unliquidated claim that is a Secured Obligation, the Administrative Agent is hereby authorized, but is not required, to estimate the amount thereof for purposes of any credit bid or purchase described in the second preceding paragraph so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of the Administrative Agent to credit bid the Secured Obligations or purchase the Collateral in the relevant Disposition. In the event that the Administrative Agent, in its sole and absolute discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of the Administrative Agent to consummate any credit bid or purchase in accordance with the second preceding paragraph, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

Each Secured Party whose Secured Obligations are credit bid under clauses (b), (c) or (d) of the third preceding paragraph is entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Capital Stock of the acquisition vehicle or vehicles that are used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (x) the amount of the Secured Obligations of such Secured Party that were credit bid in such credit bid or other Disposition, by (y) the aggregate amount of all Secured Obligations that were credit bid in such credit bid or other Disposition.

In addition, in case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, each Secured Party agrees that the Administrative Agent (irrespective of whether the principal of any Loan or any Obligations is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent has made any demand on the Borrowers) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid fees in respect of the Loans and all other Obligations that are owing and unpaid under the terms of Agreement and other Loan Documents and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts to the extent due to the Lenders under Section 9.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same to the Lenders and Issuing Bank under the terms of the Agreement.

Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments directly to the Administrative Agent on behalf of all of the Lenders or Issuing Bank to whom any amounts are owed under the Agreement and other Loan Documents unless the Administrative Agent expressly consents in writing to the making of such payments or distributions directly to such Lenders and Issuing Bank and, in the event that the Administrative Agent consents to the making of such payments directly to the Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amount due to the Administrative Agent under this Agreement and other Loan Documents.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice (including any telephonic notice), request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) that it believes in good faith to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent may also rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent has received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), 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. In no event shall the Administrative Agent be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of its duties under the Loan Documents or in the exercise of any of its rights or powers under this Agreement. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or moresub-agents appointed by it. The Administrative Agent and any such sub-agent may perform any and all of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory and indemnification provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final andnon-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

Any entity into which the Administrative Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidations which the Administrative Agent in its individual capacity may be party, or any corporation to which substantially all of the corporate trust or agency business of the Administrative Agent in its individual capacity may be transferred, shall be the Administrative Agent under this Agreement without further action.

The Administrative Agent may resign at any time by giving thirty (30) days' written notice to the Lenders, the Issuing Bank and the Lead Borrower. If the Administrative Agent is a Defaulting Lender or an Affiliate of a Defaulting Lender, either the Required Lenders or the Lead Borrower may, upon ten Business Days' notice, remove the Administrative Agent. Upon receipt of any such notice of resignation or delivery of any such notice of removal, the Required Lenders shall have the right, with the consent of the Lead Borrower (not to be unreasonably withheld or delayed), to appoint a Successor Administrative Agent which shall be a commercial bank, trust company or other Person reasonably acceptable to the Lead Borrower with offices in the U.S. having combined capital and surplus in excess of $500,000,000; *provided* that during the existence and continuation of a Specified Event of Default, no consent of the Lead Borrower shall be required. If no successor has been appointed as provided above and accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation or the Administrative Agent receives notice of removal, then (a) in the case of a retirement, the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Bank,

(x) appoint a Successor Administrative Agent meeting the qualifications set forth above (including, for the avoidance of doubt, the consent of the Lead Borrower) or (y) apply to a court of competent jurisdiction for the appointment of a successor agent or for other appropriate relief with it being understood that the reasonable costs and expenses (including its reasonable attorneys' fees and expenses) incurred by the Administrative Agent in connection with such proceeding shall be paid by such parties, or (b) in the case of a removal, the Lead Borrower may, after consulting with the Required Lenders, appoint a Successor Administrative Agent meeting the qualifications set forth above; *provided* that (x) in the case of a retirement, if the Administrative Agent notifies the Lead Borrower, the Lenders and the Issuing Bank that no qualifying Person has accepted such appointment or (y) in the case of a removal, the Lead Borrower notifies the Required Lenders that no qualifying Person has accepted such appointment, then, in each case, such resignation or removal shall nonetheless become effective in accordance with such notice and (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent in its capacity as Collateral Agent for the Secured Parties for purposes of maintaining the perfection of the Lien on the Collateral securing the Secured Obligations, the retiring Administrative Agent shall continue to hold such collateral security until such time as a Successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts owed to the Administrative Agent, all payments, communications and determinations required to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Bank directly (and each Lender and the Issuing Bank will cooperate with the Lead Borrower to enable the Lead Borrower to take such actions), until such time as the Required Lenders or the Lead Borrower, as applicable, appoint a Successor Administrative Agent, as provided above in this Article 8. Upon the acceptance of its appointment as Administrative Agent hereunder as a Successor Administrative Agent, the Successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring Administrative Agent), and regardless of whether a Successor Administrative Agent is appointed, the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under all other Loan Documents (other than its obligations under Section 9.13 hereof). The fees payable by the Borrowers to any Successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such Successor Administrative Agent. After the Administrative Agent's resignation or removal hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any action taken or omitted to be taken by any of them while the relevant Person was acting as Administrative Agent (including for this purpose holding any collateral security following the retirement or removal of the Administrative Agent). Notwithstanding anything to the contrary herein, no Disqualified Institution (nor any Affiliate thereof) may be appointed as a Successor Administrative Agent.

Each Lender and the Issuing Bank represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of business and acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information (which may contain Material Non-Public Information concerning the Loan Parties pursuant to the applicable Requirements of Laws (including United States federal and state securities laws and regulations)) as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective 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 other Loan Document or related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders and the Issuing Bank by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender or the Issuing Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of the Administrative Agent or any of its Related Parties.

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Bank hereunder.

Each Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall:

(a) automatically release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the occurrence of the Termination Date, (ii) that is sold or to be sold or transferred as part of or in connection with any Disposition permitted under the Loan Documents to a Person that is not a Loan Party, (iii) that does not constitute (or ceases to constitute) Collateral, (iv) subject to Section 9.23, if the property subject to such Lien is owned by a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Loan Guaranty otherwise in accordance with the Loan Documents, (v) as required under clause (d) below, (vi) in accordance with any applicable intercreditor agreements or (vii) subject to Section 9.02(b)(v) and (vi), if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 9.02;

(b) subject to Section 9.23, automatically release any Subsidiary Guarantor from its Loan Guaranty (i) upon the consummation of any permitted transaction or series of related permitted transactions if as a result thereof such Subsidiary Guarantor ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary; *provided* that (x) no such release shall occur if such Subsidiary Guarantor continues to be a guarantor in respect of any material Junior Indebtedness or material Junior Lien Indebtedness and (y) no such release shall occur if such Subsidiary Guarantor becomes an Excluded Subsidiary as a result of clause (a) of the definition thereof unless such Subsidiary Guarantor ceases to be a Wholly-owned Subsidiary pursuant to a transaction where such Subsidiary Guarantor becomes a bona fide joint venture where the other Person obtaining an equity interest in such Subsidiary Guarantor is not an Affiliate of the Lead Borrower or the Restricted Subsidiaries (other than as a result of such joint venture) and/or (ii) upon the occurrence of the Termination Date;

(c) to release or subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to another Lien (A) permitted to exist on such property, and (B) not prohibited from being senior to the Liens of the Secured Parties under this Agreement; and

(d) enter into subordination, intercreditor, collateral trust and/or similar agreements with respect to Indebtedness (including any Acceptable Intercreditor Agreement and/or any amendment thereof) that is (i) required or permitted to be subordinated hereunder and/or (ii) secured by Liens, and with respect to which Indebtedness and/or Liens, this Agreement contemplates an intercreditor, subordination, collateral trust agreement or similar agreement.

Upon the request of the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or Collateral Agent's, as applicable, authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Guaranty or its Lien on any Collateral pursuant to this Article 8. In

each case specified in this Article 8, the Administrative Agent will (and each Lender, and the Issuing Bank hereby authorizes the Administrative Agent to), at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents, to subordinate its interest therein, or to release such Loan Party from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article 8;.

Except as otherwise expressly set forth herein, in the Loan Guaranty or in any Collateral Document, no Hedge Bank or Banking Services Bank that obtains the benefit of the provisions of Section 2.18(b), the Loan Guaranty or any Collateral by virtue of the provisions hereof, the Loan Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Loan Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 8 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Banking Services Agreements and Hedging Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Banking Services Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Banking Services Agreements and Hedging Agreements in the case of a Termination Date.

Notwithstanding anything to the contrary contained herein, the Administrative Agent shall not have any responsibility to the Secured Parties for or have any duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. In addition, and notwithstanding anything to the contrary contained herein, neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (ii) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

The Administrative Agent is authorized to enter into any Acceptable Intercreditor Agreement and any other intercreditor, subordination, collateral trust or similar agreement reasonably satisfactory to it and the Borrowers contemplated hereby with respect to any (a) Indebtedness (i) that is (A) required or permitted to be lien subordinated hereunder and/or (B) secured by Liens and (ii) with respect to which Indebtedness and/or Liens, this Agreement contemplates an intercreditor, subordination, collateral trust or similar agreement (including Indebtedness that is permitted to be senior or *pari passu* with the Obligations) and/or (b) Secured Hedging Obligations and/or Banking Services Obligations, whether or not constituting Indebtedness (any such other intercreditor, subordination, collateral trust and/or similar agreement, an "Additional Agreement"), and the Secured Parties party hereto acknowledge that any Additional Agreement is binding upon them. Each Secured Party party hereto hereby (a) agrees that they will be bound by, and will not take any action contrary to, the provisions of any Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Secured Parties to extend credit to the Borrowers, and the Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Additional Agreement.

To the extent that the Administrative Agent (or any Affiliate thereof) is not reimbursed and indemnified by the Borrowers in accordance with and to the extent required by Section 9.03(b), the Lenders will reimburse and indemnify the Administrative Agent (and any Affiliate thereof) in proportion to their respective Applicable Percentages (determined as if there were no Defaulting Lenders) for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or any Affiliate thereof) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such Affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). For the avoidance of doubt, the term "Lender" shall, for all purposes of this paragraph, include the Issuing Bank and the Swingline Lender.

To the extent required by any applicable Requirements of Law (as determined in good faith by the Administrative Agent), the Administrative Agent may withhold from any payment to any Lender under any Loan Document an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 2.17, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within 10 days after demand therefor, all amounts paid, directly or indirectly, including any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective) or if any payment has been made to any Lender by the Administrative Agent without the applicable withholding Tax being withheld from such payment and the Administrative Agent has paid over the applicable withholding Tax to the IRS or any other Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this paragraph. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. For the avoidance of doubt, the term "Lender" shall, for all purposes of this paragraph include the Issuing Bank and the Swingline Lender.

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender Recipient Party, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender

Recipient Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE 9 MISCELLANEOUS

Section 9.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email, as follows:

(i) if to any Loan Party, to such Loan Party in the care of the Lead Borrower at:

BigBear.ai Holdings, Inc.
6811 Benjamin Franklin Dr. Suite 200
Columbia, MD 21046
Attn: Josh Kinley, Chief Financial Officer
Email:[***]

with a copy to:

AE Industrial Partners, LP
2500 N. Military Trail, Suite 470
Boca Raton, FL 33431
Attn: Kirk Konert
Email:[***]

with a copy to (which shall not constitute notice to any Loan Party):

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Michelle Kilkenney, P.C.
Telephone: (312) 862-2487
Email: michelle.kilkenney@kirkland.com

(ii) if to the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified on Schedule 1.01(b); and

(iii) if to any Lender or Issuing Bank, to it at its address or facsimile number or email address set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three Business Days after dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to the relevant party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01 or (B) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; *provided* that notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, such notices or other communications shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or Intranet websites) pursuant to procedures set forth herein or otherwise approved by the Administrative Agent. The Administrative Agent or the Lead Borrower (on behalf of any Loan Party) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; *provided* that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) 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); *provided* that any such notice or communication not given during the normal business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day for the recipient and (ii) 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 (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number or other notice information hereunder by notice to the other parties hereto; it being understood and agreed that the Lead Borrower may provide any such notice to the Administrative Agent as recipient on behalf of itself, the Issuing Bank, the Swingline Lender and each Lender.

(d) The Platform. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to communications that are not made available through the "Public Side Information" portion of the Platform and that may contain Material Non-Public Information with respect to the Lead Borrower or its securities for purposes of United States Federal or state securities laws.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES (COLLECTIVELY, THE "AGENT PARTIES") WARRANTS THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE AGENT PARTIES IN CONNECTION WITH THE BORROWER MATERIALS OR THE

PLATFORM. IN NO EVENT SHALL ANY AGENT PARTY OR ANY OF THE LOAN PARTIES HAVE ANY LIABILITY TO ANY OTHER PARTY HERETO OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF BORROWER MATERIALS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OR MATERIAL BREACH OF THIS AGREEMENT.

Section 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof except as provided herein or in any Loan Document, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any party hereto therefrom shall in any event be effective unless the same is permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, to the extent permitted by applicable Requirements of Law, neither the making of any Loan nor the issuance of any Letter of Credit shall be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) (other than with respect to any amendment or waiver contemplated in Sections 9.02(b)(i) through (viii) below, which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) and acknowledged by the Administrative Agent (which acknowledgement shall not be unreasonably withheld, delayed or conditioned) and the applicable Loan Party, as the case may be; *provided* that, no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender without the written consent of each Lender holding such Commitment (it being understood that a waiver of any condition precedent set forth in Sections 4.01 or 4.02 or of any Default, Event of Default, Default Rate, mandatory prepayment or mandatory reduction of any Commitments shall not constitute such an extension or increase);

(ii) postpone any date scheduled for any payment of principal (including final maturity), interest, premiums or fees hereunder, without the written consent of each Lender directly and adversely affected thereby (it being understood that (i) the waiver (or amendment to the terms of) of any mandatory prepayment of the Loans or any obligation of the Borrowers to pay interest at the Default Rate, any Default or Event of Default,

mandatory prepayment or mandatory reduction of any Commitments shall not constitute such a postponement of any date scheduled for the payment of principal or interest and (ii) any change to the definition of "Total Net Leverage Ratio", "Senior Secured Net Leverage Ratio", "Secured Net Leverage Ratio" or the component definitions thereof shall not constitute a postponement of such scheduled payment);

(iii) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit, or (subject to clause (iii) of the second proviso to this Section 9.02(b)) any premiums, fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby (it being understood that (i) the waiver of (or amendment to the terms of) any obligation of the Borrowers to pay interest at the Default Rate or to comply with any most-favored-nation pricing protection, any mandatory prepayment of the Loans or mandatory reduction of any Commitments shall not constitute such a reduction and (ii) any change to the definition of "Total Net Leverage Ratio", "Senior Secured Net Leverage Ratio", "Secured Net Leverage Ratio" or the component definitions thereof shall not constitute a reduction or forgiveness in any rate of interest, principal, premiums, fees or other amounts);

(iv) change any provision of (i) this Section 9.02 or (ii) the definition of "Required Lenders" or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, in each case to reduce the percentage set forth therein, without the written consent of each Lender (it being understood that, with the consent of the Required Lenders (if such consent is otherwise required) or the Administrative Agent (if the consent of the Required Lenders is not otherwise required), additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Revolving Credit Commitments);

(v) other than in connection with a transaction permitted under Section 6.07 or as otherwise permitted under this Agreement, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(vi) other than in connection with a transaction permitted under Section 6.07 or as otherwise permitted under this Agreement, release all or substantially all of the Guarantors, without the written consent of each Lender;

(vii) amend or modify the provisions of Sections 2.10, 2.11, 2.18(a), 2.18(b) or 2.18(c) in a manner that would by its terms alter the pro rata sharing of payments required thereby (except in connection with any transaction permitted under Sections 2.22, 2.23 and/or 9.05(g) or as otherwise provided in this Section 9.02) without the written consent of each Lender directly and adversely affected thereby; and

(viii) contractually subordinate in right of payment of the Obligations or Liens granted to the Collateral Agent in the Collateral in connection with such Obligations without the written consent of each Lender directly and adversely affected thereby, except to (A) Indebtedness that is permitted by the Loan Documents as in effect as of the Closing Date to be senior in right of payment to such Obligations and/or be secured by a Lien on the Collateral that is senior to such Lien, (B) any "debtor in-possession" facility or (C) any other Indebtedness so long as such Indebtedness is offered ratably to all Lenders of the loans being exchanged;

provided, *further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Bank in addition to the Lenders required above, adversely affect the rights or duties of the Issuing Bank under this Agreement or any Letter of Credit application relating to any Letter of Credit issued or to be issued by it; *provided* that the Letter of Credit Sublimit may be increased with the consent of the Issuing Bank, Administrative Agent and the Borrowers; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, adversely affect the rights or duties of the Swingline Lender under this Agreement; *provided*, *however*, that this Agreement may be amended to adjust the borrowing mechanics related to Swingline Loans with only the written consent of the Administrative Agent, the Swingline Lender and the Lead Borrower so long as the obligations of the Revolving Lenders, if any, who have not executed such amendment are not adversely affected thereby; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; (iv) only the consent of the parties to the Fee Letter shall be required to amend, modify or supplement the terms thereof; and (v) no Lender consent is required to effect an Incremental Facility Agreement, Refinancing Amendment or Extension Amendment (except as expressly provided in Sections 2.22 or 2.23, as applicable) (and the Administrative Agent and the Lead Borrower may effect such amendments to this Agreement and the other Loan Documents without the consent of any other party as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the terms of any such incremental facility, refinancing facility or extension facility). 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 directly and adversely affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any such Defaulting Lender may not be increased or extended without the consent of such Lender (it being understood that a waiver of any condition precedent set forth in Sections 4.01 or 4.02, or the waiver of any Default, Event of Default, Default Rate, mandatory prepayment or mandatory reduction of any Commitments shall not constitute such an extension or increase), and (y) any waiver, amendment or modification requiring the consent of all Lenders or each directly and adversely affected Lender that by its terms materially and adversely affects any Defaulting Lender disproportionally to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, no Lender consent is required for the Administrative Agent to enter into or to effect any amendment, modification or supplement to any Acceptable Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement or in any document pertaining to any Indebtedness permitted hereby that is permitted to be secured by the Collateral, including any Incremental Commitment or Refinancing Indebtedness, or any Permitted Ratio Debt for the purpose of adding the holders of such Indebtedness (or their senior representative) as a party thereto and otherwise causing such Indebtedness to be subject thereto, in each case as contemplated by the terms of such Acceptable Intercreditor Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make (i) such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent and the Lead Borrower, are required to effectuate the foregoing, (ii) any immaterial changes and (iii) material changes thereto in light of prevailing market conditions approved by the Administrative Agent and the Lead Borrower, which material changes shall be posted to the Lenders not less than five (5) Business Days (or such shorter period as agreed by the Administrative Agent) before execution thereof and, if the Required Lenders shall not have objected to such changes within five (5) Business Days after posting (or such shorter period as agreed by the Administrative Agent), then the Required Lenders shall be deemed to have agreed that the Administrative Agent's entry into such intercreditor agreement (with such changes) is reasonable and to have consented to such intercreditor agreement (with such changes)); *provided*, *further*, that no such agreement shall adversely affect the rights or duties of the Administrative Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Lead Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans, Swingline Loans and LC Exposure and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Lead Borrower, the Required Lenders and the Lenders providing the Replacement Revolving Loans (as defined below) to permit the refinancing of all or a portion of the outstanding Revolving Loans of any Class ("Replaced Revolving Loans") with one or more tranches of replacement revolving loans ("Replacement Revolving Loans") hereunder; *provided* that (a) except as otherwise permitted by Section 2.22, the aggregate principal amount of such Replacement Revolving Loans shall not exceed the aggregate principal amount of such Replaced Revolving Loans (plus accrued interest, fees, expenses and premium), (b) the Weighted Average Life to Maturity of Replacement Revolving Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Revolving Loans, at the time of such refinancing (except by virtue of amortization or prepayment of the Replaced Revolving Loans prior to the time of such incurrence), (c) such Replacement Revolving Loans shall constitute and qualify as Refinancing Indebtedness and (d) all other terms applicable to such Replacement Revolving Loans shall be as agreed between the Lead Borrower and the Lenders providing such Replacement Revolving Loans.

Notwithstanding anything to the contrary contained in this Section 9.02, guarantees, Collateral Documents and related documents executed by the Loan Parties or their Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, modified, supplemented and waived with the consent of the Administrative Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment, modification, supplement or waiver is delivered (A) in order to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, (B) as required by local Law or advice of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law, (C) in order to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent and the Lead Borrower) or (D) in order to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Notwithstanding anything in this Agreement or any Collateral Document to the contrary, the Collateral Agent may, in its sole discretion, grant extensions of time for the satisfaction of any of the requirements described in the definition of "Collateral and Guarantee Requirement" under Section 5.12 or Section 5.14 or any Collateral Document in respect of any particular Collateral or any particular Subsidiary if it determines that the satisfaction thereof with respect to such Collateral or such Subsidiary cannot be accomplished without undue expense or unreasonable effort or due to factors beyond the control of the Borrowers and the other Restricted Subsidiaries of the Lead Borrower by the time or times at which it would otherwise be required to be satisfied under this Agreement or any Collateral Document.

In addition, notwithstanding the foregoing, this Agreement may be amended, supplemented or modified with the written consent of the Administrative Agent and the Lead Borrower in a manner not materially adverse to any Lender.

Notwithstanding anything to the contrary contained in Section 9.02, if at any time after the Closing Date, the Administrative Agent and the Lead Borrower shall have jointly identified (i) an error, omission, ambiguity, mistake, or defect; (ii) administrative changes of a technical or immaterial nature or (iii) incorrect cross references, or similar inaccuracies, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Lead Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document.

Section 9.03 Expenses; Indemnity.

(a) The Borrowers agree (i) if the Closing Date occurs, to pay or reimburse all reasonable and documented or invoicedout-of-pocket expenses incurred by the Lead Arranger and the Administrative Agent (but limited to (A) in the case of legal fees and expenses, the reasonable fees, disbursements and other charges of Moore & Van Allen PLLC, and, if reasonably necessary, of one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole, and counsel otherwise retained with the Lead Borrower's consent (excluding in all events allocated costs of in-house counsel) and (B) fees and expenses related to any other advisor or consultant, solely to the extent the Lead Borrower has consented to the retention or engagement of such Person) in connection with the syndication and distribution (including via the Internet or through a service such as IntraLinks) of the Revolving Facility, in connection with the preparation, execution, delivery and administration of the Loan Documents and any related documentation, including in connection with any amendment, modification or waiver of any provision of any Loan Document and (ii) from and after the Closing Date, within thirty (30) days after written demand (including documentation reasonably supporting such request as further detailed below) all reasonable and documented or invoiced out-of-pocket expenses incurred by the Administrative Agent, the Lead Arranger, the Collateral Agent, the Issuing Bank or the Lenders (but limited to (A) in the case of legal fees and expenses, (x) the reasonable fees, disbursements and other charges of one firm of outside counsel to all such Persons, taken as a whole and, if reasonably necessary, of one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole, and counsel otherwise retained with the Lead Borrower's consent (excluding in all events allocated costs of in house counsel), and (y) solely in the case of an actual or reasonably perceived conflict of interest, one additional counsel to all such Persons, taken as a whole, and one additional local counsel to all such Persons, taken as a whole, to each group of similarly situated affected parties, and (B) fees and expenses related to any other advisor or consultant, solely to the extent the Lead Borrower has consented to the retention or engagement of such Person) in connection with the enforcement, collection or protection of their respective rights in connection with the Loan Documents, including their respective rights under this Section, or in connection with the Loans made and/or Letters of Credit issued hereunder. Except to the extent required to be paid on the Closing Date, all amounts due under this paragraph (a) shall be payable by the Borrowers within 30 days of receipt by the Borrowers of an invoice setting forth such expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request.

(b) The Borrowers shall indemnify the Lead Arranger, the Administrative Agent, the Collateral Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all actual losses, claims, actual damages and liabilities (but limited (A) in the case of legal fees and expenses, to the actual reasonable and documented or invoiced out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel in any relevant material jurisdiction to all Indemnitees, taken as a whole and solely in the case of an actual or reasonably perceived conflict of interest, (x) one additional counsel to all affected Indemnitees, taken as a whole, and (y) one

additional local counsel in each relevant material jurisdiction to all affected Indemnitees, taken as a whole and (B) fees and expenses related to any other advisor, solely to the extent the Lead Borrower has consented to the retention of such Person), incurred by or asserted against any Indemnitee by any Person arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby (including, without limitation, the Indemnitee's reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record), the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby and/or the enforcement of the Loan Documents, (ii) the use of the proceeds of the Loans or any Letters of Credit and any refusal by the Issuing Bank to honor a demand for payment under an Letters of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, (iii) any actual or alleged Release or presence of Hazardous Materials on, at, in, under, to or from any property currently or formerly owned, leased or operated by the Borrowers, any of their Restricted Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrowers, any of their Restricted Subsidiaries or any other Loan Party and/or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrowers, any other Loan Party or any of their respective Affiliates); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that any such loss, claim, damage, or liability (i) is determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee (or its Related Parties) or, to the extent such judgment finds that any such loss, claim, damage, or liability has resulted from such Person's (or its Related Parties) material breach of the Loan Documents or (ii) arises out of any claim, litigation, investigation or proceeding brought by such Indemnitee (or its Related Parties) against another Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by or against the Administrative Agent or the Lead Arranger, acting in its capacity as the Administrative Agent or as the Lead Arranger) that does not involve any act or omission of the Lead Borrower or any of its subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrowers pursuant to this Section 9.03 to such Indemnitee for any fees, expenses, or damages to the extent such Indemnitee is not entitled to payment thereof in accordance with the terms hereof, in each case as determined by a final and non-appealable judgment of a court of competent jurisdiction. All amounts due under this paragraph (b) shall be payable by the Borrowers within 30 days (x) after receipt by the Lead Borrower of a written demand therefor, in the case of any indemnification obligations and (y) in the case of reimbursement of costs and expenses, after receipt by the Lead Borrower of an invoice setting forth such costs and expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request. This Section 9.03(b) shall not apply to Taxes other than any Taxes that represent losses, claims, damages or liabilities in respect of a non-Tax claim.

(c) The Borrowers shall not be liable for any settlement of any proceeding effected without the written consent of the Borrowers (which consent shall not be unreasonably withheld, delayed or conditioned), but if any proceeding is settled with the written consent of the Borrowers, or if there is a final judgment against any Indemnitee in any such proceeding, the Borrowers agree to indemnify and hold harmless each Indemnitee to the extent and in the manner set forth above. The Borrowers shall not, without the prior written consent of the affected Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) such settlement does not include any statement as to any admission of fault or culpability.

(d) In the event that the Administrative Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any obligation for the benefit of another, which in the Administrative Agent's sole discretion may cause the Administrative Agent to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Administrative Agent to incur liability under CERCLA or any other federal, state or local law, the Administrative Agent reserves the right, instead of taking such action, to either resign as the Administrative Agent or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Except for such claims or actions arising from the gross negligence, bad faith or willful misconduct of the Administrative Agent, the Administrative Agent shall not be liable to any person or entity for any Environmental Claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Administrative Agent's actions and conduct as authorized, empowered and directed hereunder relating to the discharge, Release or threatened Release of Hazardous Materials into the Environment. If at any time after any foreclosure on the Collateral (or a transfer in lieu of foreclosure) upon the exercise of remedies in accordance with the Collateral Documents it is necessary or advisable to take possession, own, operate or manage any portion of the Collateral by any person or entity other than the Borrowers, the Administrative Agent shall appoint an appropriately qualified Person to possess, own, operate or manage such Collateral.

Section 9.04 Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement shall assert, and each hereby waives, any claim against any other party hereto, any Loan Party and/or any Related Party of any thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or any Letter of Credit or the use of the proceeds thereof, except, in the case of any claim by any Indemnitee against the Borrowers, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 9.03.

Section 9.05 Successors and Assigns.

(a) The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower nor any other Loan Party may assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (except as permitted by Section 6.07) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Assignee pursuant to an assignment made in accordance with the provisions of Section 9.05(b) (such an assignee, an "Eligible Assignee"), (ii) by way of participation in accordance with the provisions of Section 9.05(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions ofSection 9.05(g) or (iv) to an SPC in accordance with the provisions of Section 9.05(h); *provided, however*, that notwithstanding the foregoing, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) any Person that is a Defaulting Lender, (ii) a natural Person or (iii) the Borrowers or any of their respective Affiliates. No assignment, transfer or participation may be made to a Person that was a Disqualified Institution as of the date on which the applicable Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person, in each case, absent the prior written consent of the Lead Borrower (which consent may be made or withheld in its sole and

absolute discretion), in which case, such Person will not be considered a Disqualified Institution for purposes of this Agreement. 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 9.05(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Notwithstanding the foregoing:

(i) For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable trade date (including as a result of the specification by the Lead Borrower pursuant to the definition of "Disqualified Institution"), such assignee shall not retroactively be considered a Disqualified Institution. Any assignment to a Disqualified Institution in violation of this Section 9.05 shall not be void, but the other provisions of this Section 9.05 shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Lead Borrower's prior written consent in violation of this Section 9.05, (I) for purposes of voting on any plan of reorganization pursuant to the Bankruptcy Code of the United States, each Disqualified Institution party hereto hereby agrees (A) not to vote on such plan of reorganization, (B) if such Disqualified Institution does vote on such plan of reorganization notwithstanding the restriction in the foregoing clause (A), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code of the United States (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan of reorganization in accordance with Section 1126(c) of the Bankruptcy Code of the United States (or any similar provision in any other Debtor Relief Laws) and (C) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (B), (II) such Disqualified Institution shall not vote for any purpose under the Loan Documents, (III) such Disqualified Institution shall not be entitled to any expense reimbursement or indemnification under the Loan Documents, and nothing in the Loan Documents shall restrict the rights and remedies of the Loan Parties against such Disqualified Institution and (IV) the Lead Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Institution and repay all obligations of the Borrowers owing to such Disqualified Institution in connection with such Revolving Credit Commitment (on a non-pro rata basis), (B) [reserved] and/or (C) require such Disqualified Institution to assign or transfer, without recourse (in accordance with and subject to the restrictions contained in this Section 9.05), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) The Lenders and the Lead Borrower, on behalf of itself, the other Borrowers and their Restricted Subsidiaries, expressly acknowledges that the Administrative Agent (solely in its capacity as such or as an arranger, bookrunner or other agent hereunder) shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or Excluded Party or (y) have any liability with respect to or arising out of any assignment

or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution or Excluded Party. Without limiting the foregoing, the parties hereto acknowledge and agree that the Administrative Agent and the Collateral 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 Disqualified Institutions or Excluded Parties.

(b) (i) Subject to the conditions set forth in Section 9.05(b)(ii) below, any Lender may at any time assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 9.05(b), participations in Letters of Credit and in Swingline Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, denied, delayed or conditioned) of:

(A) the Lead Borrower; *provided* that no consent of the Lead Borrower shall be required for (i) [reserved], (ii) an assignment of all or a portion of any Revolving Credit Commitments or Revolving Credit Exposure to a Lender, an Affiliate of a Lender or any Approved Fund thereof, (iii) [reserved] and (iv) after the occurrence and during the continuance of a Specified Event of Default, to any Assignee (other than, for the avoidance of doubt, a Disqualified Institution); *provided, further*, that the Lead Borrower shall be deemed to have consented to any such assignment unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice thereof;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment (i) [reserved], (ii) of all or any portion of any Revolving Credit Commitments or Revolving Credit Exposure to a Lender, an Affiliate of a Lender or any Approved Fund thereof, (iii) [reserved], or (iv) from the Administrative Agent to its Affiliates;

(C) each Issuing Bank at the time of such assignment; *provided* that no consent of the Issuing Banks shall be required for (i) any assignment not in respect of Revolving Credit Commitments or Revolving Credit Exposure or (ii) any assignment to the Administrative Agent or an Affiliate or Approved Fund of the Administrative Agent; and

(D) the Swingline Lender; *provided* that no consent of a Swingline Lender shall be required for any assignment not in respect of Revolving Credit Commitments or Revolving Credit Exposure or any assignment to the Administrative Agent or an Affiliate of the Administrative Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 (in the case of each Revolving Loan or Revolving Credit Commitment) unless each of the Lead Borrower and the Administrative Agent otherwise consents; *provided* that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) any partial assignment shall be made as an assignment of a proportionate part of all the relevant assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall (1) execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent or (2) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Assumption, together, in each case, with a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(D) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, and all "know your customer" documents reasonably requested in writing by the Administrative Agent pursuant to anti-money laundering rules and regulations, including, but without limitation, the USA Patriot Act; and

(E) the Assignee shall execute and deliver to the Administrative Agent and the Lead Borrower the forms described in Section 2.17 applicable to it.

This Section 9.05 shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Revolving Facilities on a non-*pro rata* basis among such Revolving Facilities.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 9.05(d), from and after the recordation date specified in each Assignment and Assumption, (1) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (2) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment); *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, and the surrender by the assigning Lender of its Promissory Note, the Borrowers (at their expense) shall promptly execute and deliver a Promissory Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.05(c) 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 9.05(e).

(d) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office in the United States a copy of each Assignment and Assumption and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans, LC Exposure (specifying the

unreimbursed amounts), LC Disbursements and the amounts due under Section 2.05, owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). Upon its receipt of, and consent to (to the extent required), a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, and each other party thereto an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 9.05(b)(ii)(B) above, if applicable, and the written consent of the Administrative Agent and, if required, the Lead Borrower, the Swingline Lender and each Issuing Bank to such assignment and any applicable tax forms, the Administrative Agent shall (i) accept such Assignment and Assumption and (ii) promptly record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this Section 9.05(d). The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Administrative Agent and any Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior written notice. The parties intend that Loans are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations).

(e) Any Lender may at any time, sell participations to any Person (other than a natural Person, a Defaulting Lender, any Borrower or any of the Borrowers' Affiliates or Subsidiaries or a Disqualified Institution) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in LC Disbursements and/or Swingline Loans) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Issuing Bank and the other 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 Article 8 without regard to the existence of any participations. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right (i) to enforce this Agreement and the other Loan Documents and (ii) to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the relevant Participant, agree to any amendment, modification or waiver described in (x) clauses (i) through (iii), (vii) and (viii) of the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y)clauses (iv) through (vi) of the first proviso to Section 9.02(b). Subject to Section 9.05(f) and a Participant's compliance with Section 2.17 and agreement to be subject to the provisions of Section 2.18 and Section 2.19 as if it were an Assignee under Section 9.05(b), the Borrowers agree that each Participant shall be entitled to the benefits and obligations of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations of such Sections, including the requirements under Section 2.17 (it being understood that the documentation required under Section 2.22 shall be delivered to the participating Lender)) to the same extent the Lender from which it acquired its participation interest. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender;*provided* that such Participant agrees to be subject toSection 2.18 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 Borrowers, maintain a register on which it enters the name and address of

each Participant and its respective successors and registered assigns, and the principal amounts (and related stated interest amounts) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or Section 1.163-5 of the Proposed U.S. Treasury Regulations (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. The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the U.S. Treasury Regulations or Section 1.163-5 of the Proposed U.S. Treasury Regulations (or, in each case, any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) A Participant shall not be entitled to receive any greater payment under Sections 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(g) Any Lender may, without the consent of the Lead Borrower or the Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution) (including under its Promissory Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (other than a Disqualified Institution) identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Lead Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof, shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) an SPC shall be entitled to the benefit of Sections 2.15, 2.16 or 2.17 (subject to the requirements and the limitations of such Section), but neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrowers under this Agreement, (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement)

that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the Requirements of Law of the U.S. or any State thereof; *provided* that (x) such SPC's Granting Lender is in compliance in all material respects with its obligations to the Borrower hereunder and (y) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Lead Borrower and the Administrative Agent and with the payment of a processing fee of $3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) subject to the confidentiality terms hereof disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

Notwithstanding anything to the contrary in this Section 9.05, such Disqualified Institutions may be liable to the Borrowers and the other Loan Parties for any and all claims, including breach of contract.

The Administrative Agent shall have the right, and the Borrowers hereby expressly authorize the Administrative Agent to provide the list of Disqualified Institutions to each Lender requesting the same.

Section 9.06 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loan and issuance of any Letter of Credit regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Termination Date. The provisions of Sections 2.15, 2.16, 2.17, 9.03 and 9.13 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Revolving Credit Commitment, the occurrence of the Termination Date or the termination of this Agreement or any provision hereof but in each case, subject to the limitations set forth in this Agreement.

Section 9.07 Integration; Effectiveness. This Agreement, the other Loan Documents and the Fee Letter constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it has been executed by the Lead Borrower and the Administrative Agent and when the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 9.08 Severability. To the extent permitted by applicable Requirements of Law, any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.09 Right of Setoff. At any time when an Event of Default exists, upon the written consent of the Administrative Agent, the Administrative Agent, the Issuing Bank, and each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) (other than escrow, payroll, employee health and benefits, pension, fiduciary, 401(K), petty cash, trust and tax accounts and other accounts of the type described in the definition of Excluded Assets) at any time held and other obligations (in any currency) at any time owing by the Administrative Agent, the Issuing Bank such Lender or such Affiliate to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by the Administrative Agent, the Issuing Bank or such Lender, irrespective of whether or not the Administrative Agent, the Issuing Bank or such Lender shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or Issuing Bank different than the branch or office holding such deposit or obligation on such Indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Any applicable Lender or Issuing Bank shall promptly notify the Lead Borrower and the Administrative Agent of such set-off or application; *provided* that any failure to give or any delay in giving such notice shall not affect the validity of any suchset-off or application under this Section. The rights of each Lender, the Issuing Bank and the Administrative Agent and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender, the Issuing Bank or the Administrative Agent or such Affiliates may have.

Section 9.10 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT) AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN ANY OTHER LOAN DOCUMENT), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; *PROVIDED*, *HOWEVER*, THAT (A) THE INTERPRETATION OF THE DEFINITION OF "HOLDINGS MATERIAL ADVERSE EFFECT" (AS DEFINED IN THE MERGER AGREEMENT) AND WHETHER THERE SHALL HAVE OCCURRED A HOLDINGS MATERIAL ADVERSE EFFECT (AS DEFINED IN THE MERGER AGREEMENT), (B) WHETHER THE MERGERS HAVE BEEN CONSUMMATED IN ACCORDANCE WITH THE MERGER AGREEMENT AND (C) WHETHER THE MERGER AGREEMENT REPRESENTATIONS ARE ACCURATE AND WHETHER THE BUYER (OR ITS AFFILIATES) HAS (OR HAVE) THE RIGHT (TAKING INTO ACCOUNT ANY APPLICABLE CURE PROVISIONS) TO TERMINATE ITS (OR THEIR) OBLIGATIONS UNDER THE MERGER AGREEMENT OR DECLINE TO CONSUMMATE THE MERGERS (IN EACH CASE, IN ACCORDANCE WITH THE TERMS OF THE MERGER AGREEMENT) AS A RESULT OF A BREACH OF ANY MERGER AGREEMENT REPRESENTATION, SHALL, IN EACH CASE, BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, FEDERAL COURT. EACH PARTY HERETO AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH PARTY HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE REQUIREMENTS OF LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT RETAINS THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ITS RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH 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 ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

Section 9.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR

THEREBY. EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.12 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.13 Confidentiality.

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the Issuing Bank agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates (other than Excluded Parties), its auditors and its Related Parties on a "need to know" basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed of their obligation to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Lead Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority or pursuant to any routine audit or examination conducted by accountants or any governmental regulatory authority exercising examination or regulatory authority) unless such notification is prohibited by law, rule or regulation; (iii) to the extent required by Requirements of Law regulations or by any subpoena or similar legal process; *provided* that the Administrative Agent or such Lender, as applicable, agrees that it will notify the Lead Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 9.13 (or as may otherwise be reasonably acceptable to the Lead Borrower), to (A) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder (other than any Person with respect to whom the Lead Borrower has affirmatively denied to provide consent to assignment in accordance with Section 9.05(b)(i)(A) or any Disqualified Institution (it being understood that the list of Disqualified Institutions may be disclosed to any assignee or Participant, or prospective assignee or Participant, in reliance on this clause (vi))), (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrowers or their Subsidiaries or the credit facilities provided hereunder, (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, any Issuing Bank and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders, or (C) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (viii) with the prior written consent of the Lead Borrower or to the extent such Information (A) becomes publicly available

other than as a result of a breach of this Section 9.13, (B) becomes available to the Administrative Agent, any Lender, any Issuing Bank any of their respective Affiliates on a nonconfidential basis from a source other than a Loan Party (so long as such source is not known (after due inquiry) to the Administrative Agent, such Lender or any of their respective Affiliates to be bound by confidentiality obligations to any Loan Party, the Sponsor or your respective Affiliates) or (C) is independently discovered or developed by a party hereto without utilizing any Information received from the Borrowers or violating the terms of this Section 9.13 or any other confidentiality obligation over to the Borrowers. For purposes of this Section 9.13, "Information" means all information received from the Loan Parties relating to any Loan Party, its Affiliates or its Affiliates' directors, officers, employees, trustees, investment advisors or agents, other than any such information that is publicly available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section 9.13 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and customary information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the Issuing Bank acknowledge that (i) the Information may include Material Non-Public Information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of Material Non-Public Information and (iii) it will handle such Material Non-Public Information in accordance with Requirements of Law, including United States federal and state securities Laws.

(c) Customary Advertising Material. The consent of the Lead Borrower shall be required prior to the publication by the Administrative Agent or any Lender of advertising material relating to the transactions contemplated hereby using the product photographs or trademarks of the Loan Parties; *provided* no consent shall be required for disclosure of the name and industry of the Borrowers, the logo of the Loan Parties, the Lenders and the types, amounts, tenor and use of proceeds of the credit facilities contained herein in customary marketing materials of the Administrative Agent.

Section 9.14 No Fiduciary Duty. Each of the Administrative Agent, the Lead Arranger, the Collateral Agent, each Lender, the Issuing Bank and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, the Lead Arranger, the Collateral Agent and the Lenders, on the one hand, and such Loan Party, its respective stockholders or its respective affiliates, on the other. Each Loan Party acknowledges and agrees that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Administrative Agent, the Lenders, and the Lead Arranger, on the one hand, and the Loan Parties and their respective Affiliates, on the other, and (ii) in connection therewith and with the process leading thereto, (x) none of the Administrative Agent, the Lead Arranger, the Collateral Agent or any Lender, in its capacity as such, has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading

thereto (irrespective of whether the Administrative Agent, the Lead Arranger, the Collateral Agent or any such Lender has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Lender, in its capacity as such, is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. To the fullest extent permitted by applicable Requirements of Law, each Loan Party waives any claim that it may have against any Lender with respect to any breach or alleged breach of fiduciary duty arising solely by virtue of this Agreement. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal, tax and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party further agrees that none of the Administrative Agent, the Lead Arranger, the Collateral Agent or any Lender has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and the Administrative Agent, the Lead Arranger, the Collateral Agent and the Lenders, and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates.

Section 9.15 Electronic Signatures; Counterparts.

This Agreement, any Loan Document and any other Communication related to this Agreement, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent, the Issuing Bank, the Swingline Lender, and each Lender (collectively, each a "Credit Party") agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of each of the Loan Parties enforceable against such Loan Party in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Credit Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Secured Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided*, *further*, without limiting the foregoing, (a) to the extent the Administrative Agent, the Issuing Bank and/or the Swingline Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party or any Credit Party without further verification and (b) upon the request of the Administrative Agent or any Credit Party, any Electronic Signature shall be promptly followed by such manually executed counterpart.

Neither the Administrative Agent, Issuing Bank nor the Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's, Issuing Bank's or Swingline Lender's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, the Issuing Bank and Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by a Responsible Officer (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document based solely on the lack of paper original copies of this Agreement, such other Loan Document, and (ii) waives any claim against the Administrative Agent, each Credit Party and each related party for any liabilities arising solely from the Administrative Agent's and/or any Credit Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.16 Several Obligations. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan, issue and Letter of Credit or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder.

Section 9.17 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network (as published at 81 FR 29397, 31 CFR 1010, 1020, 1023, 1024, and 1026), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network.

Section 9.18 Disclosure of Agent Conflicts. Each Loan Party, the Issuing Bank and each Lender hereby acknowledge and agree that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.19 Appointment for Perfection. Each Lender hereby appoints each other Lender and the Issuing Bank as its agent for the purpose of perfecting Liens for the benefit of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable Requirement of Law can be perfected only by possession, control or notation. If any Lender or Issuing Bank (other than the Administrative Agent) obtains possession, control or notation of any Collateral, such Lender, Issuing Bank shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.20 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or Letter of Credit, together with all fees, charges and other amounts which are treated as interest on such Loan or Letter of Credit under applicable Requirements of Law (collectively the "Charged Amounts"), shall exceed the maximum lawful rate (the "Maximum Rate")

which may be contracted for, charged, taken, received or reserved by the Lender or Issuing Bank holding such Loan or Letter of Credit in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan or Letter of Credit hereunder, together with all Charged Amounts payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charged Amounts that would have been payable in respect of such Loan or Letter of Credit but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charged Amounts payable to such Lender or Issuing Bank in respect of other Loans or Letters of Credit or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, have been received by such Lender or Issuing Bank.

Section 9.21 Intercreditor Agreements. REFERENCE IS MADE TO ANY ACCEPTABLE INTERCREDITOR AGREEMENT. EACH LENDER HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF ANY ACCEPTABLE INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO EACH ACCEPTABLE INTERCREDITOR AGREEMENT AS "COLLATERAL AGENT" (OR OTHER APPLICABLE TITLE) ON BEHALF OF SUCH LENDER. THE PROVISIONS OF THIS SECTION 9.21 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY ACCEPTABLE INTERCREDITOR AGREEMENT, THE FORMS OF CERTAIN OF WHICH ARE ATTACHED AS AN EXHIBIT TO THIS AGREEMENT. REFERENCE MUST BE MADE TO EACH ACCEPTABLE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF EACH ACCEPTABLE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY ACCEPTABLE INTERCREDITOR AGREEMENT.

Section 9.22 Conflicts. Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event of any conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall govern and control; *provided* that in the case of any conflict or inconsistency between any Acceptable Intercreditor Agreement and any Loan Document, the terms of such Acceptable Intercreditor Agreements shall govern and control.

Section 9.23 Release of Guarantors. Notwithstanding anything in Section 9.02(b) to the contrary, (a) any Subsidiary Guarantor shall automatically be released from its obligations hereunder (and its Loan Guaranty shall be automatically released) (i) upon the consummation of any permitted transaction or series of related permitted transactions if as a result thereof such Subsidiary Guarantor ceases to be a Restricted Subsidiary (or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions permitted hereunder) and/or (ii) upon the occurrence of the Termination Date and (b) any Subsidiary Guarantor that qualifies as an "Excluded Subsidiary" shall be released by the Administrative Agent promptly following the request therefor by the Lead Borrower; *provided* that (x) no release pursuant to the foregoing clause (a)(i) or (b) shall occur if such Subsidiary Guarantor continues to be a guarantor in respect of any material Junior Indebtedness or material Junior Lien Indebtedness and (y) no such release shall occur if such Subsidiary Guarantor becomes an Excluded Subsidiary as a result of clause (a) of the definition thereof unless such Subsidiary Guarantor ceases to be a Wholly-owned Subsidiary pursuant to a transaction where such Subsidiary Guarantor becomes a bona fide joint venture where the other Person obtaining an equity interest in such Subsidiary Guarantor is not an Affiliate of the Lead Borrower or the Restricted Subsidiaries (other than as a result of such joint venture). In connection with any such release, the Administrative Agent shall promptly execute and deliver to the relevant Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence termination or release; *provided*, that, in connection with such documents requested by any Loan Party,

upon the request of the Administrative Agent, the Borrowers shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement. Any execution and delivery of any document pursuant to the preceding sentence of this Section 9.23 shall be without recourse to or warranty by the Administrative Agent (other than as to the Administrative Agent's authority to execute and deliver such documents).

Section 9.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding of the parties hereto, each such party acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down 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 Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 9.25 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arranger and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE84-14 (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), PTE91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Lead Arranger and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that none of the Administrative Agent or the Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 9.26 Acknowledgement Regarding Any Supported QFCs

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any

such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.27 Joint and Several. The obligations of the Borrowers hereunder and under the other Loan Documents are joint and several on an unsubordinated basis regardless of which such Person actually receives Credit Extensions hereunder or the amount of such Credit Extensions received or the manner in which the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender accounts for such Credit Extensions on its books and records. Any rights that arise hereunder against a Borrower arise as such rights would arise against the Lead Borrower. For the avoidance of doubt, each Borrower is a Primary Obligor hereunder.

[SIGNATURE PAGES FOLLOW]

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

BIGBEAR.AI HOLDINGS, INC., as the Lead Borrower

By: */s/ Louis R. Brothers*
Name: Louis R. Brothers
Title: Chief Executive Officer

BIGBEAR.AI INTERMEDIATE HOLDINGS, LLC, as a Borrower

By: */s/ Louis R. Brothers*
Name: Louis R. Brothers
Title: Chief Executive Officer

BIGBEAR.AI, LLC, as a Borrower

By: */s/ Joshua Kinley*
Name: Joshua Kinley
Title: Chief Financial Officer

NUWAVE SOLUTIONS, L.L.C., as a Borrower

By: */s/ Joshua Kinley*
Name: Joshua Kinley
Title: Chief Financial Officer

PCI STRATEGIC MANAGEMENT, LLC, as a Borrower

By: */s/ Joshua Kinley*
Name: Joshua Kinley
Title: Chief Financial Officer

PROMODEL GOVERNMENT SOLUTIONS, INC., as a Borrower

By: */s/ Joshua Kinley*
Name: Joshua Kinley
Title: Chief Financial Officer

OPEN SOLUTIONS GROUP, LLC, as a Borrower

By: */s/ Joshua Kinley*
Name: Joshua Kinley
Title: Chief Financial Officer

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

By: */s/ Larry Van Sant*
Name: Larry Van Sant
Title: Senior Vice President

[Signature Page to Credit Agreement]

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

By: */s/ Larry Van Sant*
Name: Larry Van Sant
Title: Senior Vice President

[Signature Page to Credit Agreement]

Exhibit 10.18

PCI STRATEGIC MANAGEMENT, LLC EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") dated as of October 23, 2020, between PCI Strategic Management, LLC, a Maryland limited liability company (the "Company"), and Joshua Kinley (the "Executive").

W I T N E S S E T H

WHEREAS, the Company desires to employ the Executive as the Chief Financial Officer of the Company; and

WHEREAS, the Company and the Executive desire to enter into this Agreement as to the terms of the Executive's employment with the Company.

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

1. **POSITION AND DUTIES.**

(a) During the Employment Term (as defined inSection 2 hereof), the Executive shall serve as the Chief Financial Officer of the Company. In this capacity, the Executive shall report directly to, and have the duties, authorities and responsibilities determined from time to time by, the Chief Executive Officer of the Company (the "CEO").

(b) During the Employment Term, the Executive shall devote all of the Executive's business time, energy, business judgment, knowledge and skill and the Executive's best efforts to the performance of the Executive's duties with the Company, provided that the foregoing shall not prevent the Executive from (i) serving on the boards of directors of charitable, civic, social and religious organizations, (ii) participating in charitable, civic, social, religious, educational, professional, community or industry affairs, and (iii) managing the Executive's passive personal investments, in each case so long as such activities in the aggregate do not interfere or conflict with the Executive's duties hereunder or create a potential business or fiduciary conflict.

2. **EMPLOYMENT TERM**. The Company agrees to employ the Executive pursuant to the terms of this Agreement, and the Executive agrees to be so employed, for a term of eighteen (18) months (the "Initial Term") commencing as of the date hereof (the "Effective Date"). On each anniversary of the Effective Date following the Initial Term, the term of this Agreement shall be automatically extended for successive one-year terms; provided, however, that either party hereto may elect not to extend this Agreement by giving written notice to the other party at least ninety (90) days prior to any such anniversary date. Notwithstanding the foregoing, the Executive's employment hereunder may be earlier terminated in accordance with Section 6 hereof, subject to Section 7 hereof. The period of time between the Effective Date and the termination of the Executive's employment hereunder shall be referred to herein as the "Employment Term."

3. **BASE SALARY.** The Company agrees to pay the Executive a base salary at an annual rate of not less than $300,000 (the "Initial Salary"), payable in accordance with the regular payroll practices of the Company, but not less frequently than monthly. The Executive's base salary shall be subject to annual review by the Board of Managers of the Company (the "Board") (or a committee designated thereby), and may be adjusted from time to time by the Board. The base salary as determined herein and adjusted from time to time shall constitute "Base Salary" for purposes of this Agreement. Notwithstanding the foregoing, the Executive's Base Salary shall at no time during the Initial Term be less than the Initial Salary, except as a result of a reduction (i) precipitated by a national financial depression or recession adversely affecting the Company or (ii) in connection with a reduction in compensation to all or substantially all of the Company's senior executives.

4. **ANNUAL BONUS.** During the Employment Term, the Executive shall be eligible to receive an annual discretionary incentive payment under the Company's annual bonus plan as may be in effect from time to time (the "Annual Bonus") based on a target bonus opportunity of 35% of the Executive's Base Salary (the "Target Bonus"), in each case upon the attainment of one or more performance goals established by the Board or any committee designated thereby in its sole discretion.

5. **EMPLOYEE BENEFITS.**

(a) **BENEFIT PLANS.** During the Employment Term, the Executive shall be entitled to participate in any employee benefit plan that the Company has adopted or may adopt, maintain or contribute to for the benefit of its employees generally, including medical, dental and vision plans, subject to satisfying the applicable eligibility requirements, except to the extent that such plans are duplicative of the benefits otherwise provided for hereunder. The Executive's participation will be subject to the terms of the applicable plan documents and generally applicable Company policies. Notwithstanding the foregoing, the Company may modify or terminate any employee benefit plan at any time.

(b) **BUSINESS EXPENSES.** Upon presentation of reasonable substantiation and documentation as the Company may specify from time to time, the Executive shall be reimbursed in accordance with the Company's expense reimbursement policy, for all reasonable out-of-pocket business expenses incurred and paid by the Executive during the Employment Term and in connection with the performance of the Executive's duties hereunder, in accordance with the Company's policies with regard thereto.

(c) **VACATIONS.** During the Employment Term, the Executive shall be entitled paid vacation in accordance with the Company's vacation policies as in effect from time to time. Notwithstanding the foregoing, Executive shall be entitled to 30 days of paid vacation each calendar year of the Employment Term beginning January 1, 2021. In addition to the foregoing, during the first year of the Initial Term, the Executive shall be entitled to 15 additional days of paid vacation in respect of paid-time-off accrued to date for such Executive on the day immediately prior to the Effective Date; provided that such additional days of paid vacation shall automatically be forfeited for no consideration on the date that is one year following the Effective Date to the extent unused as of such date.

6. **TERMINATION.** The Executive's employment and the Employment Term shall terminate on the first of the following to occur:

(a) **DISABILITY.** Upon ten (10) days' prior written notice by the Company to the Executive of termination due to Disability. For purposes of this Agreement, Executive shall be deemed to have a "Disability" if (i) the Executive is incapable of performing his duties to the Company for (A) a continuous period of ninety (90) days and remains so incapable at the end of such ninety (90) day period or (B) periods amounting in the aggregate to ninety (90) days within any one period of one hundred twenty (120) days and remains so incapable at the end of such aggregate period of one hundred twenty (120) days, in each case, as determined by the Board in good faith, (ii) the Executive qualifies to receive long-term disability payments under the long-term disability insurance program, as it may be amended from time to time, covering employees of the Company or a Company affiliate to which the Executive provides services or (iii) the Executive is determined to be totally disabled by the Social Security Administration.

(b) **DEATH.** Automatically upon the date of death of the Executive.

(c) **CAUSE.** Immediately upon written notice by the Company to the Executive of a termination for Cause. For purposes of this Agreement, "Cause" shall mean (A) the Executive's indictment for, conviction of or plea of *nolo contendere* to a felony, any crime involving moral turpitude or a fraud, (B) the Executive's engagement in fraud, theft, embezzlement or other act involving dishonesty with respect to the Company or its affiliates, (C) any act or omission of the Executive that brings or could reasonably be expected to bring the Company or any affiliate of the Company into substantial public disgrace or disrepute or otherwise materially injures the integrity, character or reputation of the Company or its affiliates, (D) gross negligence or gross misconduct by the Executive with respect to the Company or any affiliate of the Company, (E) the Executive's material non-performance of the duties reasonably assigned to him, (F) the Executive's insubordination or failure to follow the directions of the CEO or Board, (G) the Executive's breach of the provisions of Section 9 of this Agreement or any other applicable restrictive covenants with the Company or any of its affiliates, (H) the Executive's breach of a material employment policy of the Company or any of its affiliates or (I) any other material breach by the Executive of this Agreement or any other agreement with the Company or any of its affiliate. With respect to items (E), (F), (H) or (I), the Company shall provide the Executive with written notice of such breach or nonperformance and the Executive shall have fifteen (15) days to cure the noncompliance.

(d) **WITHOUT CAUSE.** Immediately upon written notice by the Company to the Executive of an involuntary termination without Cause (other than for death or Disability). Notwithstanding the foregoing, the Executive shall not be terminated without Cause during the Initial Term.

(e) **BY THE EXECUTIVE VOLUNTARILY.** Upon sixty (60) days' prior written notice by the Executive to the Company of the Executive's voluntary termination of employment for any reason (which the Company may, in its sole discretion, make effective earlier than any notice date).

(f) **EXPIRATION OF EMPLOYMENT TERM; NON-EXTENSION OF AGREEMENT.** Upon the expiration of the Employment Term due to a non-extension of the Agreement by the Company or the Executive pursuant to the provisions of Section 2 hereof.

(g) **GOOD REASON.** Executive may, in Executive's sole discretion, immediately terminate this Agreement for "Good Reason." "Good Reason" shall mean (i) upon the Company's breach of any material term of this Agreement that is not cured within fifteen (15) days after the Company's receipt of written notice from the Executive specifying the nature of the breach, or (ii) a relocation of Executive's principal office, to a location more than twenty-five (25) miles from Executive's office location as of the Effective Date.

7. **CONSEQUENCES OF TERMINATION.**

(a) **DEATH.** In the event that the Executive's employment and the Employment Term ends on account of the Executive's death, the Executive or the Executive's estate, as the case may be, shall be entitled to the following (with the amounts due under Sections 7(a)(i) through 7(a)(iv) hereof to be paid within sixty (60) days following termination of employment, or such earlier date as may be required by applicable law):

(i) any unpaid Base Salary through the date of termination;

(ii) any Annual Bonus fully earned, but not yet paid;

(iii) reimbursement for any unreimbursed business expenses incurred through the date of termination;

(iv) any accrued but unused vacation time in accordance with Company policy; and

(v) all other payments, benefits or fringe benefits to which the Executive shall be entitled under the terms of any applicable compensation arrangement or benefit, equity or fringe benefit plan or program or grant or this Agreement (collectively, Sections 7(a)(i) through 7(a)(v) hereof shall be hereafter referred to as the "Accrued Benefits").

(b) **DISABILITY.** In the event that the Executive's employment and/or Employment Term ends on account of the Executive's Disability, the Company shall pay or provide the Executive with the Accrued Benefits.

(c) **TERMINATION FOR CAUSE OR BY THE EXECUTIVE OR AS A RESULT OF NON-EXTENSION OF THIS AGREEMENT.** If the Executive's employment is terminated (x) by the Company for Cause, (y) by the Executive for any reason except Good Reason, or (z) as a result of non-extension of the Employment Term as provided in Section 2 hereof, the Company shall pay to the Executive the Accrued Benefits.

(d) **TERMINATION WITHOUT CAUSE OR TERMINATION FOR GOOD REASON.** If the Executive's employment by the Company is terminated by the Company other than for Cause or the Executive terminates for Good Reason, the Company shall pay or provide the Executive with the following, subject to the provisions of Section 20 hereof:

(i) the Accrued Benefits; and

(ii) subject to the Executive's continued compliance with the obligations in Sections 8, 9 and 10 hereof, an amount equal to the Executive's monthly Base Salary rate as in effect on the date of termination, paid monthly for a period of twelve (12) months following such termination; provided that to the extent that the payment of any amount constitutes "nonqualified deferred compensation" for purposes of Code Section 409A (as defined in Section 20 hereof), any such payment scheduled to occur during the first sixty (60) days following the termination of employment shall not be paid until the first regularly scheduled pay period following the sixtieth (60th) day following such termination and shall include payment of any amount that was otherwise scheduled to be paid prior thereto.

Payments and benefits provided in this Section 7(d) shall be in lieu of any termination or severance payments or benefits for which the Executive may be eligible under any of the plans, policies or programs of the Company or under the Worker Adjustment Retraining Notification Act of 1988 or any similar state statute or regulation.

(e) **OTHER OBLIGATIONS.** Upon any termination of the Executive's employment with the Company, the Executive shall promptly resign from any position as an officer, director or fiduciary of any Company-related entity.

(f) **EXCLUSIVE REMEDY.** The amounts payable to the Executive following termination of employment and the Employment Term hereunder pursuant to Section 7 hereof shall be in full and complete satisfaction of the Executive's rights under this Agreement and any other claims that the Executive may have in respect of the Executive's employment with the Company or any of its affiliates, and the Executive acknowledges that such amounts are fair and reasonable, and are the Executive's sole and exclusive remedy, in lieu of all other remedies at law or in equity, with respect to the termination of the Executive's employment hereunder or any breach of this Agreement.

8. **RELEASE; NO MITIGATION**. Any and all amounts payable and benefits or additional rights provided pursuant to this Agreement beyond the Accrued Benefits shall only be payable if the Executive delivers to the Company and does not revoke a general release of claims in favor of the Company in a form reasonably satisfactory to the Board. Such general release shall be executed and delivered by both the Executive and the Company (and no longer subject to revocation, if applicable) within sixty (60) days following termination.

9. **RESTRICTIVE COVENANTS**.

(a) **CONFIDENTIALITY.** During the course of the Executive's employment with the Company, the Executive will have access to Confidential Information. For purposes of this Agreement, "Confidential Information" means all data, information, ideas, concepts, discoveries, trade secrets, inventions (whether or not patentable or reduced to practice), innovations, improvements, know-how, developments, techniques, methods, processes, treatments, drawings, sketches, specifications, designs, plans, patterns, models, plans and strategies, and all other confidential or proprietary information or trade secrets in any form or medium (whether merely remembered or embodied in a tangible or intangible form or medium) whether now or hereafter

existing, relating to or arising from the past, current or potential business, activities and/or operations of PCISM Ultimate Holdings, LLC and its subsidiaries, including the Company (collectively, the "Company Group"), including, without limitation, any such information relating to or concerning finances, sales, marketing, advertising, transition, promotions, pricing, personnel, customers, suppliers, vendors, raw partners and/or competitors. The Executive agrees that the Executive shall not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person, other than in the course of the Executive's assigned duties and for the benefit of the Company Group, either during the Employment Term or at any time thereafter, any Confidential Information or other confidential or proprietary information received from third parties subject to a duty on the Company's and its subsidiaries' and affiliates' part to maintain the confidentiality of such information, and to use such information only for certain limited purposes, in each case, which shall have been obtained by the Executive during the Executive's employment by the Company (or any predecessor). The foregoing shall not apply to information that (i) was known to the public prior to its disclosure to the Executive; (ii) becomes generally known to the public subsequent to disclosure to the Executive through no wrongful act of the Executive or any representative of the Executive; or (iii) the Executive is required to disclose by applicable law, regulation or legal process (provided that the Executive provides the Company with prior notice of the contemplated disclosure, so long as legally permissible, and cooperates with the Company at its expense in seeking a protective order or other appropriate protection of such information).

(b) **NONCOMPETITION.** The Executive acknowledges that (i) the Executive performs services of a unique nature for the Company Group that are irreplaceable, and that the Executive's performance of such services to a competing business will result in irreparable harm to the Company Group, (ii) the Executive has had and will continue to have access to trade secrets and other confidential information of the Company Group, which, if disclosed, would unfairly and inappropriately assist in competition against the Company Group, (iii) in the course of the Executive's employment by a competitor, the Executive would inevitably use or disclose such trade secrets and Confidential Information, (iv) the Company Group has substantial relationships with its customers and the Executive has had and will continue to have access to these customers, (v) the Executive has received and will receive specialized training from the Company Group, and (vi) the Executive has generated and will continue to generate goodwill for the Company Group in the course of the Executive's employment. Accordingly, during the Employment Term and for a period of one (1) year thereafter, the Executive agrees that the Executive will not, directly or indirectly, own, manage, operate, control, be employed by (whether as an employee, consultant, independent contractor or otherwise, and whether or not for compensation) or render services to any person, firm, corporation or other entity, in whatever form, engaged in competition with the Company Group in any other material business in which the Company Group is engaged on the date of termination or in which they have planned (provided Executive was aware of such plan), on or prior to such date, to be engaged in on or after such date, in any locale of any country in which the Company Group conducts business. Notwithstanding the foregoing, nothing herein shall prohibit the Executive from being a passive owner of not more than one percent (1%) of the equity securities of a publicly traded corporation engaged in a business that is in competition with the Company Group, so long as the Executive has no active participation in the business of such corporation. The Company and the Executive acknowledge and agree that, (A) notwithstanding the restrictions contained in this Section 9(b), (1) Executive shall not be prohibited from accepting employment with any agency of the United States government (provided that, for the avoidance of doubt, the restrictions contained in this Section 9(b) shall be deemed to prohibit Executive

during the Restricted Period from participation, directly or indirectly, on behalf of the U.S. Air Force or the National Security Administration (or, for the avoidance of doubt, any other potential future employer) in any program in which any member of the Company Group was engaged, or planned to engage, during the Employment Term), and (2) neither the investments made as of the date hereof by Executive in convertible promissory notes issued by Anno.Ai Inc., a Delaware corporation ("Anno"), nor the conversion of any such note listed into equity interests of Anno pursuant to the terms of such note, shall be deemed to violate this Section 9(b); provided that Executive (x) shall hold such note or equity interests received as a result of any such conversion in a purely passive manner, (y) shall not have any role, directly or indirectly, in the day-to-day operations or decision-making of Anno, and (z) shall at no time during the Employment Term and for a period of one (1) year thereafter possess, directly or indirectly, individually or in the aggregate with any other Seller(s) (as defined in the Purchase Agreement), the power to direct or cause the direction of the management, operation or policies of Anno, whether through the ownership of voting securities, by contract or otherwise, and (B) in the event Executive desires to engage in an activity that falls within the scope of this Section 9(b), or with respect to which it is unclear whether such activity falls within the scope of thisSection 9(b), the Executive may request the Company's prior written consent to such activity and, if the Company, in its sole and absolute discretion, consents in writing to the Executive's requested activity, the Executive may undertake such activity to the extent of the Company's consent and will not be deemed to have violated this Section 9(b) on account thereof.

(c) **NONSOLICITATION; NONINTERFERENCE.**

(i) During the Employment Term and for a period of one (1) year thereafter, the Executive agrees that the Executive shall not, except in the furtherance of the Executive's duties hereunder, directly or indirectly, individually or on behalf of any other person, firm, corporation or other entity, solicit, aid or induce any individual or entity that is, or was during the twelve-month period immediately prior to the termination of the Executive's employment for any reason, a customer or supplier of the Company Group to purchase goods or services then sold by the Company Group from another person, firm, corporation or other entity, or stop supplying or purchasing, as applicable, or decrease the amount of goods, materials or services being supplied to or purchased from the Company Group, as applicable, or assist or aid any other persons or entity in identifying or soliciting any such customer or supplier.

(ii) During the Employment Term and for a period of one (1) year thereafter, the Executive agrees that the Executive shall not, except in the furtherance of the Executive's duties hereunder, directly or indirectly, individually or on behalf of any other person, firm, corporation or other entity, (A) solicit, aid or induce any employee, representative or agent of the Company Group to leave such employment or retention or to accept employment with or render services to or with any other person, firm, corporation or other entity unaffiliated with the Company Group or hire or retain any such employee, representative or agent, or take any action to materially assist or aid any other person, firm, corporation or other entity in identifying, hiring or soliciting any such employee, representative or agent, or (B) interfere, or aid or induce any other person or entity in interfering, with the relationship between the Company Group and any of their respective vendors, joint venturers or licensors. Any person described in this Section 9(c)(ii) shall be deemed covered by this Section 9(c)(ii) while so employed or retained and for a period of twelve (12) months thereafter.

(d) **MUTUAL NONDISPARAGMENT.** The Executive agrees not to make negative comments or otherwise disparage the Company or any of its affiliates or any of their officers, directors, employees, shareholders, agents or products, except as required by applicable law or order or in the course of filing a charge with a government agency or participating in its investigation. The Company agrees not to make, and agrees to instruct its officers, managers and directors not to make, negative comments about, or otherwise disparage, the Executive, except as required by applicable law or order or in the course of filing a charge with a government agency or participating in its investigation.

(e) INVENTIONS.

(i) The Executive acknowledges and agrees that all ideas, methods, inventions, discoveries, improvements, work products, developments or works of authorship ("Inventions"), whether patentable or unpatentable, (A) that relate to the Executive's work with the Company or any of its affiliates, made or conceived by the Executive, solely or jointly with others, during the Employment Term, or (B) suggested by any work that the Executive performs in connection with the Company or its affiliates, either while performing the Executive's duties with the Company or its affiliates or on the Executive's own time, shall belong exclusively to the Company (or its designee), whether or not patent applications are filed thereon. The Executive will keep full and complete written records (the "Records"), in the manner prescribed by the Company, of all Inventions, and will promptly disclose all Inventions completely and in writing to the Company. The Records shall be the sole and exclusive property of the Company, and the Executive will surrender them upon the termination of the Employment Term, or upon the Company's request. The Executive hereby irrevocably conveys, transfers and assigns to the Company the Inventions and all patents that may issue thereon in any and all countries, whether during or subsequent to the Employment Term, together with the right to file, in the Executive's name or in the name of the Company (or its designee), applications for patents and equivalent rights (the "Applications"). The Executive will, at any time during and subsequent to the Employment Term, make such applications, sign such papers, take all rightful oaths, and perform all acts as may be requested from time to time by the Company, at the Company's sole cost and expense, with respect to the Inventions. The Executive will also execute assignments to the Company (or its designee) of the Applications, and give the Company and its attorneys all reasonable assistance (including the giving of testimony) to obtain the Inventions for the Company's benefit, all without additional compensation to the Executive from the Company, but entirely at the Company's expense. Notwithstanding the foregoing, if Executive is required to provide testimony, Executive shall be reimbursed for all reasonable and documented out-of-pocket costs and expenses incurred by Executive in connection with travel to and from such testimony in accordance with the Company's expense reimbursement policy and, if required to provide testimony after the Employment Term, reasonably compensated for his time during such travel and testimony. If the Company is unable for any other reason to secure Executive's signature on any document for this purpose, then Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agent and attorney in fact, to act for and in Executive's behalf and stead to execute any documents and to do all other lawfully permitted acts in connection with the foregoing.

(ii) In addition, the Inventions will be deemed Work for Hire, as such term is defined under the copyright laws of the United States, on behalf of the Company and the Executive agrees that the Company will be the sole owner of the Inventions, and all underlying rights therein, in all media now known or hereinafter devised, throughout the universe and in perpetuity without any further obligations to the Executive. If the Inventions, or any portion thereof, are deemed not to be Work for Hire, the Executive hereby irrevocably conveys, transfers and assigns to the Company, all rights, in all media now known or hereinafter devised, throughout the universe and in perpetuity, in and to the Inventions, including, without limitation, all of the Executive's right, title and interest in the copyrights (and all renewals, revivals and extensions thereof) to the Inventions, including, without limitation, all rights of any kind or any nature now or hereafter recognized, including, without limitation, the unrestricted right to make modifications, adaptations and revisions to the Inventions, to exploit and allow others to exploit the Inventions and all rights to sue at law or in equity for any infringement, or other unauthorized use or conduct in derogation of the Inventions, known or unknown, prior to the date hereof, including, without limitation, the right to receive all proceeds and damages therefrom. In addition, the Executive hereby waives any so-called "moral rights" with respect to the Inventions. To the extent that the Executive has any rights in the results and proceeds of the Executive's service to the Company or its affiliates that cannot be assigned in the manner described herein, the Executive agrees to unconditionally waive the enforcement of such rights. The Executive hereby waives any and all currently existing and future monetary rights in and to the Inventions and all patents that may issue thereon, including, without limitation, any rights that would otherwise accrue to the Executive's benefit by virtue of the Executive being an employee of or other service provider to the Company.

(iii) The Executive shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with the Company any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. The Executive represents and warrants that he does not possess or own any rights in or to any confidential, proprietary or non-public information or intellectual property related to the business of the Company. The Executive shall comply with all relevant policies and guidelines of the Company regarding the protection of Confidential Information and intellectual property and potential conflicts of interest, provided same are consistent with the terms of this Agreement. The Executive acknowledges that the Company may amend any such policies and guidelines from time to time, and that the Executive remains at all times bound by their most current version.

(f) **RETURN OF COMPANY PROPERTY.** On the date of the Executive's termination of employment with the Company for any reason (or at any time prior thereto at the Company's request), the Executive shall return all property belonging to the Company or its affiliates (including, but not limited to, any Company-provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to the Company).

(g) **REASONABLENESS OF COVENANTS.** In signing this Agreement, the Executive gives the Company assurance that the Executive has carefully read and considered all of the terms and conditions of this Agreement, including the restraints imposed under this Section 9 hereof. The Executive agrees that these restraints are necessary for the reasonable and proper protection of the Company and its affiliates and their trade secrets and Confidential Information and that each and every one of the restraints is reasonable in respect to subject matter, length of time and geographic area, and that these restraints, individually or in the aggregate, will not prevent the Executive from obtaining other suitable employment during the period in which the Executive is bound by the restraints. The Executive agrees that, before providing services, whether as an employee or consultant, to any entity during the period of time that the Executive is subject to the constraints in Section 9(b) hereof, the Executive will provide a copy of this Agreement (including, without limitation, this Section 9) to such entity, and the Company shall be entitled to share a copy of this Agreement (including, without limitation, this Section 9) with such entity or any other entity to which the Executive performs services. The Executive acknowledges that each of these covenants has a unique, very substantial and immeasurable value to the Company and its affiliates and that the Executive has sufficient assets and skills to provide a livelihood while such covenants remain in force. The Executive further covenants that the Executive will not challenge the reasonableness or enforceability of any of the covenants set forth in this Section 9, and that the Executive will reimburse the Company and its affiliates for all costs (including reasonable attorneys' fees) incurred in connection with any action to enforce any of the provisions of this Section 9 if either the Company and/or its affiliates prevails on any material issue involved in such dispute or if the Executive challenges the reasonableness or enforceability of any of the provisions of this Section 9. It is also agreed that each of the Company's affiliates will have the right to enforce all of the Executive's obligations to that affiliate under this Agreement and shall be third party beneficiaries hereunder, including without limitation pursuant to this Section 9.

(h) **REFORMATION.** If it is determined by a court of competent jurisdiction in any state that any restriction in this Section 9 is excessive in duration or scope or is unreasonable or unenforceable under applicable law, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the laws of that state.

(i) **TOLLING.** In the event of any violation of the provisions of this Section 9, the Executive acknowledges and agrees that the post-termination restrictions contained in this Section 9 shall be extended by a period of time equal to the period of such violation, it being the intention of the parties hereto that the running of the applicable post-termination restriction period shall be tolled during any period of such violation.

(j) **SURVIVAL OF PROVISIONS.** The obligations contained in Sections 9 and 10 hereof shall survive the termination or expiration of the Employment Term and the Executive's employment with the Company and shall be fully enforceable thereafter.

10. **COOPERATION.** Upon the receipt of reasonable notice from the Company (including outside counsel), the Executive agrees that during the Employment Term and thereafter, the Executive will respond and provide information with regard to matters in which the Executive has knowledge as a result of the Executive's employment with the Company, and will provide reasonable assistance to the Company, its affiliates and their respective representatives in defense of any claims that may be made against the Company or its affiliates, and will provide reasonable assistance to the Company and its affiliates in the prosecution of any claims that may be made by the Company or its affiliates, to the extent that such claims may relate to the period of the Executive's employment with the Company (collectively, the "Claims"). The Company shall reimburse the Executive for all reasonable, out-of-pocket expenses incurred by the Executive in connection with any cooperation provided pursuant to this Section 10 and, if after the Employment Term, Executive shall be provided reasonable compensation for his time in providing assistance to the Company, its affiliates and their respective representatives in defense of any Claim. The Executive agrees that while employed by the Company and thereafter to promptly inform the Company if the Executive becomes aware of any lawsuits involving Claims that may be filed or threatened against the Company or its affiliates. The Executive also agrees to promptly inform the Company (to the extent that the Executive is legally permitted to do so) if the Executive is asked to assist in any investigation of the Company or its affiliates (or their actions) or another party attempts to obtain information or documents from the Executive (other than in connection with any litigation or other proceeding in which the Executive is a party-in-opposition) with respect to matters the Executive believes in good faith to relate to any investigation of the Company or its affiliates, in each case, regardless of whether a lawsuit or other proceeding has then been filed against the Company or its affiliates with respect to such investigation, and shall not do so unless legally required. During the pendency of any litigation or other proceeding involving Claims, the Executive shall not communicate with anyone (other than the Executive's attorneys and tax and/or financial advisors and except to the extent that the Executive determines in good faith is necessary in connection with the performance of the Executive's duties hereunder) with respect to the facts or subject matter of any pending or potential litigation or regulatory or administrative proceeding involving the Company or any of its affiliates without giving prior written notice to the Company or the Company's counsel.

11. **EQUITABLE RELIEF AND OTHER REMEDIES.** The Executive acknowledges and agrees that the Company's remedies at law for a breach or threatened breach of any of the provisions of Section 9 or Section 10 hereof would be inadequate and, in recognition of this fact, the Executive agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law, the Company, without posting any bond, shall be entitled to seek equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available, without the necessity of showing actual monetary damages or the posting of a bond or other security. In the event of a violation by the Executive of Section 9 or Section 10 hereof, any severance being paid to the Executive pursuant to this Agreement or otherwise shall immediately cease, and any severance previously paid to the Executive shall be immediately repaid to the Company.

12. **NO ASSIGNMENTS.** This Agreement is personal to each of the parties hereto. Except as provided in this Section 12 hereof, no party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party hereto. The Company may assign this Agreement to any successor to all or substantially all of the business and/or assets of the Company, provided that the Company shall require such successor to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the

Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company and any successor to its business and/or assets, which assumes and agrees to perform the duties and obligations of the Company under this Agreement by operation of law or otherwise.

13. **NOTICE**. For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered by hand, (b) on the date of transmission, if delivered by confirmed facsimile or electronic mail, (c) on the first business day following the date of deposit, if delivered by guaranteed overnight delivery service, or (d) on the fourth business day following the date delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

At the address (or to the facsimile number) shown
in the books and records of the Company.

If to the Company:
PCI Strategic Management, LLC
6811 Benjamin Franklin Drive
Columbia, MD 21046
Attention: Sean Battle
Email:

with a mandatory copy to (which shall not constitute notice to the Company):

AE Industrial Partners, LLC
2500 N. Military Trail, Suite 470
Boca Raton, FL 33431
Attention: Charlie Compton and Jeff Hart
Facsimile: [***]
Email:

and:

Kirkland & Ellis LLP
300 N LaSalle Street
Chicago, IL 60654
Attention: Jeremy S. Liss, P.C., Matthew S. Arenson, P.C. and Jeffrey P Swatzell
Facsimile: (312) 862-2200
Email: jeremy.liss@kirkland.com, matthew.arenson@kirkland.com and
jeffrey.swatzell@kirkalnd.com

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

14. **SECTION HEADINGS; INCONSISTENCY.** The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement. In the event of any inconsistency between the terms of this Agreement and any form, award, plan or policy of the Company, the terms of this Agreement shall govern and control.

15. **SEVERABILITY.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

16. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf or similar attachment to electronic mail, shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

17. **GOVERNING LAW**. THE LAW OF THE STATE OF DELAWARE SHALL GOVERN ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND ENFORCEABILITY OF THIS AGREEMENT AND THE SCHEDULES ATTACHED HERETO, AND THE PERFORMANCE OF THE OBLIGATIONS IMPOSED BY THIS AGREEMENT, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE.

18. ARBITRATION; WAIVER OF JURY TRIAL.

(a) Any dispute, controversy, or claim arising under or relating to this Agreement or any breach or threatened breach hereof ("Arbitrable Dispute") shall be resolved by final and binding arbitration administered by American Arbitration Association ("AAA"); provided, that nothing in this Section 18(a) shall prohibit a party from instituting litigation to enforce any Final Determination in any court of competent jurisdiction. Except as otherwise provided in this Section 18(a) or in the rules and procedures of AAA as in effect from time to time, the arbitration procedures and any Final Determination hereunder shall be governed by and shall be enforced pursuant to the Uniform Arbitration Act and applicable provisions of Delaware Law.

(b) In the event that any party asserts that there exists an Arbitrable Dispute, such party shall deliver a written notice to each other party involved therein specifying the nature of the asserted Arbitrable Dispute and requesting a meeting to attempt to resolve the same. If no such resolution is reached within thirty (30) days after such delivery of such notice, the party delivering such notice of Arbitrable Dispute (the "Disputing Person") may, within forty-five (45) days after delivery of such notice, commence arbitration hereunder by delivering to each other party involved therein a notice of arbitration (a "Notice of Arbitration") and by filing a copy of such Notice of Arbitration with the New York office of AAA. Such Notice of Arbitration shall specify the matters as to which arbitration is sought, the nature of any Arbitrable Dispute and the claims of each party to the arbitration and shall specify the amount and nature of any damages, if any, sought to be recovered as a result of any alleged claim, and any other matters required by the rules and procedures of AAA as in effect from time to time to be included therein, if any.

(c) Within twenty (20) days after receipt of the Notice of Arbitration, the parties shall use their best efforts to agree on an independent arbitrator expert in the subject matters of the Arbitrable Dispute (the "Arbitrator"). If the parties cannot agree on the identity of the Arbitrator, each of the parties to the Arbitrable Dispute shall select one independent arbitrator expert in the subject matter of the Arbitrable Dispute. In the event that any party fails to select an independent arbitrator as set forth herein within twenty (20) days after delivery of a Notice of Arbitration, then the matter shall be resolved by the arbitrator(s) selected by the other party(ies). The arbitrators selected by the parties to the Arbitrable Dispute shall select the Arbitrator, and the Arbitrator shall resolve the matter according to the procedures set forth in this Section 17.

(d) The Arbitrator selected pursuant to Section 18(c) shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration of any Arbitrable Dispute and the enforcement of its rights under this Agreement and, if the Arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the Arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration and the enforcement of its rights under this Agreement.

(e) The arbitration shall be conducted under the rules and procedures of AAA as in effect from time to time, except as otherwise set forth herein or as modified by the agreement of all of the parties. The arbitration shall be conducted in Baltimore, Maryland. The Arbitrator shall conduct the arbitration so that a final result, determination, finding, judgment and/or award (the "Final Determination") is made or rendered as soon as practicable, but in no event later than sixty (60) days after the delivery of the Notice of Arbitration nor later than ten (10) days following completion of the arbitration. The Final Determination must be agreed upon and signed by the Arbitrator. The Final Determination shall be final and binding on all parties hereto and there shall be no appeal from or reexamination of the Final Determination, except for fraud, perjury, evident partiality or misconduct by an arbitrator to correct manifest clerical errors.

(f) The parties hereto may enforce any Final Determination in any court of competent jurisdiction.

(g) Each party hereby irrevocably consents to the service of process by registered mail or personal service.

(h) If any party shall fail to pay the amount of any damages, if any, assessed against it within five (5) days after the delivery to such party of such Final Determination, the unpaid amount shall bear interest from the date of such delivery at the lesser of (i) twelve percent (12%) and (ii) the maximum rate permitted by applicable laws. Interest on any such unpaid amount shall be compounded monthly, computed on the basis of a 365 day year and shall be payable on demand. In addition, such party shall promptly reimburse the other party for any and all costs or expenses of any nature or kind whatsoever (including but not limited to all attorneys' fees and expenses) incurred in seeking to collect such damages or to enforce any Final Determination.

(i) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, SUIT OR PROCEEDING (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE (INCLUDING, FOR THE AVOIDANCE OF DOUBT, ANY SEEKING EQUITABLE RELIEF).

19. **MISCELLANEOUS.** No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and such officer or director of the Company as may be designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. This Agreement together with all exhibits hereto sets forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersedes any and all prior agreements or understandings between the Executive and the Company with respect to the subject matter hereof; provided that the restrictive covenants set forth in Sections 9 and 10 and other obligations contained in this Agreement are independent of, supplemental to and do not modify, supersede or restrict (and shall not be modified, superseded by or restricted by) any non-competition, non-solicitation, non-hire, non-disparagement confidentiality or other similar covenants in any other current or future agreement unless express written reference is made to the specific provisions hereof which are intended to be superseded. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement and any such other representations are hereby disclaimed. The Board shall resolve, in its sole discretion, any ambiguity regarding the application of any provision of this Agreement in the manner it deems equitable, practicable and consistent with this Agreement and applicable law.

20. **REPRESENTATIONS.** The Executive represents and warrants to the Company that (a) the Executive has the legal right to enter into this Agreement and to perform all of the obligations on the Executive's part to be performed hereunder in accordance with its terms, and (b) the Executive is not a party to any agreement or understanding, written or oral, and is not subject to any restriction, which, in either case, could prevent the Executive from entering into this Agreement or performing all of the Executive's duties and obligations hereunder.

21. **ACKNOWLEDGEMENT OF VOLUNTARY AGREEMENT.** THE EXECUTIVE HAS ENTERED INTO THIS AGREEMENT FREELY AND WITHOUT COERCION, THE EXECUTIVE HAS BEEN ADVISED BY THE COMPANY TO CONSULT WITH COUNSEL OF THE EXECUTIVE'S CHOICE WITH REGARD TO THE EXECUTION OF THIS AGREEMENT AND THE EXECUTIVE'S COVENANTS HEREUNDER, THE EXECUTIVE HAS HAD AN ADEQUATE OPPORTUNITY TO CONSULT WITH SUCH

COUNSEL AND EITHER SO CONSULTED OR FREELY DETERMINED IN THE EXECUTIVE'S OWN DISCRETION NOT TO SO CONSULT WITH SUCH COUNSEL, THE EXECUTIVE UNDERSTANDS THAT THE COMPANY HAS BEEN ADVISED BY COUNSEL, AND THE EXECUTIVE HAS READ THIS AGREEMENT AND FULLY AND COMPLETELY UNDERSTANDS THIS AGREEMENT AND EACH OF THE EXECUTIVE'S REPRESENTATIONS, WARRANTIES, COVENANTS AND OTHER AGREEMENTS HEREUNDER. KIRKLAND & ELLIS LLP ("K&E LLP") HAS NOT AND IS NOT REPRESENTING THE EXECUTIVE IN CONNECTION WITH THIS AGREEMENT, AND K&E LLP HAS NOT AND IS NOT PROVIDING ANY ADVICE OR COUNSEL (INCLUDING LEGAL ADVICE OR COUNSEL) TO THE EXECUTIVE IN CONNECTION WITH THIS AGREEMENT. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED AS HAVING BEEN DRAFTED JOINTLY BY THE EXECUTIVE AND THE COMPANY AND NO PRESUMPTION OR BURDEN OF PROOF SHALL ARISE FAVORING OR DISFAVORING ANY PARTY HERETO BY VIRTUE OF THE AUTHORSHIP OF ANY OR ALL OF THE PROVISIONS OF THIS AGREEMENT.

22. TAX MATTERS.

(a) **WITHHOLDING.** The Company may withhold from any and all amounts payable under this Agreement or otherwise such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation. In the event that the Company fails to withhold any taxes required to be withheld by applicable law or regulation, the Executive agrees to indemnify the Company for any amount paid with respect to any such taxes, together with any interest, penalty and/or expense related thereto.

(b) SECTION 409A COMPLIANCE.

(i) The intent of the parties is that payments and benefits under this Agreement comply with Internal Revenue Code Section 409A and the regulations and guidance promulgated thereunder (collectively "Code Section 409A") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. In no event whatsoever shall the Company be liable for any additional tax, interest or penalty that may be imposed on the Executive by Code Section 409A or damages for failing to comply with Code Section 409A.

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Code Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." Notwithstanding anything to the contrary in this Agreement, if the Executive is deemed on the date of termination to be a "specified employee" within the meaning of that term under Code Section 409A(a)(2)(B), then with regard to any payment or the provision of any benefit that is considered deferred compensation under Code Section 409A payable on account of a "separation from service," such payment or benefit shall not be made or provided until the date which is the earlier of (A) the expiration of the six (6)-month period measured

from the date of such "separation from service" of the Executive, and (B) the date of the Executive's death, to the extent required under Code Section 409A. Upon the expiration of the foregoing delay period, all payments and benefits delayed pursuant to this Section 22(b)(ii) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

(iii) To the extent that reimbursements or otherin-kind benefits under this Agreement constitute "nonqualified deferred compensation" for purposes of Code Section 409A, (A) all such expenses or other reimbursements hereunder shall be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by the Executive, (B) any right to such reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (C) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

(iv) For purposes of Code Section 409A, the Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of the Company.

(v) Notwithstanding any other provision of this Agreement to the contrary, in no event shall any payment under this Agreement that constitutes "nonqualified deferred compensation" for purposes of Code Section 409A be subject to offset by any other amount unless otherwise permitted by Code Section 409A.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

COMPANY:

PCI STRATEGIC MANAGEMENT, LLC

By: /s/ Sean Battle
Name: Sean Battle
Title: Chief Executive Officer

EXECUTIVE:

/s/ Joshua Kinley
Joshua Kinley

Exhibit 10.19

NuWave Solutions Holdings, LLC
c/o AE Industrial Partners, LLC
2500 N. Military Trail, Suite 470
Boca Raton, Florida 33431

May 22, 2020

Attention: Mr. Reginald Brothers

Re: Employment Offer

Dear Reginald:

On behalf of AE Industrial Partners Fund II, L.P. ("AE"), we are pleased to present this offer letter to you (this "Agreement") summarizing the details related to the offer of employment for the position of Chief Executive Officer of NuWave Solutions Holdings, LLC (the "Company"). Subject to your timely execution of this Agreement and the successful completion of a transaction with NuWave Solutions, LLC (the "Target Company"), your employment with the Company will commence immediately after the closing of the acquisition of the Target Company (the "Effective Date"). This Agreement will be binding immediately upon its timely execution by you.

Title

Your title and position will be Chief Executive Officer, reporting directly to the Board of Managers of the Company.

Location

You will be headquartered at the Company's office in McLean, VA.

Compensation

- **Base Salary –** Effective on the Effective Date, your base salary will be $300,000 (USD) per year, less applicable withholdings, that will be paid semi-monthly in accordance with the Company's normal payroll procedures. You should note that the Company may modify job titles and benefits from time to time as it deems necessary, in its sole discretion. There will be an opportunity for your compensation to increase as the Company continues to grow and meet its growth objectives, and your compensation will be reevaluated periodically for such increases, at the sole discretion of the Board of Managers of the Company.
- **Annualized Bonus –** You will be eligible to receive an annual bonus in an amount up to 70% of your base salary, the final amount of which will be dependent upon achievement of business goals, at the sole discretion of the Board of Managers of the Company.
- **Incentive Equity –** Upon the approval and establishment of a Management Incentive Equity Plan of the Company, you will be granted incentive units of the Company amounting to 15% of the management incentive equity pool, which translates to 1.5% of the total equity of the Company based off AE's estimated initial investment (the "Grant"). The Grant will set forth applicable vesting and forfeiture terms and any other terms and conditions deemed necessary or desirable to drive Company success. In addition, you may be eligible to receive additional equity or long-term incentive awards under any other applicable incentive plan adopted by the Company pursuant to which other c-suite employees are generally eligible to receive such awards. The level of your participation in such plan(s), if any, shall be determined in the sole discretion of the Board of Managers of the Company from time to time.

- **Benefits –** As a Company employee, as of the Effective Date, you shall be eligible to participate in any employee benefit plans, including any tax-qualified retirement plan, currently and hereafter maintained by the Company of general applicability to other similarly situated Company c-suite employees.

Employment Relationship

The Company looks forward to a beneficial and productive relationship. Nevertheless, your employment with the Company will be for no specific period and you or the Company may terminate the employment relationship at any time, with or without Cause (as defined below), and with or without notice and for any reason or no particular reason, and without the need to make any additional payments, except as expressly set forth below in the section of this Agreement titled "Termination Without Cause". Although your compensation and benefits may change from time to time, the nature of your employment as described in this paragraph and the section below titled "Termination" may only be changed by an express written agreement approved by the Board of Managers of the Company and signed by another executive of the Company and you. Your employment will be subject to the Company's personnel policies and procedures in effect from time to time.

Termination

- **Definitions.** As used in this Agreement:
  - "Cause" means, with respect to you, one or more of the following, as determined by the Board of Managers of the Company in its sole discretion: (i) the commission of a felony or other crime involving moral turpitude; (ii) the commission of any act or omission involving moral turpitude, dishonesty or fraud; (iii) the commission of any act or omission which is significantly injurious to the Company or any of its subsidiaries or other affiliates; (iv) reporting to work under the influence of alcohol or illegal drugs, or the use of illegal drugs or the illegal use of legally controlled substances (whether or not at the workplace) or other conduct causing the Company or any of its subsidiaries or other affiliates public disgrace or disrepute or significant economic harm, whether if in conjunction with the performance of any duties for the Company or any of its subsidiaries or other affiliates, or otherwise; (v) failure to perform duties as reasonably directed by the Board of Managers of the Company; (vi) any act or omission aiding or abetting a competitor, supplier or customer of the Company or any of its subsidiaries or other affiliates to the disadvantage or detriment of the Company or any of its subsidiaries or other affiliates; (vii) breach of any fiduciary duty, gross negligence or willful misconduct with respect to the Company or any of its subsidiaries or other affiliates; or (viii) any breach of the provisions set forth in Appendix A to this Agreement or any other material breach of this Agreement or any policies or procedures of the Company.
  - "Disability" means your inability to perform your essential job duties, with or without a reasonable accommodation that does not impose an undue hardship, with the Company for sixty (60) consecutive days or for a total of ninety (90) days in any twelve (12)-month period, in either case, as a result of a mental or physical impairment.
  - "Liquidity Event" means (i) the sale, lease, transfer, conveyance or other disposition, in one transaction or a series of related transactions, of all, substantially all, or a majority of the assets of (x) the Company or (y) any of its subsidiaries (in each case, including by way of merger, consolidation, recapitalization, reorganization or sale of securities), (ii) a transaction or series of related transactions (including by way of merger, consolidation, recapitalization, reorganization or sale of securities) the result of which is that the equityholders of the Company or the equityholders of any subsidiary of the Company are, after giving effect to such transaction (or series of related transactions), no longer, in the aggregate, the beneficial owners of more than 50% of the voting power of the outstanding voting securities of the Company or such subsidiary, or (iii) a sale of the equity interests of the Company or any of its subsidiaries to the public pursuant to an offering registered under the Securities Act and filed with the Securities and Exchange Commission.

- **Termination Without Cause**. If you incur a "separation from service" from the Company (within the meaning of Section 409A(a)(2)(A)(i) of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulation Section 1.409A-1(h)) (a "Separation from Service") during your period of employment by the Company (the "Employment Period") by reason of a termination of your employment by the Company without Cause (other than by reason of your resignation, death or Disability), (1) you shall be entitled to receive your base salary (as in effect on the date of the Separation from Service) for a period of six (6) months following the date of your Separation from Service, which shall be paid in accordance with the normal payroll practices of the Company (the "Severance Payments") and (2) the "Post-Employment Restricted Period", as such term is used in Appendix A, shall mean a period of six (6) months immediately following the last day of your Employment Period. Notwithstanding the foregoing: (x) it shall be a condition to your right to receive the Severance Payments that you execute and deliver to the Company an effective general release of claims in a form prescribed by the Company (the "Release") within twenty-one (21) days (or, to the extent required by law, forty-five (45) days) following the date of your Separation from Service and that you not revoke such Release during any applicable revocation period, and (y) in the event you breach any of the provisions set forth in Appendix A, the Company shall not be obligated to pay, and you shall not have any right to receive, any further Severance Payments. Upon execution and delivery of the Release, payment of the Severance Payments shall begin no later than ninety (90) days after the date of your Separation from Service. Notwithstanding the foregoing, if the above-referenced 90-day period begins in one taxable year for you and ends in a second taxable year for you, the Severance Payments shall begin in the second taxable year (and within such 90-day period) as required under Code Section 409A.

- **Resignation in Connection with a Liquidity Event.** If you incur a Separation from Service during the Employment Period by reason of your resignation and such resignation occurs within 120 days of a Liquidity Event, the "Post-Employment Restricted Period", as such term is used in Appendix A, shall mean a period of twenty-four (24) months immediately following your Employment Period. For the avoidance of doubt, the Company shall not owe you any payments in connection with such resignation.

- **Other Resignation or Termination.** If you incur a Separation from Service during the Employment Period by reason of the Company's termination of you for Cause, your resignation (that does not occur within 120 days of a Liquidity Event), your Disability or for any other circumstances other than those described above under the headings "Termination Without Cause" or "Resignation in Connection with a Liquidity Event", the "Post-Employment Restricted Period", as such term is used in Appendix A, shall mean a period of six (6) months immediately following your Employment Period. For the avoidance of doubt, the Company shall not owe you any payments in connection with such Separation from Service.

- **Six-Month Delay.** To the maximum extent permitted under Section 409A of the Code, the Severance Payments are intended to comply with the "separation pay exception" under Treas. Reg. § 1.409A-l(b)(9)(iii). To the extent the overall amount and/or timing of Severance Payments do not qualify for the "severance pay exception," then notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including without limitation the Severance Payments, shall be paid to you during the six (6)-month period following your Separation from Service if the Company determines that paying such amounts at the time or times indicated in this

Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six (6)-month period (or such earlier date upon which such amount can be paid under Section 409A of the Code without resulting in a prohibited distribution, including as a result of your death), the Company shall pay you a lump-sum amount equal to the cumulative amount that would have otherwise been payable to you during such delay period (without interest).

Restrictive Covenants

By execution of this Agreement, you agree to be bound by the provisions set forth in Appendix A attached hereto, including the confidentiality, invention assignment and restrictive covenants set forth therein, which Appendix A is incorporated into this Agreement by reference as if fully set forth herein. The Company agrees to be bound by the non-disparagement provision set forth in Appendix A.

Employment Taxes

All payments made pursuant to this Agreement shall be subject to withholding of applicable deductions and withholdings for income and employment taxes. The Company shall not be obligated to compensate you or provide you with any gross-up amounts for any taxes, including excise or other federal and state taxes owed by you as a result of such payments.

Pre-Employment Documentation

For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or our employment relationship with you may be terminated.

No Conflicts

We also ask that, if you have not already done so, you disclose to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or limit the manner in which you may be employed. This includes the existence of any restrictive covenant agreements you may have with any prior employer. It is the Company's understanding that any such agreements will not prevent you from performing the duties of your position.

Code Section 409A Compliance

It is intended that the provisions of this Agreement are either exempt from or comply with the terms and conditions of Section 409A of the Code and to the extent that the requirements of Section 409A of the Code are applicable thereto, all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A of the Code. Notwithstanding the foregoing, the Company shall have no liability with regard to any failure to comply with Section 409A of the Code. If under this Agreement, an amount is to be paid in two or more installments, for purposes of Section 409A of the Code each installment shall be treated as a separate payment. Notwithstanding anything herein to the contrary or otherwise, except to the extent any expense, reimbursement or in-kind benefit provided pursuant to this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A of the Code and the regulations and other guidance thereunder: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided to Employee during any calendar year will not affect the amount of expenses eligible for reimbursement or in-kind benefits provided to Employee in any other calendar year; (ii) the reimbursements for expenses for which Employee is entitled to be reimbursed shall be made on or before the last day of the calendar year following the calendar year in which the applicable expense is incurred; and (iii) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit.

Miscellaneous

To accept the Company's offer, please sign and date this Agreement in the space provided below. This Agreement sets forth the terms of your employment with the Company and supersedes any prior representations or agreements including, but not limited to, any representations made during your recruitment, interviews or preemployment negotiations, whether written or oral, or during the period during which you served as a consultant to the Company. This Agreement, including, but not limited to, its "Employment Relationship" and "Termination" provisions, may not be modified or amended except by a written agreement that is approved by the Board of Managers of the Company and signed by another executive of the Company and you. This Agreement will terminate if it is not accepted, signed and returned by you by May 29, 2020.

Reginald, we are very excited about your becoming Chief Executive Officer and I look forward to you joining our team. We have a great opportunity to take the Company to a new level of performance.

Sincerely,

NUWAVE SOLUTIONS HOLDINGS LLC

By: /s/ Kirk Konert
Name: Kirk Konert
Title: President

Agreed to and accepted:

I have read and understood, and I accept all the terms of this Agreement. I have not relied on any agreements or representations, express or implied, that are not set forth expressly in this Agreement, and I understand that this Agreement supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter of this Agreement.

Signature: /s/ Reginald Brothers
Printed Name: **Reginald Brothers**
Date: 5/27/20

Appendix A

1. Restrictive Covenants. You (the "Executive") acknowledge that in the course of Executive's employment with the Company, the Executive will become familiar with the trade secrets and other Confidential Information (as defined below) of the Company, its subsidiaries and its affiliates (collectively, the "Company Parties") and that the Executive's services will be of special, unique and extraordinary value to the Company Parties. Therefore, the Executive agrees that, in order to protect and preserve the trade secrets, Confidential Information, and customer and client relationships and goodwill of the Company (collectively, the "legitimate business interests"), it is reasonably necessary for the Executive to agree to certain restrictions as set forth in this Appendix A. The Executive agrees that: (1) the length of time of the restrictions in this Appendix A is reasonable; (2) the geographic area covered by the restrictions of this Appendix A is reasonable; (3) the restrictions of this Appendix A afford fair protection to the Company Parties; (4) the extent of the restraint on the Executive under this Appendix A is reasonably necessary for the protection of the legitimate business interests of the Company Parties; (5) that the restrictions of this Appendix A do not interfere with the public interest; and (6) the restrictions in this Appendix A are supported by good and valuable consideration. To the extent Executive interacts with, performs services for, serves as an officer, director or manager of, or receives or has access to Confidential Information of any Company Party in addition to the Company, the definition of "Company" for purposes of this Appendix A shall also include any such additional Company Party.

(a) Confidential Information.

(i) The Executive acknowledges that the information, observations and data (including trade secrets) previously obtained, or to be obtained, by him during the course of Executive's employment with the Company (and/or other Company Parties) concerning the business or affairs of the Company Parties or their predecessors and their respective affiliates ("Confidential Information") are the property of the Company (or such other Company Parties or affiliates, as applicable), including information concerning acquisition opportunities in, or reasonably related to, the Company's business or industry of which the Executive becomes or has become aware during such employment. Therefore, the Executive agrees that the Executive will not disclose or use any Confidential Information for any purpose other than for the benefit of the Company Parties in connection with the Executive's performance of duties under this Agreement, unless and to the extent that the Confidential Information is required to be disclosed pursuant to any applicable law or court order.

(ii) The Executive acknowledges that all client and customer lists, supplier lists, discoveries, concepts, ideas, inventions, innovations, improvements, developments, methods, processes, programs, designs, analyses, drawings, reports, patent applications, copyrightable work and mask work (whether or not including any Confidential Information) and all registrations or applications related thereto, all other proprietary information and all similar or related information (whether or not patentable) that relate to any Company Party's or any of their respective affiliates' actual or anticipated business, research and development, or existing or future products or services and that are conceived, developed, contributed to, made, or reduced to practice by the Executive (either solely or jointly with others) while employed by any Company Party or any of their predecessors (including any of the foregoing that constitutes any proprietary information or records) ("Work Product") belong to the Company or such applicable other Company Party, and the Executive acquires no proprietary interest in the Work Product. The Executive hereby assigns, and agrees to assign, all of the above Work Product to the Company or such applicable other Company Party. Any copyrightable work prepared in whole or in part by the Executive in the course of the Executive's work for any of the foregoing entities shall be deemed a "work made for hire" under the copyright laws, and the Company or such applicable other Company Party shall own all rights therein. To the extent that any such copyrightable work is not a "work made for hire," the Executive hereby assigns and agrees to assign to such Company Party all right, title, and interest,

including without limitation, copyright in and to such copyrightable work. The Executive shall promptly disclose such Work Product and copyrightable work to the board of managers of the Company and perform all actions reasonably requested by such board of managers of the Company (whether during or after the Executive's employment with the Company) to establish and confirm such Company Party's ownership (including, without limitation, assignments, consents, powers of attorney, and other instruments).

(iii) The Executive understands that the Company Parties and their respective affiliates will receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the part of such Company Party and/or affiliate to maintain the confidentiality of such information and to use it only for certain limited purposes. Without in any way limiting the provisions of Appendix A(a)(i) above, the Executive will hold Third Party Information in the strictest confidence and will not disclose Third Party Information to anyone (other than personnel, representatives and consultants of the Company Parties who need to know such information in connection with their work for the Company Parties) or use, except in connection with the Executive's work for the Company Parties, Third Party Information unless expressly authorized by the board of managers of the Company in writing.

(iv) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (A) is made (x) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and (y) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Should Executive file a lawsuit for retaliation by an employer for reporting a suspected violation of law Executive may disclose the trade secret to the Executive's attorney and use the trade secret information in the court proceeding, if Executive: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

(b) Return of Company Property. The Executive will deliver to the Company at the termination or expiration of his employment with the Company, or at any other time the Company may request, all equipment, files, property, memoranda, notes, plans, records, reports, computer tapes, printouts, Confidential Information, Work Product, software, documents and data (and all electronic, paper or other copies thereof) belonging to any Company Party or any of their respective affiliates, which the Executive may then possess or have under the Executive's control.

(c) Nondisparagement. The Executive agrees that he will not at any time (whether during or after the Executive's employment with the Company) publish or communicate to any person or entity any Disparaging (as defined below) remarks, comments or statements concerning any Company Party, or its respective affiliates, directors, officers, shareholders, employees, agents, attorneys, successors or assigns. The Company agrees that it will not at any time (whether during or after the Executive's employment with the Company) publish or communicate to any person or entity any Disparaging remarks, comments or statements concerning Executive. "Disparaging" remarks, comments or statements are those that impugn the character, honesty, integrity or morality or business acumen or abilities in connection with any aspect of the operation of business of the individual or entity being disparaged. Notwithstanding the foregoing, it shall not be deemed a violation Section 1(c) if the Executive or the Company makes truthful statements (i) that are required by any applicable law or (ii) in connection with any legal process.

(d) Non-Competition and Non-Solicitation.

(i) During the Employment Period and the applicable Post-Employment Restricted Period (collectively, the "Restricted Period"), the Executive shall not engage or participate, directly or indirectly, as principal, agent, executive, director, manager, officer, proprietor, joint venturer, trustee, employee, employer, consultant, stockholder, equityholder, partner or in any other capacity whatsoever, in the conduct or management of, or fund, invest in, lend to, own any stock or any other equity or debt investment in, or provide any services of any nature whatsoever to or in respect of, any business that is competitive with or in the same line of business as the Business (as hereinafter defined) within the Restricted Territory (as hereinafter defined), provided that nothing herein shall prevent the Executive from making, or continuing any existing or future, passive investments of less than two percent (2%) of the outstanding stock of any publicly-traded company. For purposes of this Appendix A: (A) "Business" means all activities conducted or in planning by Company Parties or any of their subsidiaries during the Employment Period; and (B) "Restricted Territory" means the United States of America.

(ii) During the Restricted Period, the Executive shall not, directly or indirectly, for the benefit of the Executive or for the benefit of any Person other than any Company Party, (A) solicit, or assist any Person to solicit, any officer, director, manager, executive, employee or consultant of any Company Party or any of their respective affiliates to leave his employment, (B) hire or cause to be hired any Person who is then, or who will have been at any point in time during the Restricted Period, an officer, director, manager, executive, employee or consultant of any Company Party or any of their respective affiliates, or (C) engage or cause to be engaged any Person who is then, or who will have been at any point in time during the Restricted Period, an officer, manager, director, executive, employee or consultant of any Company Party or any of their respective affiliates as a partner, contractor, sub-contractor or consultant.

(iii) During the Restricted Period, the Executive will not, directly or indirectly (A) solicit, or assist any Person to solicit, any Person that is an existing or potential client, customer or supplier of any Company Party or any of their respective affiliates, or has been a client, customer or supplier of any Company Party or any of their respective affiliates during the prior twelve (12) months, to provide any products and/or services competitive with those provided by any Company Party or (B) interfere with any of the business relationships of any Company Party or any of their respective affiliates with any potential client, customer or supplier or any client, customer, or suppler that has transacted business with the Company Party within the prior twelve (12) months. Following the Employment Period, Executive agrees and covenants that Executive shall not use the trade secrets or Confidential Information of any Company Party or any of their respective affiliates to directly or indirectly solicit the clients, customers or suppliers of any Company Party or any of their respective affiliates, or to interrupt, disturb or interfere with the relationships of any Company Party or any of their respective affiliates with their clients, customers or suppliers, including potential client, customers and suppliers and those clients, customers and suppliers with whom the Company Party has transacted business within the prior twelve (12) months. For purposes of this paragraph, a "potential client, customer or supplier" is one to whom a Company Party has made a proposal within the prior six (6) months to engage in business together.

(e) The Executive acknowledges that the above covenants are manifestly reasonable on their face, and the parties expressly agree that such restrictions are reasonably necessary for the protection of the Company Parties' legitimate business interests and are a significant element of the consideration hereunder.

(f) If the final judgment of a court of competent jurisdiction declares that any term or provision of this Appendix A is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Appendix A shall be enforceable as so modified to cover the maximum duration, scope or area permitted by law.

(g) In order to assure the Company that the Company will retain the value of its operations, the Executive covenants not to utilize the Executive's special knowledge of such business operations and the Executive's relationships with customers and suppliers to compete with any Company Party or any of their respective affiliates. The Executive further acknowledges that: (A) the Executive is engaged in, is knowledgeable about, and provides services in connection with all aspects of the Business; (B) the agreements and covenants contained in this Appendix A are reasonably necessary to protect the value and goodwill of the Business; and (C) the provisions contained in this Appendix A are integral to the transactions set forth in the Agreement to which this Appendix A is attached and that the Company would not enter into such transactions without the protections afforded by this Appendix A.

(h) Remedies. This Appendix A shall be governed and construed in accordance with the statutory and decisional law of the State of Florida, without regard to conflicts of laws. Executive consents and agrees that if he violates any covenants contained in this Appendix A, the Company would sustain irreparable harm and, therefore, in addition to any other remedies which may be available to it, the Company shall be entitled to an injunction restraining Executive from committing or continuing any such violation of this Appendix A. Nothing in this Appendix A shall be construed as prohibiting the Company from pursuing any other remedy or remedies including, without limitation, recovery of damages. Executive acknowledges that the Company Parties and their respective affiliates are express third-party beneficiaries of this Appendix A and that they may enforce these rights and this Appendix A as third party beneficiaries. These restrictive covenants shall be construed as independent agreements, and the existence of any claim or cause of action of the Executive against the Company, whether predicated upon the Agreement to which this Appendix A is attached or otherwise, shall not constitute a defense to the enforcement by the Company of any restrictive covenant. The failure of the Company to enforce the covenants of this Appendix A against any other employee shall not constitute a waiver or estoppel defense to the enforcement of the covenants of this Appendix A against Executive. In the event of the breach by Executive of any of the provisions of this Appendix A, the Company shall be entitled, in addition to all other available rights and remedies, to withhold any or all of the amounts agreed to be paid to the Executive in the Agreement to which this Appendix A is attached and the Company shall also be entitled to terminate his employment status and the provision of any benefits and compensation conditioned upon such status, but all of Executive's obligations under the Agreement to which this Appendix A is attached, and this Appendix A, shall continue in full force and effect. Executive shall not be entitled to any payments pursuant to the Agreement to which this Appendix A is attached during any period in which Executive is violating any of his obligations under this Appendix A. The Company may assign the restrictive covenants set forth in this Appendix A in connection with the acquisition of all or a part of the assets of the Company or any other Company Party, and any such assignee or successor shall be entitled to enforce the rights and remedies set forth in this Appendix A. Executive acknowledges and agrees that the Restricted Period shall be tolled on a day-for-day basis for all periods in which Executive is found to have violated the terms of this Appendix A so that the Company receives the full benefit of the Restricted Period to which Executive has agreed.

(i) Survival. Notwithstanding anything to the contrary set forth herein, the provisions of this Appendix A shall survive the termination or cessation of the Agreement to which this Appendix A is attached or Executive's employment in accordance with their terms, irrespective of the reason for such termination or cessation. Executive shall disclose the restrictions set forth in this Appendix A to any subsequent employer or potential employer.

(j) Attorney's Fees. In the event that any dispute between the parties relating to this Appendix A should result in litigation, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

Exhibit 16.1

BPM

10 Almaden Boulevard, Suite 1000, San Jose, CA 95113

Phone 408-961-6300 | **Fax** 408-961-6324 | bpm@bpmcpa.com

December 13, 2021

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Ladies and Gentlemen:

We have read the statements made by BigBear.ai Holdings, Inc. (formally known as GigCapital4, Inc.) included under Item 4.01 of itsForm 8-K dated December 13, 2021. We agree with the statements concerning our Firm under Item 4.01. We are not in a position to agree or disagree with other statements contained therein.

Sincerely,

/s/ BPM LLP

San Jose, California

bpmcpa.com

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The following unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X, as amended by the final rule, Release No. 33-10786 "Amendments to Financial Disclosures about Acquired and Disposed Businesses."

Introduction

GigCapital4 is a Private-to-Public Equity ("*PPE*")™ company, also known as a blank check company or special purpose acquisition company, formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses.

AE Industrial Partners ("*AE*") is a private equity firm specializing in aerospace, defense, space and government services, power generation, and specialty industrial markets. On May 22, 2020, AE formed a series of acquisition vehicles, which included Lake Parent, LLC ("*Lake Parent*"), BigBear.ai Holdings, LLC, ("*BigBear*"), BigBear.ai Intermediate Holdings, LLC ("*BigBear Intermediate*") and BigBear.ai, LLC, ("*BigBear.ai*"), with Lake Parent being the top holding company. BigBear.ai and BigBear Intermediate are wholly owned subsidiaries of BigBear. Upon the formation of these acquisition vehicles, a number of acquisitions were effected:

- on June 19, 2020, BigBear.ai acquired NuWave Solutions, LLC ("*NuWave*") (the "*NuWave Acquisition*");
- on December 2, 2020, NuWave entered into an agreement with Open Solutions Group, LLC ("*Open Solutions*") to acquire 100% of its equity (the "*Open Solutions Acquisition*"); and
- on December 21, 2020, NuWave acquired the Government Services division of ProModel Government Services, Inc. ("*ProModel"*) (the "*ProModel Acquisition"*).

Separately, on October 8, 2020, AE formed a second series of acquisition vehicles, which included BBAI Ultimate Holdings, LLC (formerly known as PCISM Ultimate Holdings, LLC) ("*Ultimate*"), PCISM Intermediate Holdings, LLC, PCISM Intermediate II Holdings, LLC, and PCISM Holdings, LLC. On October 23, 2020 Ultimate acquired PCI Strategic Management, LLC ("*PCI*" or "*Predecessor*") (the "*PCI Acquisition"*). On December 21, 2020, BigBear.ai acquired 100% of the equity of PCI in a series of transactions, which resulted in BigBear being a wholly owned subsidiary of Ultimate. This transaction left Lake Parent with no assets or operations, and it was dissolved.

BigBear and its wholly owned subsidiaries, including NuWave, PCI, Open Solutions, and ProModel after their respective acquisition dates, are referred to as the "Successor".

Description of the Business Combination

On June 4, 2021, GigCapital4, Inc. (the *"Company"*), GigCapital4 Merger Sub Corporation ("*Merger Sub*"), BigBear, and Ultimate entered into an Agreement and Plan of Merger ("*Merger Agreement*"). On December 3, 2021, the Merger Agreement was approved by Company stockholders at the Special Meeting and (i) Merger Sub merged with and into BigBear, with BigBear surviving the first merger and becoming a wholly-owned subsidiary of the Company, and (ii) immediately after the First Merger, BigBear (as the surviving company of the First Merger) merged with and into the Company, with the Company surviving the second merger (the "*Second Merger*", and together with the First Merger, the "*Business Combination*"). Herein, "*New BigBear*" refers to GigCapital4 after giving effect to the Business Combination.

Subject to the terms and conditions set forth in the Merger Agreement, at the time of the First Merger (the "*First Effective Time*"), all units of limited liability company interest of BigBear issued and outstanding immediately prior to the First Effective Time (other than units held in BigBear's treasury or owned by GigCapital4, Merger Sub or BigBear immediately prior to the First Effective Time) were cancelled and automatically deemed for all purposes to represent the right to receive, the "Aggregate Merger Consideration", consisting of: (i) $75,000,000 (the "*Cash Merger Consideration*"), and (ii) in book entry, a number of shares of GigCapital4 common stock, equal to the result of dividing (i) the difference of (A) $1,312,100,000, *minus* (B) $75,000,000, *by* (ii) 10.00 (rounded up to the nearest whole number of shares) (the "*Equity Merger Consideration*"). Ultimate, as the sole member of BigBear, was paid the Aggregate Merger Consideration.

In connection with the foregoing and concurrently with the execution of the Merger Agreement, GigCapital4 has obtained commitments from certain investors (the "*Convertible Note Investors*") for the purchase from GigCapital4 of certain convertible senior notes (the "*Convertible Notes*"), pursuant to the terms of one or more convertible note subscription agreements (each, a "*Convertible Note Subscription Agreements*"), subject to the terms of an indenture entered into in connection with the closing of the Business Combination (the "*Closing*") between GigCapital4 and Wilmington Trust, National Association, a national banking association, in its capacity as trustee thereunder (the "Indenture"), such note financing (the "Note Financing") was consummated immediately prior to the consummation of the transactions contemplated by the Merger Agreement.

At the time of the Second Merger (the "*Second Effective Time*"), all units of limited liability company interest of BigBear issued and outstanding immediately prior to the Second Effective Time were cancelled and cease to exist without any conversion thereof or payment therefor, and the capital stock of the Company outstanding immediately prior to the Second Effective Time remains outstanding as the capital stock of the Company, which, collectively with the Convertible Notes and the warrants entitling the holders to purchase one share of GigCapital4 Common Stock per warrant ("*GigCapital4 Warrants"*), constitute one hundred percent (100%) of the outstanding equity securities (and securities convertible into equity securities) of the Company immediately after the Second Effective Time.

Immediately prior to the closing of the transactions contemplated by the Note Subscription Agreements and the completion of the Business Combination, the authorized capital stock of GigCapital4 consisted of 501,000,000 shares of capital stock, including (i) 500,000,000 shares of GigCapital4 common stock, and (ii) 1,000,000 shares of GigCapital4 preferred stock of which GigCapital4 has committed to issue up to 17,391,304 shares of GigCapital4 common stock (subject to adjustment as provided in the Indenture) and zero shares of GigCapital4 preferred stock to the Note Investors upon conversion of the principal amount of the Notes in accordance with the Note Subscription Agreements and the Indenture, and GigCapital4 will have up to 12,326,513 warrants issued and outstanding, of which (i) up to 283,333 will be issued to the Sponsor and (ii) 12,326,513 GigCapital4 warrants will entitle the holder thereof to purchase GigCapital4 common stock at an exercise price of $11.50 per share on the terms and conditions set forth in the applicable warrant agreement.

Accounting for the Business Combination

The Business Combination was accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with United States ("*U.S."*) generally accepted accounting principles ("*GAAP"*). Under this method of accounting, GigCapital4 was treated as the "acquired" company for financial reporting purposes. Accordingly, for accounting purposes, the Business Combination was treated as the equivalent of the Company issuing stock for the net assets of GigCapital4, accompanied by a recapitalization. The net assets of GigCapital4 were stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination are those of the Company.

The Company has been determined to be the accounting acquirer based on evaluation of the following facts and circumstances:

- Members of Ultimate's senior management comprise all key management positions of the combined company;
- Ultimate, along with its affiliate, AE BBAI Aggregator, LP, has the majority voting interest (83.5%) in the combined company;
- Ultimate has the ability to appoint the majority of the Board of Directors and elect those directors through its majority voting power;
- The Company's subsidiaries comprise the ongoing operations of the combined company;
- The Company is larger in relative size than GigCapital4; and
- The combined company continues to operate under the BigBear tradename, and the headquarters of the combined company remains the BigBear headquarters.

Basis of Pro Forma Presentation

The adjustments presented on the unaudited pro forma condensed combined balance sheet as of September 30, 2021 and statements of operations for the year ended December 31, 2020 and the nine months ended September 30, 2021 have been identified and presented to provide relevant information necessary for an accurate understanding of the combined company upon consummation of the Business Combination. The unaudited pro forma condensed combined balance sheet as of September 30, 2021 is based on the historical unaudited balance sheets of BigBear and GigCapital4 as of September 30, 2021 and gives effect to the Business Combination, including the Note Financing, as if it had occurred on September 30, 2021. The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 combines the historical audited consolidated statement of operations of BigBear for the period from May 22, 2020 to December 31, 2020 and the historical audited statement of operations of GigCapital4 for the period from December 4, 2020 (date of inception) to December 31, 2020 and has been prepared to reflect the Business Combination as if it occurred on January 1, 2020. The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2021 combines the historical unaudited interim condensed consolidated statement of operations of BigBear for the nine months ended September 30, 2021 and the historical unaudited statement of operations of GigCapital4 for the nine months ended September 30, 2021 and has been prepared to reflect the Business Combination as if it occurred on January 1, 2020.

Additionally, the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 reflects the impact of the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, and the ProModel Acquisition as if they occurred on January 1, 2020. The unaudited pro forma adjustments are based on information currently available. Assumptions and estimates underlying the unaudited pro forma adjustments are described in the accompanying notes. Actual results may differ materially from the assumptions used to present the accompanying unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined statements of operations do not necessarily reflect what the combined company's results of operations would have been had the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, the ProModel Acquisition, and the Business Combination occurred on the date indicated. The unaudited pro forma condensed combined statements of operations also may not be useful in predicting the future results of operations of the combined company. The actual financial results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

The unaudited pro forma condensed combined financial information should be read in conjunction with the accompanying notes. See *Note 1, Basis of Presentation*, to the Unaudited Pro Forma Condensed Combined Financial Information for information about the sources used to derive the unaudited pro forma financial information. In addition, the unaudited pro forma condensed combined financial information was based on and should be read in conjunction with the following historical financial statements and the accompanying notes, which are included in this current report on Form 8-K:

- historical audited financial statements of GigCapital4 as of December 31, 2020 and for the period from December 4, 2020 (date of inception) through December 31, 2020;
- historical audited combined financial statements of BigBear ("*Successor*") as of December 31, 2020 and for the period from May 22, 2020 through December 31, 2020, and the historical audited combined financial statements of PCI ("*Predecessor*") as of December 31, 2019, for the years ended December 31, 2019 and 2018, and for the period from January 1, 2020 through October 22, 2020;
- historical audited financial statements of NuWave as of June 18, 2020 and for the period from January 1, 2020 through June 18, 2020;
- historical audited financial statements of Open Solutions as of December 1, 2020 and for the period from January 1, 2020 through December 1, 2020;
- historical audited financial statements of ProModel as of December 20, 2020 for the period from January 1, 2020 through December 20, 2020;
- historical unaudited interim condensed financial statements of GigCapital4 as of and for the nine months ended September 30, 2021; and
- historical unaudited interim condensed consolidated financial statements of BigBear ("*Successor*"), as of and for the nine months ended September 30, 2021.

Further, unaudited pro forma condensed combined financial information should be read in conjunction with the sections of this current report on Form 8-K entitled "*BigBear Management's Discussion and Analysis of Financial Condition and Results of Operations*" and "*The Company's Management's Discussion and Analysis of Financial Condition and Results of Operations*." The unaudited pro forma condensed combined financial information may have footing differences resulting from decimal numbers not presented herein.

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET
AS OF SEPTEMBER 30, 2021
(*in thousands of United States Dollars, except share and per share amounts*)

	BigBear (Historical)	GigCapital4 (Historical)	Business Combination Transaction Accounting Adjustments	Notes	Pro Forma Combined
ASSETS					
Current Assets					
Cash and cash equivalents	$ 10,776	$ 982	$ 110,033	(a.2)	$ 95,032
	—	—	195,027	(b)	—
	—	—	80,000	(g)	—
	—	—	(5,023)	(e.1)	—
			(5,380)	(e.2a)	
	—	—	(4,524)	(e.2b)	—
	—	—	(75,000)	(f)	—
	—	—	(110,838)	(h)	—
	—	—	(101,021)	(j)	—
Restricted Cash	—	—	101,021	(j)	101,021
Accounts receivable	21,263	—	—		21,263
Contract assets	2,863	—	—		2,863
Inventory	—	—	—		—
Related party receivable	—	1	—		1
Prepaid expenses and other current assets	6,420	348	(4,471)	(e.2a)	2,297
Total current assets	41,322	1,331	179,824		222,477
Cash and marketable securities held in Trust Account	—	358,817	(110,030)	(a.2)	—
	—	—	(248,787)	(a.1)	—
Property and equipment, net	1,213	—	—		1,213
Goodwill	91,636	—	—		91,636
Intangible assets, net	85,317	—	—		85,317
Deferred tax assets	4,135	—	—		4,135
Other non-current assets	592	114	—		706
Interest receivable on cash and marketable securities held in Trust Account	—	3	(3)	(a.2)	—
Total assets	$ 224,215	$ 360,265	$ (178,996)		$405,484
LIABILITIES AND EQUITY					
Current liabilities:					
Accounts payable	$ 9,468	$ 26	$ (429)	(e.2a)	$ 9,065
Note payable to related parties	—	—	—		—
Short-term debt, including current portion of long-term debt	2,600	—	(2,600)	(h)	—
Accrued liabilities	12,368	2,312	(163)	(h)	22,965
	—	—	(150)	(e.2a)	—
	—	—	8,598	(e.2b)	—
Contract liabilities	2,136	—	—		2,136
Derivative liability	—	—	12,047	(j)	12,047
Payable to related parties	—	57	—		57
Other current liabilities	464	6	—		470
Total current liabilities	27,036	2,401	17,303		46,740
Long-term debt	105,447	—	190,227	(b)	190,227
	—	—	(105,447)	(h)	—
Warrant liability	—	385	—		385
Deferred underwriting fee payable	—	12,558	(12,558)	(e.1)	—
Deferred tax liabilities	—	—	—		—
Other non-current liabilities	7	—	—		7
Total liabilities	132,490	15,344	89,525		237,359
Common stock subject to possible redemption	—	358,814	(110,027)	(c)	—
	—	—	(248,787)	(a.1)	—
Equity:	—	—	—		—
Common stock, $0.0001 par value	—	1	1	(c)	14
	—	—	—	(b)	—
	—	—	11	(d)	—
	—	—	—	(e.1)	—
	—	—	—	(e.2a)	—
	—	—	—	(e.2b)	—
	—	—	1	(g)	—
Members' contribution/Additional paid-in capital	108,321	—	110,026	(c)	258,483
	—	—	4,800	(b)	—
	—	—	(13,905)	(d)	—
	—	—	7,535	(e.1)	—
	—	—	(9,272)	(e.2a)	—
	—	—	2,000	(e.2b)	—
	—	—	(75,000)	(f)	—
	—	—	79,999	(g)	—
	—	—	56,026	(i)	—
	—	—	(12,047)	(j)	—
Accumulated deficit	(16,596)	(13,894)	13,894	(d)	(90,372)
	—	—	(15,122)	(e.2b)	—
	—	—	(56,026)	(i)	—
	—	—	(2,628)	(h)	—
Total equity	91,725	(13,893)	90,293		168,125
Total liabilities and equity	$ 224,215	$ 360,265	$ (178,996)		$405,484

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2020
(*in thousands of United States Dollars, except share and per share amounts*)

	BigBear (Historical)	NuWave Acquisition Transaction Accounting Adjustments *	Notes	PCI Acquisition Transaction Accounting Adjustments **	Notes	Open Solutions Acquisition Transaction Accounting Adjustments ***	Notes	ProModel Acquisition Transaction Accounting Adjustments ****	Notes	BigBear (Pro Forma)	GigCapital4 (Historical)	Business Combination Transaction Accounting Adjustments	Notes	Pro Forma Combined
Revenues	$ 31,552	$ 10,809		$ 59,765		$ 22,693		$ 15,782		$138,992	$ —	$ —		$ 138,992
	—	—		—		—		(1,609)	(l)	—	—	—		—
Cost of sales	22,877	5,436		46,755		13,183		9,491		96,133	—	6,482	(o)	102,615
	—	(1,609)	(l)	—		—		—		—	—	—		—
Gross margin	**8,675**	**6,982**		**13,010**		**9,510**		**4,682**		**42,859**	**—**	**(6,482)**		**36,377**
Operating expenses:	—	—		—		—		—		—	—	—		—
Selling, general and administrative	7,909	3,266		7,632		4,192		1,555		30,235	34	49,543	(o)	79,812
	—	735	(k)	922	(k)	2,331	(k)	1,693	(k)	—	—	—		—
Research and development	530	—		85		—		—		615	—	—		615
Transaction expenses	10,091	—		—		—		—		10,091	—	20,112	(p)	30,203
Operating (loss) income	**(9,855)**	**2,981**		**4,371**		**2,987**		**1,434**		**1,918**	**(34)**	**(76,137)**		**(74,253)**
Interest income	—	—		—		(3)		—		(3)	—	—		(3)
Interest expense	616	—		1		—		—		8,399	—	—		13,955
	—	—		—		—		—		—	—	13,955	(q)	—
	—	862	(m.1)	1,873	(m.1)	2,131	(m.1)	2,918	(m.1)	—	—	(8,399)	(r.1)	—
	—	(1)	(m.2)	(1)	(m.2)	—		—		—	—	—		—
Other (income) expense, net	—	—		—		—		—		—	—	2,628	(r.2)	2,628
(Loss) income before taxes	**(10,471)**	**2,120**		**2,498**		**859**		**(1,484)**		**(6,478)**	**(34)**	**(84,321)**		**(90,833)**
Income tax (benefit) expense	(2,633)	445	(n)	525	(n)	180	(n)	(312)	(n)	(1,795)	—	(17,280)	(s)	(19,075)
Net (loss) income	**$ (7,838)**	**$ 1,675**		**$ 1,973**		**$ 679**		**$ (1,172)**		**$ (4,683)**	**$ (34)**	**$ (67,041)**		**$ (71,758)**
Net loss per share of common stock—basic and diluted														$ (71,758)
Weighted average shares of common stock outstanding —basic and diluted														135,566,227
Net loss per share of common stock—basic and diluted														$ (0.53)

* *Represents the addition of NuWave pre-acquisition activity for the period January 1, 2020 to June 18, 2020 to the historical BigBear statement of operations and pro forma adjustments related to the NuWave Acquisition.*

** *Represents the addition of PCI pre-acquisition activity for the period January 1, 2020 to October 22, 2020 to the historical BigBear statement of operations and pro forma adjustments related to the PCI Acquisition.*

*** *Represents the addition of Open Solutions pre-acquisition activity for the period January 1, 2020 to December 1, 2020 to the historical BigBear statement of operations and pro forma adjustments related to the Open Solutions Acquisition.*

**** *Represents the addition of ProModel pre-acquisition activity for the period January 1, 2020 to December 20, 2020 to the historical BigBear statement of operations and pro forma adjustments related to the ProModel Acquisition.*

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2021
(*in thousands of United States Dollars, except share and per share amounts*)

	BigBear (Historical)	GigCapital4 (Historical)	Business Combination Transaction Accounting Adjustments	Notes	Pro Forma Combined
Revenues	$ 112,100	$ —	$ —		$ 112,100
Cost of sales	81,859	—	—		81,859
Gross margin	**30,241**	**—**	**—**		**30,241**
Operating expenses	—	—	—		—
Selling, general and administrative	32,557	4,097	—		36,654
Research and development	4,158	—	—		4,158
Operating (loss) income	**(6,474)**	**(4,097)**	**—**		**(10,571)**
Interest income	—	(20)	20	(t)	—
Interest expense	5,579	—	10,441	(u)	10,441
	—	—	(5,579)	(v)	—
Other (income) expense, net	(1)	197	—		196
(Loss) income before taxes	**(12,052)**	**(4,274)**	**(4,882)**		**(21,208)**
Income tax (benefit) expense	(3,294)	6	(1,166)	(w)	(4,454)
Net (loss) income	**$ (8,758)**	**$ (4,280)**	**$ (3,716)**		**$ (16,754)**
Net loss per share of common stock—basic and diluted					$ (16,754)
Weighted average shares of common stock outstanding—basic and diluted					135,566,227
Net loss per share of common stock—basic and diluted					$ (0.12)

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Basis of Presentation

The unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X as amended by the final rule, Release No. 33-10786 "Amendments to Financial Disclosures about Acquired and Disposed Businesses." Release No. 33-10786 replaces the existing pro forma adjustment criteria with simplified requirements to depict the accounting for the transaction ("*Transaction Accounting Adjustments*") and present the reasonably estimable synergies and other transaction effects that have occurred or are reasonably expected to occur ("*Management's Adjustments*") in the notes to the Unaudited Pro Forma Condensed Combined Financial Information. BigBear.ai Holdings, LLC ("*BigBear*" or "*Successor*") has elected not to present Management's Adjustments and is only presenting Transaction Accounting Adjustments in the unaudited pro forma condensed combined financial information.

Management has made significant estimates and assumptions in its determination of the pro forma adjustments. As the pro forma combined financial information has been prepared based on these preliminary estimates and assumptions, the final amounts recorded may differ materially from the information presented.

The unaudited pro forma condensed combined balance sheet as of September 30, 2021 presents pro forma effects to the Business Combination as if it had been completed on September 30, 2021.

The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 presents pro forma effects to the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, the ProModel Acquisition, and the Business Combination as if they had been completed on January 1, 2020.

The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2021 presents pro forma effects to the Business Combination as if it had been completed on January 1, 2020.

The unaudited pro forma condensed combined balance sheet as of September 30, 2021 has been prepared using and should be read in conjunction with the following, which are included in this current report on Form 8-K:

- GigCapital4's unaudited balance sheet as of September 30, 2021 and the related notes; and
- BigBear ("*Successor*")'s unaudited interim condensed consolidated balance sheet as of September 30, 2021 and the related notes.

The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 has been prepared using and should be read in conjunction with the following, which are included in the definitive proxy statement:

- GigCapital4's historical audited statement of operations for the period from December 4, 2020 (date of inception) to December 31, 2020 and the related notes;
- BigBear ("*Successor*")'s historical audited combined statement of operations for the period from May 22, 2020 through December 31, 2020, and PCI's ("*Predecessor*") historical audited statement of operations for the period from January 1, 2020 through October 22, 2020 and the related notes;
- NuWave's historical audited statement of operations for the period from January 1, 2020 through June 18, 2020 and the related notes;
- Open Solutions' historical audited statement of operations for the period from January 1, 2020 through December 1, 2020 and the related notes; and
- ProModel's historical audited statement of operations for the period from January 1, 2020 through December 20, 2020 and the related notes;

The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2021 has been prepared using and should be read in conjunction with the following, which are included in this current reporting on Form 8-K:

- GigCapital4's historical unaudited statement of operations for the nine months ended September 30, 2021 and the related notes; and
- BigBear ("*Successor*")'s historical unaudited interim condensed consolidated statement of operations for the nine months ended September 30, 2021 and the related notes.

The unaudited pro forma condensed combined financial information has been prepared based on the actual withdrawal of $248.8 million from the Trust Account to fund the GigCapital4 public stockholders' exercise of their redemption rights on December 3, 2021 with respect to 24,878,693 common shares, as well as the reclassification of the remaining 11,001,307 common shares formerly deemed redeemable at September 30, 2021 to New BigBear common stock.

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, the ProModel Acquisition, or the Business Combination. The combined company will incur additional costs after the Business Combination in order to satisfy its obligations as a reporting public company with the Securities Exchange Commission ("*SEC*"). No adjustment to the unaudited pro forma condensed combined statement of operations has been made for these items as the amounts are not yet known.

The pro forma adjustments reflecting the consummation of the Business Combination and the completion of the Note Financing are based on certain currently available information at the Closing of the transaction and certain assumptions and methodologies that GigCapital4 believes are reasonable under the circumstances. The unaudited condensed pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments and it is possible the differences may be material. GigCapital4 believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the Business Combination and the Note Financing contemplated based on information available to management at this time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined financial information is not necessarily indicative of what the actual results of operations and financial position would have been had the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, the ProModel Acquisition, or the Business Combination taken place on the date indicated, nor are they indicative of the future consolidated results of operations or financial position of the combined company.

2. Accounting Policies

Since GigCapital4 had substantially no business operations as a blank check company, its limited accounting policies were not in conflict with those of BigBear. Accordingly, the combined company uses the accounting policies of BigBear as described in Note 1 to BigBear's audited consolidated financial statements as of December 31, 2020 and for the period from May 22, 2020 to December 31, 2020 included in the definitive proxy statement. As a result, the unaudited pro forma condensed combined financial information does not assume any differences in accounting policies.

3. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet

The adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2021 are as follows:

a) Reflects (1) the redemption of 24,878,693 shares of GigCapital4's common stock for an aggregate payment of $248.8million at $10.00 per share, and (2) the reclassification of cash and cash equivalents held in GigCapital4's trust account (and related interest receivable) of approximately $110.0 million to fund the Business Combination consideration.

b) Reflects the gross cash proceeds from the Note Financing of $200.0 million, net of debt issuance costs paid, and recognition of the associated convertible notes payable. Of the $9.8 million debt issuance costs, $5 million were settled in cash and $4.8 million was settled in equity of New BigBear.

c) Reflects the reclassification of the remining 11,001,307 of GigCapital4's common stock formerly deemed redeemable at September 30, 2021 to common stock in permanent equity of New BigBear.

d) Reflects the recapitalization of BigBear, including the reclassification of members' equity to common stock and additionalpaid-in capital of New BigBear, and the closing of GigCapital4's accumulated deficit to additional paid-in capital of New BigBear.

e) Reflects the cash and equity settlement and accrual of transaction costs. Transaction costs are made up of (1) $12.5 million of GigCapital4's deferred underwriting fees recorded on the historical balance sheet as of September 30, 2021. After a $2.5 million reduction in fee agreed at close, $5.0 million was settled in cash and $5.0 million in New BigBear common stock; (2a) $12.4 million of BigBear's costs incurred in connection with the issuance of equity (with a corresponding adjustment to additional paid-in capital). At close, $5.4 million was settled in cash and $3.1 million was settled in New BigBear common stock. $4.8 million was reclassified from prepaid expenses and other current assets to equity; and (2b) $15.1 million of GigCapital4's transaction costs expensed as incurred and BigBear's expenses unrelated to the issuance of equity. At close, $4.5 million was settled in cash and $2.0 million was settled in New BigBear common stock.

f) Reflects the payment of the Cash Merger Consideration to stockholders of Ultimate.

g) Reflects the proceeds of PIPE financing from AE BBAI Aggregator, LP consisting of 8,000,000 shares of New BigBear common stock at a purchase price of $10 per share.

h) Reflects the repayment of long-term debt and related interest payable, as well as the associated loss on debt extinguishment related to unamortized debt issuance costs.

i) Reflects the recognition of share-based compensation related to certain equity incentives issued by Ultimate that would vest on an accelerated basis as a result of the Business Combination.

j) Reflects the establishment of an escrow account ($101.0 million) and a derivative liability ($12.0 million) for New BigBear's contingent obligation to purchase 9,952,803 shares of common stock at $10.15 from certain shareholders, if those shares are not sold in the open market during the three-month period from the close of the Business Combination.

Adjustments to Unaudited Pro Forma Condensed Combined Statements of Operations

The historical financial statements have been adjusted in the unaudited pro forma condensed combined statement of operations to reflect the effects of the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, the ProModel Acquisition, and the Business Combination on BigBear's historical financial statements. The unaudited pro forma condensed combined statements of operations have been prepared for informational purposes only.

The pro forma condensed combined provision for income taxes does not necessarily reflect the amounts that would have resulted had the combined company filed consolidated income tax returns during the periods presented.

Management has made significant estimates and assumptions in its determination of the pro forma adjustments. As the unaudited pro forma condensed combined financial information has been prepared based on these preliminary estimates, the final amounts recorded may differ materially from the information presented.

The pro forma basic and diluted earnings (loss) per share amounts presented in the unaudited pro forma condensed combined statements of operations are based upon the number of the combined company's weighted average shares outstanding, assuming the Business Combination had occurred on January 1, 2020.

The NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, and the ProModel Acquisition pro forma Transaction Accounting Adjustments included in the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 are as follows:

k) Adjustment to include pre-acquisition amortization on the fair value of the acquired intangible assets.

l) Adjustment to eliminate pre-acquisition intercompany sales between NuWave and ProModel.

m) Adjustment to (1) include the interest expense that would have been incurred to finance the NuWave Acquisition, the PCI Acquisition, the Open Solutions Acquisition, and Pro Model Acquisition as if they had taken place on January 1, 2020, based on the effective interest rate of the credit facility used to finance the acquisitions, and (2) eliminate the pre-acquisition interest expense, including amortization of deferred financing fees, related to the outstanding debt balances of PCI, which were settled by the sellers of PCI with proceeds from the sale.

n) Adjustment for income taxes, applying a statutory tax rate of 21% for the year ended December 31, 2020.

The Business Combination pro forma Transaction Accounting Adjustments included in the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020 are as follows:

o) Adjustment to include the share-based compensation related to vesting of profit interests, issued by Ultimate to employees of BigBear, on consummation of the Business Combination.

p) Addition of transaction expenses for the Business Combination incurred or expected to be incurred subsequent to December 31, 2020. These costs will not affect BigBear's statement of operations beyond 12 months after the Closing.

q) Addition of interest expense related to the Note Financing, net of amortization of debt issuance costs, that would have been incurred if the Business Combination had occurred on January 1, 2020.

r) Adjustment to (1) eliminate BigBear's interest expense and amortization of debt issuance costs that would not have been incurred had the planned long-term debt repayment contingent on close of the Business Combination occurred on January 1, 2020 and (2) include the loss on debt extinguishment on repayment of the long-term loan.

s) Adjustment for income taxes, applying a statutory tax rate of 21% for the year ended December 31, 2020.

The Business Combination pro forma Transaction Accounting Adjustments included in the unaudited pro forma condensed combined statement of operations for the year ended September 30, 2021 are as follows:

t) Elimination of GigCapital4 trust account interest income of approximately $20.

u) Addition of interest expense related to the Note Financing, net of amortization of debt issuance costs, that would have been incurred if the Business Combination had occurred on January 1, 2020.

v) Elimination of BigBear's interest expense and amortization of debt issuance costs related to the paydown of debt that would not have been incurred if the Business Combination had occurred on January 1, 2020.

w) Adjustment for income taxes, applying a statutory tax rate of 21% for the nine months ended September 30, 2021.

4. Loss per Share

Represents the unaudited loss per share calculated based on the recapitalization resulting from the Business Combination, assuming the shares were outstanding since January 1, 2020. As the Business Combination is being reflected as if it had occurred at the beginning of the periods presented, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes that the shares issued relating to the Business Combination have been outstanding for the entire periods presented. The following tables set forth the computation of pro forma basic and diluted loss per share for the year ended December 31, 2020 and the nine months ended September 30, 2021; amounts are stated in thousands of U.S. Dollars, except for share and per share amounts.

The Notes are considered anti-dilutive and any shares that would be issued upon exercise of the conversion of the Notes are not included in loss per share.

	Year ended December 31, 2020
	Pro Forma Combined
Net loss	$ (71,758)
Weighted average shares outstanding—basic and diluted	135,566,227
Net loss per share—basic and diluted	$ (0.53)

	Nine months ended September 30, 2021
	Pro Forma Combined
Net loss	$ (16,754)
Weighted average shares outstanding—basic and diluted	135,566,227
Net loss per share—basic and diluted	$ (0.12)

Exhibit 99.2

BIGBEAR.AI HOLDINGS, LLC
Financial Statements
For the three months ended September 30, 2021 (Successor), for the three months ended September 30, 2020 (Successor), nine months ended September 30, 2021 (Successor), the period from May 22, 2020 through September 30, 2020 (Successor), three months ended September 30, 2020 (Predecessor), and nine months ended September 30, 2020 (Predecessor)

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BIGBEAR.AI HOLDINGS, LLC
CONDENSED CONSOLIDATED BALANCE SHEETS
(UNAUDITED)

(in thousands)

	Successor	
	As of September 30, 2021	As of December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 10,776	$ 9,704
Accounts receivable, less allowance for doubtful accounts of $43 as of September 30, 2021 and December 31, 2020	21,263	21,426
Contract assets	2,863	2,575
Prepaid expenses and other current assets	6,420	641
Total current assets	**41,322**	**34,346**
Non-current assets:		
Property and equipment, net	1,213	863
Goodwill	91,636	91,271
Intangible assets, net	85,317	90,498
Deferred tax assets	4,135	794
Other non-current assets	592	593
Total assets	**$ 224,215**	**$ 218,365**
Liabilities and members' equity		
Current liabilities:		
Accounts payable	$ 9,468	$ 2,731
Short-term debt, including current portion of long-term debt	2,600	1,100
Accrued liabilities	12,368	7,270
Contract liabilities	2,136	541
Other current liabilities	464	413
Total current liabilities	**27,036**	**12,055**
Non-current liabilities:		
Long-term debt	105,447	105,894
Other non-current liabilities	7	19
Total liabilities	**132,490**	**117,968**
Commitments and contingencies (Note J)		
Equity:		
Members' contribution	108,321	108,235
Accumulated deficit	(16,596)	(7,838)
Total equity	**91,725**	**100,397**
Total liabilities and members' equity	**$ 224,215**	**$ 218,365**

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

BIGBEAR.AI HOLDINGS, LLC
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

(in thousands, except unit and per unit data)

	Successor				Predecessor	
	Three months ended September 30, 2021	Three months ended September 30, 2020	Nine months ended September 30, 2021	Period from May 22, 2020 through September 30, 2020	Three months ended September 30, 2020	Nine months ended September 30, 2020
Revenues	$ 40,219	$ 7,802	$ 112,100	$ 9,183	$ 17,899	$ 55,093
Cost of revenues	29,421	5,584	81,859	6,325	13,972	43,088
Gross margin	**10,798**	**2,218**	**30,241**	**2,858**	**3,927**	**12,005**
Operating expenses:						
Selling, general and administrative	12,038	1,910	32,557	2,024	2,426	7,183
Research and development	1,363	184	4,158	258	41	77
Transaction expenses	—	—	—	1,662	—	—
Operating (loss) income	**(2,603)**	**124**	**(6,474)**	**(1,086)**	**1,460**	**4,745**
Interest expense	1,870	65	5,579	65	—	1
Other income, net	—	—	(1)	—	—	—
(Loss) income before taxes	**(4,473)**	**59**	**(12,052)**	**(1,151)**	**1,460**	**4,744**
Income tax (benefit) expense	(1,327)	(14)	(3,294)	(296)	—	7
Net (loss) income	**$ (3,146)**	**$ 73**	**$ (8,758)**	**$ (855)**	**$ 1,460**	**$ 4,737**
Basic net (loss) income per Unit	$ (31.46)	$ 0.73	$ (87.58)	$ (8.55)		
Diluted net (loss) income per Unit	$ (31.46)	$ 0.73	$ (87.58)	$ (8.55)		
Weighted-average Units outstanding:						
Basic	100	100	100	100		
Diluted	100	100	100	100		

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

BIGBEAR.AI HOLDINGS, LLC
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN MEMBERS' EQUITY
(UNAUDITED)

(in thousands, except unit data)

For the nine months ended September 30, 2021 (Successor)

	Class A Units	Members' contribution	Accumulated deficit	Total members' equity
Balance at December 31, 2020 (Successor)	**100**	**$ 108,235**	**$ (7,838)**	**$100,397**
Net loss	—	—	(8,758)	**(8,758)**
Equity-based compensation expense	—	86	—	**86**
Balance at September 30, 2021 (Successor)	**100**	**$ 108,321**	**$ (16,596)**	**$ 91,725**

For the period from May 22, 2020 through September 30, 2020 (Successor)

	Class A Units	Members' contribution	Accumulated deficit	Total members' equity
Balance at May 22, 2020 (Successor)	**—**	**$ —**	**$ —**	**$ —**
Parent's contributions	100	15,298	—	**15,298**
Parent's contributions for acquisitions	—	2,900	—	**2,900**
Net loss	—	—	(855)	**(855)**
Balance at September 30, 2020 (Successor)	**100**	**$ 18,198**	**$ (855)**	**$ 17,343**

For the nine months ended September 30, 2020 (Predecessor)

	Class A Units	Class B Units	Members' contribution	Accumulated deficit	Total members' equity
Balance at December 31, 2019 (Predecessor)	**900**	**10**	**$ 4,998**	**$ 6,677**	**$ 11,675**
Net income	—	—	—	4,737	**4,737**
Equity-based compensation expense	—	—	74	—	**74**
Distributions	—	—	—	(4,011)	**(4,011)**
Balance at September 30, 2020 (Predecessor)	**900**	**10**	**$ 5,047**	**$ 7,403**	**$ 12,475**

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

BIGBEAR.AI HOLDINGS, LLC
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

(In thousands)

	Successor		Predecessor
	Nine months ended September 30, 2021	Period from May 22, 2020 through September 30, 2020	Nine months ended September 30, 2020
Cash flows from operating activities:			
Net (loss) income	$ (8,758)	$ (855)	$ 4,737
Adjustments to reconcile net (loss) income to net cash provided by operating activities:			
Depreciation and amortization expense	5,432	374	48
Amortization of debt issuance costs and discount	429	—	—
Equity-based compensation expense	86	—	74
Deferred income tax benefit	(3,341)	(372)	(5)
Changes in assets and liabilities:			
Accounts receivable	163	(1,410)	88
Contract assets	(288)	526	(269)
Prepaid expenses and other assets	(5,829)	70	1
Accounts payable	6,737	1,427	840
Accrued liabilities	4,733	321	1,313
Contract liabilities	1,595	25	—
Other liabilities	263	76	(5)
Net cash provided by operating activities	**1,222**	**182**	**6,822**
Cash flows from investing activities:			
Acquisition of businesses, net of cash acquired	(224)	(26,843)	—
Purchases of property and equipment	(601)	(57)	(115)
Net cash used in investing activities	**(825)**	**(26,900)**	**(115)**
Cash flows from financing activities:			
Parent's contribution	—	15,298	—
Proceeds from promissory notes	—	15,219	—
Repayment of term loan	(825)	—	—
Proceeds from revolving credit facility	1,500	—	—
Distributions to members	—	—	(4,011)
Net cash provided by (used in) financing activities	**675**	**30,517**	**(4,011)**
Net increase in cash and cash equivalents	1,072	3,799	2,696
Cash and cash equivalents at beginning of period	9,704	—	1,644
Cash and cash equivalents at end of period	**$ 10,776**	**$ 3,799**	**$ 4,340**

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

Note A – Description of the Business

Affiliates of AE Industrial Partners Fund II, LP ("*AE*"), a private equity firm specializing in aerospace, defense, space and government services, power generation, and specialty industrial markets, formed a series of acquisition vehicles on May 22, 2020, which included Lake Parent, LLC ("*Lake Parent")*, BigBear.ai Holdings, LLC ("*BigBear*" or "*Successor*"), BigBear.ai Intermediate Holdings, LLC ("*BigBear Intermediate*") and BigBear.ai, LLC ("*BigBear.ai*") with Lake Parent being the top holding company. BigBear.ai and BigBear Intermediate are wholly owned direct or indirect subsidiaries of BigBear.

Separately, AE also formed a series of acquisition vehicles on October 8, 2020 which included BBAI Ultimate Holdings, LLC (formerly known as PCISM Ultimate Holdings, LLC) ("*BBAI Ultimate Holdings*"), PCISM Holdings, LLC ("*PCISM Holdings*"), PCISM Intermediate Holdings, LLC and PCISM Intermediate II Holdings, LLC.

Upon the formation of these acquisition vehicles and throughout 2020, BigBear Intermediate and its subsidiaries effected a number of acquisitions, including that of NuWave Solutions, LLC ("*NuWave*"), PCI Strategic Management, LLC ("*PCI*" or "*Predecessor*"), Open Solutions Group, LLC ("*Open Solutions*"), and the Government Services division of ProModel Government Solutions Inc. ("*ProModel*").

The Predecessor Period reflects the results of PCI's operations prior to its acquisition, and the Successor Period, including NuWave, PCI, Open Solutions, and ProModel (collectively, the "*Company*"), reflects the results of each entity's operations subsequent to each acquisition. The Company offers a comprehensive suite of solutions including artificial intelligence ("AI") and machine learning ("ML"), data science, advanced analytics, offensive and defensive cyber, data management, cloud solutions, digital engineering, and systems.

Note B – Summary of Significant Accounting Policies

Basis of Presentation

The interim condensed consolidated financial statements are presented in conformity with accounting principles generally accepted in the United States of America ("*GAAP*") for interim financial information. Certain information or footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted, pursuant to the rules and regulations of the Securities and Exchange Commission ("*SEC*") for interim financial reporting. Accordingly, they do not include all the information and footnotes necessary for a comprehensive presentation of financial position, results of operations, or cash flows. In the opinion of management, the accompanying condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which are necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented. The interim condensed consolidated financial statements should be read in conjunction with the Company's annual combined financial statements for the year ended December 31, 2020. The interim results for the three nine and nine-month periods ended September 30, 2021 are not necessarily indicative of the results expected for the year ending December 31, 2021 or any future interim periods.

PCI was identified as the Predecessor through an analysis of various factors, including size, financial characteristics, and ongoing management. The results for the three and nine-month periods ended September 30, 2020 (the "*Predecessor Q3 Period*" and "*Predecessor Period*", respectively) relate to the predecessor period for BigBear and includes all of the accounts of PCI only. As BigBear was formed on May 22, 2020, the Successor Q3 comparative period from May 22, 2020 through September 30, 2020 (the "*Successor 2020 Period")* and three months ended September 30, 2020 (the "*Successor 2020 Q3 Period")* relates to activity of NuWave and BigBear.ai. The results and information as of December 31, 2020 relate to activity of BigBear and its subsidiaries. The results and information as of September 30, 2021, the three months ended September 30, 2021 (the "*Successor 2021 Q3 Period*"), and the nine months ended September 30, 2021 (the "*Successor 2021 Period*") relate to activity of BigBear and its subsidiaries.

The NuWave, PCI, Open Solutions, and ProModel acquisitions were accounted for as business combinations in accordance with Financial Accounting Standards Board ("*FASB*") Accounting Standards Codification 805, *Business Combinations* ("*ASC 805*"), and the resulting new basis of accounting is reflected in the applicable successor periods. All intercompany balances and transactions have been eliminated in consolidation. Amounts presented within the consolidated financial statements and accompanying notes are presented in thousands of U.S. dollars unless stated otherwise, except for percentages, unit, shares, per unit, and per share amounts.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods.

Making estimates requires management to exercise significant judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, actual results could differ from those estimates. Accounting policies subject to estimates include valuation of intangible assets, revenue recognition, income taxes, and equity-based compensation.

Significant Accounting Policies

The significant accounting policies used in preparing these interim condensed consolidated financial statements were applied on a basis consistent with those reflected in our annual combined financial statements for the year ended December 31, 2020.

Recently Issued Accounting Pronouncements

The FASB issued Accounting Standards Update ("ASU")No. 2016-02, Leases (Topic 842) ("*ASU 2016-02*"), which supersedes the current lease requirements in ASC 840, Leases. ASU 2016-02 requires lessees to recognize a right-of-use asset and related lease liability for all leases, with a limited exception for short-term leases. Leases will be classified as either finance or operating, with the classification affecting the pattern of expense recognition in the statement of operations. Currently, leases are classified as either capital or operating, with any capital leases recognized on the condensed consolidated balance sheets. The reporting of lease-related expenses in the condensed consolidated statements of operations and cash flows will be generally consistent with the current guidance. The new lease guidance will be effective for the year ending December 31, 2022 and will be applied using a modified retrospective transition method to either the beginning of the earliest period presented or the beginning of the year of adoption. The Company is currently evaluating the impact of adopting the new standard. The adoption of this standard will require the recognition of a right of use asset and liability on the Company's condensed consolidated balance sheets.

In June 2016, the FASB issued ASUNo. 2016-13, Financial Instruments–Credit Losses (Topic 326) ("*ASU 2016-13*"), an amendment of the FASB Accounting Standards Codification. Subsequent to the issuance of ASU 2016-13, there were various updates that amended and clarified the impact of ASU 2016-13. ASU 2016-13 broadens the information that an entity must consider in developing its expected credit loss estimate for assets measured either collectively or individually. The amendments in ASU 2016-13 will require an entity to record an allowance for credit losses for certain financial instruments and financial assets, including accounts receivable, based on expected losses rather than incurred losses. The measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount. An entity must use judgment in determining the relevant information and estimation methods that are appropriate in its circumstances. The use of forecasted information incorporates more timely information in the estimate of expected credit losses. The new guidance will be effective for the years beginning after December 15, 2022. The Company does not expect this guidance to have a material impact on its condensed consolidated financial statements or related disclosures.

(In thousands of U.S. dollars unless stated otherwise)

Recently Adopted Accounting Pronouncements

In August 2020, the FASB issued ASU 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20)* and *Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* ("ASU 2020-06"), which, amongst other provisions, simplifies the guidance on the issuer's accounting for convertible instruments and the derivative scope exception for contracts in an entity's own equity such that fewer conversion features will require separate recognition and modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the diluted earnings per share computation. While ASU 2020-06 is required for fiscal years beginning after December 15, 2021 (including interim periods), early adoption is permitted for fiscal years (including interim periods) beginning after December 15, 2020. The Company early adopted ASU 2020-06 as of January 1, 2021 on the modified retrospective basis, which requires the cumulative effect of applying the standard to be recognized at the date of initial application. The Company does not have an existing convertible instrument or a contract in its own equity as of the initial application date and therefore the adoption of ASU 2020-06 did not have a material impact on the condensed consolidated financial statements.

Note C – Business Combinations

NuWave Acquisition

On June 19, 2020, the Successor acquired 100% of the equity interest of NuWave for cash and 2,900,000 units of the Successor's Parent's equity ("*Parent Units*"). The acquisition supports the Company's growth in its offering of advanced data analytics.

The purchase agreement with the sellers of NuWave also stipulated that certain funds would be held in escrow ("*Indemnification Escrow Deposit*" and "*Adjustment Escrow Deposit*"), for the benefit of the seller. Pursuant to and subject to the terms and conditions of the Escrow Agreement, the Indemnification Escrow Amount of $300 and the Adjustment Escrow Amount of $150 shall be held in escrow until released in accordance with the purchase agreement and the Escrow Agreement.

The following table summarizes the fair value of the consideration transferred and the preliminary estimated fair values of the major classes of assets acquired and liabilities assumed as of the acquisition date.

	June 19, 2020
Cash paid	$27,881
Equity issued	2,900
Purchase consideration	$30,781
Assets:	
Cash	$ 1,038
Accounts receivable	3,018
Other current assets	112
Contract assets	1,095
Deposits	27
Property and equipment	77
Intangible assets	16,200
	$21,567

(In thousands of U.S. dollars unless stated otherwise)

Liabilities:	
Accounts payable	$ 365
Accrued liabilities	364
Deferred tax liability	476
	$ 1,205
Fair value of net identifiable assets acquired	20,362
Goodwill	$10,419

The following table summarizes the intangible assets acquired by class:

	June 19, 2020
Technology	$ 5,400
Customer relationships	10,800
Total intangible assets	$16,200

The fair value of the acquired technology was determined using the relief from royalty ("*RFR*") method. The fair value of the acquired customer relationships was determined using the excess earnings method.

The acquisition was accounted for as a business combination, whereby the excess of the purchase consideration over the fair value of identifiable net assets was allocated to goodwill. The goodwill reflects the potential synergies and expansion of the Company's offerings across product lines and markets complementary to its existing products and markets. For tax purposes, the goodwill related to the asset purchase is deductible.

PCI Acquisition

On October 23, 2020, the Successor acquired 100% of the equity interest of PCI for cash and 8,142,985 units of the Successor's Parent's equity. The acquisition supports the Company's growth in its offering of cybersecurity, cloud and system engineering.

The purchase agreement with the sellers of PCI also stipulated that certain funds would be held in escrow ("*Adjustment Escrow Deposit*" and "*Indemnity Escrow Amount*"), for the benefit of the sellers. Pursuant to and subject to the terms and conditions of the Escrow Agreement, the Indemnification Escrow Amount of $325 and the Adjustment Escrow Amount of $650 shall be held in escrow until released in accordance with the purchase agreement and the Escrow Agreement. The following table summarizes the preliminary fair value of the consideration transferred and the preliminary estimated fair values of the major classes of assets acquired and liabilities assumed as of the acquisition date.

	October 23, 2020
Cash paid	$ 55,932
Equity issued	8,143
Purchase consideration	$ 64,075
Assets:	
Cash	$ 364
Accounts receivable	6,710
Contract assets	4,569
Prepaid expenses and other current assets	383
Property and equipment	218
Other non-current assets	5
Intangible assets	22,800
	$ 35,049

(In thousands of U.S. dollars unless stated otherwise)

Liabilities:	
Accounts payable	$ 1,131
Deferred tax liability	1,033
Accrued liabilities	4,062
	$ 6,226
Fair value of net identifiable assets acquired	28,823
Goodwill	$35,252

The following table summarizes the intangible assets acquired by class:

	October 23, 2020
Customer relationships	$ 22,800

The amounts above represent the current preliminary fair value estimates as the measurement period is still open as of September 30, 2021. A measurement period adjustment increasing accrued liabilities and goodwill by $286 was recognized during the three-month period ended September 30, 2021. The Company is finalizing the valuation analysis.

The fair value of the acquired customer relationships was determined using the excess earnings method.

The acquisition was accounted for as a business combination, whereby the excess of the purchase consideration over the fair value of identifiable net assets was allocated to goodwill. The goodwill reflects the potential synergies and expansion of the Company's offerings across product lines and markets complementary to its existing products and markets. For tax purposes, the goodwill related to the asset purchase is deductible.

Open Solutions Acquisition

On December 2, 2020, the Company acquired 100% of the equity interest of Open Solutions for cash and 2,144,812 units of the Successor's Parent's equity. The acquisition supports the Company's growth in its offering of advanced data analytics.

The purchase agreement with the sellers of Open Solutions also stipulated that certain funds would be held in escrow (*"Indemnification Escrow Deposit*", "*Adjustment Escrow Deposit*" and "*Representative Expense Fund"),* for the benefit of the sellers. Pursuant to and subject to the terms and conditions of the Escrow Agreement, the Indemnification Escrow Amount of $285, the Adjustment Escrow Amount of $372 and Representative Expense Fund $150 shall be held in escrow until released in accordance with purchase agreement and the Escrow Agreement.

The following table summarizes the preliminary fair value of the consideration transferred and the preliminary estimated fair values of the major classes of assets acquired and liabilities assumed as of the acquisition date.

	December 2, 2020
Cash paid	$ 60,715
Equity issued	2,145
Purchase consideration	$ 62,860

(In thousands of U.S. dollars unless stated otherwise)

Assets:	
Cash	$ 63
Accounts receivable	6,127
Prepaid expenses and other current assets	89
Property and equipment	305
Other non-current assets	48
Intangible assets	30,800
	$37,432
Liabilities:	
Accounts payable	$ 122
Accrued liabilities	946
Deferred tax liability	334
Other non-current liabilities	27
	$ 1,429
Fair value of net identifiable assets acquired	36,003
Goodwill	$26,857

The following table summarizes the intangible assets acquired by class:

	December 2, 2020
Technology	$ 10,300
Customer relationships	20,500
Total intangible assets	$ 30,800

The amounts above represent the current preliminary fair value estimates as the measurement period is still open as of September 30, 2021. The Company is finalizing the valuation analysis.

The fair value of the acquired technology was determined using the RFR method. The fair value of the acquired customer relationships was determined using the excess earnings method.

The acquisition was accounted for as a business combination, whereby the excess of the purchase consideration over the fair value of identifiable net assets was allocated to goodwill. The goodwill reflects the potential synergies and expansion of the Company's offerings across product lines and markets complementary to its existing products and markets. For tax purposes, the goodwill related to the asset purchase is deductible.

ProModel Acquisition

On December 21, 2020, the Successor acquired 100% of the equity interest of ProModel for cash. The acquisition supports the Company's growth in its offering of advanced data analytics.

The purchase agreement with the sellers of ProModel also stipulated that certain funds would be held in escrow ("*Adjustment Escrow Deposit*" and "*PPP Escrow Amount*"), for the benefit of the sellers. Pursuant to and subject to the terms and conditions of the Escrow Agreement, the Adjustment Escrow Amount of $425 and PPP Escrow Amount $2,557 shall be held in escrow until released in accordance with purchase agreement and the Escrow Agreement.

The following table summarizes the preliminary fair value of the consideration transferred and the preliminary estimated fair values of the major classes of assets acquired and liabilities assumed as of the acquisition date.

	December 21, 2020
Cash paid	$ 43,718

(In thousands of U.S. dollars unless stated otherwise)

Assets:	
Cash	$ 1,843
Accounts receivable	907
Other receivables	707
Contract assets	779
Prepaid expenses and other current assets	64
Property and equipment	134
Other non-current assets	18
Intangible assets	21,700
	$26,152
Liabilities:	
Accounts payable	$ 2
Contract liabilities	501
Accrued liabilities	1,039
	$ 1,542
Fair value of net identifiable assets acquired	24,610
Goodwill	$19,108

The following table summarizes the intangible assets acquired by class:

	December 21, 2020
Technology	$ 7,000
Customer relationships	14,700
Total intangible assets	$ 21,700

The amounts above represent the current preliminary fair value estimates, as the measurement period is still open as of September 30, 2021. A measurement period adjustment increasing accrued liabilities and goodwill by $79 was recognized during the three-month period ended September 30, 2021. The Company is finalizing the valuation analysis.

The fair value of the acquired technology was determined using the RFR method. The fair value of the acquired customer relationships was determined using the excess earnings method.

The acquisition was accounted for as a business combination, whereby the excess of the purchase consideration over the fair value of identifiable net assets was allocated to goodwill. The goodwill reflects the potential synergies and expansion of the Company's offerings across product lines and markets complementary to its existing products and markets. For tax purposes, the goodwill is deductible.

Pro Forma Financial Data (Unaudited)

The following table presents the pro forma combined results of operations for the business combinations for the three and nine-month periods ended September 30, 2020 as though the acquisitions had been completed as of January 1, 2019. The three and nine-month periods ended September 30, 2020 includes the Predecessor Period, the Successor 2020 Period, and the pre-acquisition period for all business combinations.

	Pro forma for the three months ended September 30, 2020	Pro forma for the nine months ended September 30, 2020
Revenues	$ 36,035	$ 105,749
Net income	2,844	11,029

(In thousands of U.S. dollars unless stated otherwise)

The amounts included in the pro forma information are based on the historical results and do not necessarily represent what would have occurred if all the business combinations had taken place as of January 1, 2019, nor do they represent the results that may occur in the future. Accordingly, the pro forma financial information should not be relied upon as being indicative of the results that would have been realized had the acquisition occurred as of the date indicated or that may be achieved in the future.

Transaction expenses of $1,662 incurred in the Successor 2020 Period are excluded from the pro forma net income for the nine-month period ended September 30, 2020.

Note D – Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following:

	Successor	
	September 30, 2021	December 31, 2020
Capitalized advisory costs[1]	$ 4,471	$ —
Prepaid expenses	1,704	586
Pre-contract costs[2]	245	—
Other current assets	—	55
Total	**$ 6,420**	**$ 641**

1 The anticipated Merger between GigCapital4, Inc. and BigBear will be accounted for as a reverse recapitalization in which GigCapital4 is treated as the acquired company. Accordingly, any direct and incremental costs associated with the Merger, including but not limited to, certain legal, financial advisor, and accounting costs are capitalized as assets and will be reclassified as a reduction to additional paid in capital upon completion of the Merger. Capitalized advisory costs were $4,471 at September 30, 2021 and $0 at December 31, 2020.

2 Costs incurred to fulfill a contract in advance of the contract being awarded are included in prepaid expenses and other current assets if we determine that those costs relate directly to a contract or to an anticipated contract that we can specifically identify and the contract award is probable, the costs generate or enhance resources that will be used in satisfying performance obligations, and the costs are recoverable (referred to as pre-contract costs).

Pre-contract costs that are initially capitalized in prepaid assets and other current assets are generally recognized as cost of revenues consistent with the transfer of products or services to the customer upon the receipt of the anticipated contract. All other pre-contract costs, including start-up costs, are expensed as incurred. As of September 30, 2021 and December 31, 2020, $245 and $0 of pre-contract costs were included in prepaid expenses and other current assets, respectively.

Note E – Accrued Liabilities

Accrued liabilities consist of the following:

	Successor	
	September 30, 2021	December 31, 2020
Accrued payroll	$ 9,892	$ 6,741
Accrued advisory fees	2,161	—
Other accrued expenses	315	529
Total	**$ 12,368**	**$ 7,270**

Note F – Debt

On December 21, 2020, the Company entered into a credit agreement with Antares Capital (the "*Antares Capital Credit Agreement*"). The Antares Capital Credit Agreement includes the following, collectively referred to as the "*Loans*":

(i) A $110.0 million term loan (the "*Antares Capital Term Loan*") that matures on December 21, 2026.

(ii) A $15.0 million revolving credit facility (the "*Antares Capital Revolving Credit Facility*") that matures on December 21, 2026. The Company has drawn $1,500 on the revolving credit facility as of September 30, 2021. As of December 31, 2020, the balance of the revolving credit facility of $15 million was undrawn and available to the Company.

(In thousands of U.S. dollars unless stated otherwise)

The interest rates on the Loans can be based on LIBOR rates or Base rates at the Company's discretion. The interest payable is as follows:

(i) For LIBOR rate loans, the interest payable is the higher of (a) 1.00% per annum and (b) LIBOR rate plus 5.00% (as applicable margin).

(ii) For Base rate loans, the interest payable is the Base Rate plus 4.00% (as applicable margin). Base Rate is a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the Prime Rate and (c) one-month Eurocurrency Rate plus 1.00%

The Company may prepay the Loans at any time without any premium or penalty; however, the minimum amount of prepayment for the Antares Capital Term Loan and the Antares Capital Revolving Credit Facility is $250 and $100, respectively. In addition, the Antares Capital Term Loan is to be repaid quarterly in principal payments of $275 with the first repayment occurring on March 31, 2021.

The Antares Capital Credit Agreement requires the Company to meet certain financial and other covenants. As of September 30, 2021, the Company remained compliant with the covenant requirements.

The debt balances are summarized as follows:

	Successor	
	September 30, 2021	December 31, 2020
Term Loan	$ 109,175	$ 110,000
Revolver	1,500	—
Total debt	$ 110,675	$ 110,000
Less: unamortized discounts and issuance costs	2,628	3,006
Total debt, net	$ 108,047	$ 106,994
Less: current portion	2,600	1,100
Long-term debt, net	**$ 105,447**	**$ 105,894**

Interest expense, including the amortization of debt issuance costs, charged for the three and nine-month periods ended September 30, 2021 was $1,870 and $5,579, respectively.

Note G – Leases

The Company is obligated under operating leases for certain real estate and office equipment assets. Certain leases contained predetermined fixed escalation of minimum rents at rates ranging from 2.5% to 5.4% per annum and renewal options that could extend certain leases to up to five additional years.

The Company records rent expense on a straight-line basis over the life of the lease. Rent expense under all leases for the three months ended September 30, 2021 (Successor), three months ended September 30, 2020 (Successor), three months ended September 30, 2020 (Predecessor), nine months ended September 30, 2021 (Successor), period from May 22 through September 30, 2020 (Successor), and nine months ended September 30, 2020 (Predecessor) was $404, $45, $134, $1,155, $45, and $336, respectively.

(In thousands of U.S. dollars unless stated otherwise)

Note H – Income Taxes

The effective tax rates were as follows:

	Successor				Predecessor	
	Three months ended September 30, 2021	Three months ended September 30, 2020	Nine months ended September 30, 2021	Period from May 22, 2020 through September 30, 2020	Three months ended September 30, 2020	Nine months ended September 30, 2020
Effective tax rate	29.7%	(23.7)%	27.3%	25.7%	0.0%	0.1%

The Successor is established as a limited liability company and has elected to be taxed as a corporation for federal, state, and local income tax purposes. The effective tax rate for the three months ended September 30, 2021, three months ended September 30, 2020 (Successor) nine months ended September 30, 2021 and the period from May 22 through September 30, 2020 (Successor) differs from the U.S. federal income tax rate of 21.0% primarily due to state and local corporate income taxes, offset by non-deductible expenses.

The Predecessor was established and taxed as a partnership, and therefore, was not generally subject to federal, state and local corporate income taxes. The effective tax rate for the nine months ended September 30, 2020 (Predecessor) differs from the U.S. federal income tax rate of 0.0% due to state and local income taxes. The effective tax rate for the three months ended September 30, 2020 (Predecessor) differs from the effective tax rate for the nine months ended September 30, 2020 (Predecessor) due to changes in state and local corporate income tax rates.

Note I – Employee Benefit Plans

401(k) Plan

The Predecessor maintained a qualified 401(k) plan (the "*Predecessor 401(k) Plan*") for its U.S. employees. The Predecessor's contributions to the plan for the three and nine-month periods ended September 30, 2020 was $558 and $1,623, respectively.

The Company maintains three qualified 401(k) plans for its U.S. employees: the PCI 401(k) plan, the NuWave 401(k) plan and the Open Solutions 401(k) plan. During the period from May 22 through September 30, 2020 and three-month period ended September 30, 2020, the Company's total contributions to the plans were $66 and $57, respectively. During the three and nine-month periods ended September 30, 2021, the Company's total contributions to the plans were $1,118 and $2,759, respectively.

Note J – Commitments and Contingencies

Contingencies in the Normal Course of Business

Under certain contracts with the U.S. government and certain governmental entities, contract costs, including indirect costs, are subject to audit by and adjustment through negotiation with governmental representatives. Revenue is recorded in amounts expected to be realized on final settlement of any such audits.

(In thousands of U.S. dollars unless stated otherwise)

Legal Proceedings

The Company is subject to litigation, claims, investigations and audits arising from time to time in the ordinary course of business. Although legal proceedings are inherently unpredictable, the Company believes that it has valid defenses with respect to any matters currently pending against the Company and intends to defend itself vigorously. The outcome of these matters, individually and in the aggregate, is not expected to have a material impact on the Company's combined balance sheets, statements of operations, or cash flows.

Business Combinations

The Company has acquired and plans to continue to acquire businesses with prior operating histories. Acquired companies may have unknown or contingent liabilities. The associated acquisition costs incurred in the form of professional fees and services may be material to the future periods in which they occur, regardless of whether the acquisition is ultimately completed.

Note K – Equity

Predecessor

As of September 30, 2020, the Predecessor had 900 issued and outstanding Class A Units that are entitled to the voting rights and distributions.

On June 11, 2019, the Predecessor filed an amended operating agreement to issue 100 Class B Units which were subject to certain restrictions and vesting requirements (see Note L). The Class B Member is not entitled to any voting rights until January 1, 2024. Only vested Class B units participate in cash flow distributions on a pro rata basis with Class A Units and are eligible for capital transactions proceeds only if the aggregate distributions were equal to or greater than $50 million.

Successor

The Company has 100 Units ("*Units*") issued and outstanding as of September 30, 2021 and December 31, 2020.

Note L – Equity-Based Compensation

Class A Units granted to board of directors

Certain members of the board of directors of the Company have elected to receive their compensation for their services as a board member in stock, Class A units of the Parent Company. The number of units granted or to be granted by the Parent Company are determined by dividing the compensation payable for the quarter by the fair value of the Class A units at the end of each respective quarter. The total value of the Class A units granted to such board of directors for the three and nine-month periods ended September 30, 2021 is $30 and $86, respectively, and is reflected in the selling, general and administrative expenses within the condensed consolidated statements of operations.

Class B Unit Incentive Plan

In February 2021, the Company's Parent adopted a written compensatory benefit plan (the "*Class B Unit Incentive Plan*") to provide incentives to present and future directors, managers, officers, employees, consultants, advisors, and/or other service providers of the Company's Parent or its Subsidiaries in the form of the Parent's Class B Units ("*Incentive Units*"). Incentive Units have a participation threshold of $1.00 and are divided into three tranches ("*Tranche I*," "*Tranche II*," and "*Tranche III*"). Tranche I Incentive Units are subject to performance-based, service-based, and market-based conditions. The grant date fair value for the Incentive Units was $5.19.

The assumptions used in determining the fair value of the Incentive Units at the grant date are as follows:

Volatility	57%
Risk-free rate	0.1%
Time to exit (years)	1.6

(In thousands of U.S. dollars unless stated otherwise)

On July 29, 2021, the Company's Parent amended the Class B Unit Incentive Plan so that the Tranche I and the Tranche III Incentive Units will immediately become fully vested, subject to continued employment or provision of services, upon the closing of the transaction stipulated in the Agreement and Plan of Merger (the "Merger Agreement") dated June 4, 2021. The Company's Parent also amended the Class B Unit Incentive Plan so that the Tranche II Incentive Units will vest on any liquidation event, as defined in the Class B Unit Incentive Plan, rather than only upon the occurrence of an Exit Sale, subject to the market-based condition stipulated in the Class B Unit Incentive Plan prior to its amendment.

Equity-based compensation for awards with performance conditions is based on the probable outcome of the related performance condition. The performance conditions required to vest per the amended Incentive Plan remain improbable until they occur due to the unpredictability of the events required to meet the vesting conditions. As such events are not considered probable until they occur, recognition of equity-based compensation for the Incentive Units is deferred until the vesting conditions are met. Once the event occurs, unrecognized compensation cost associated with the performance-vesting Incentive Units (based on their modification date fair value) will be recognized based on the portion of the requisite service period that has been rendered.

The modification date fair value of the Incentive Units was $9.06 per unit. No equity-based compensation was recognized for the Successor 2021 Q3 Period. As of September 30, 2021 (Successor), there was approximately $85.2 million of unrecognized compensation costs related to Incentive Units.

Certain information related to the Incentive Units is presented as follows:

	Incentive Units
Unvested and outstanding as of December 31, 2020	—
Granted	9,650,000
Forfeited	(250,000)
Unvested and outstanding as of September 30, 2021	**9,400,000**

The assumptions used in determining the fair value of the Incentive Units at the modification date are as follows:

Volatility	46%
Risk-free rate	0.2%
Time to exit (years)	1.2

The volatility used in the determination of the fair value of the Incentive Units was based on analysis of the historical volatility of guideline public companies and factors specific to the Successor.

Note M – Net (Loss) Income per Unit

The numerators and denominators of the basic and diluted net (loss) income per Unit are computed as follows (in thousands, except unit and per unit data):

	Successor			
Basic and diluted net (loss) income per Unit	**Three months ended September 30, 2021**	**Three months ended September 30, 2020**	**Nine months ended September 30, 2021**	**Period from May 22, 2020 through September 30, 2020**
Numerator:				
Net (loss) income:	$ (3,146)	$ 73	$ (8,758)	$ (855)
Denominator:				
Weighted average Units outstanding – basic and diluted	100	100	100	100
Basic and diluted net (loss) income per Unit	$ (31.46)	$ 0.73	$ (87.58)	$ (8.55)

There were no potentially issuable Units or other dilutive securities for the nine months ended September 30, 2021.

Note N – Revenues

Net revenues by contract type are as follows:

	Successor				Predecessor	
	Three months ended September 30, 2021	**Three months ended September 30, 2020**	**Nine months ended September 30, 2021**	**Period from May 22, 2020 through September 30, 2020**	**Three months ended September 30, 2020**	**Nine months ended September 30, 2020**
Firm fixed price	$ 17,340	$ 3,922	$ 32,260	$ 4,070	$ 639	$ 1,883
Time and materials	22,879	3,880	79,840	5,113	17,260	53,210
Total revenues	**$ 40,219**	**$ 7,802**	**$ 112,100**	**$ 9,183**	**$ 17,899**	**$ 55,093**

The majority of the Company's revenue is recognized over time. Revenue derived from contracts that recognize revenue at a point in time was insignificant for all periods presented.

Concentration of Risk

Revenues earned from customers contributing in excess of 10% of consolidated revenues were as follows:

Successor 2021 Q3 Period

	Cyber & Engineering	**Analytics**	**Total**	**Percent of total revenues**
Customer A	$ 7,994	$ —	$ 7,994	20%
Customer B(1)	3,783	—	3,783	9%
Customer C(1)	—	6,010	6,010	15%
All others	7,452	14,980	22,432	56%
Total revenues	**$ 19,229**	**$ 20,990**	**$ 40,219**	**100%**

(In thousands of U.S. dollars unless stated otherwise)

Successor 2020 Q3 Period

	Total(2)	Percent of total revenues
Customer A	$3,837	49%
Customer B	2,688	34%
All others	1,277	17%
Total revenues	**$7,802**	**100%**

Predecessor 2020 Q3 Period

	Total(2)	Percent of total revenues
Customer A	$13,719	77%
Customer B	3,276	18%
All others	904	5%
Total revenues	**$17,899**	**100%**

Successor 2021 Period

	Cyber & Engineering	Analytics	Total	Percent of total revenues
Customer A	$ 24,503	$ —	$ 24,503	22%
Customer B(1)	11,202	—	11,202	10%
Customer C(1)	—	6,010	6,010	5%
All others	22,334	48,051	70,385	63%
Total revenues	**$ 58,039**	**$54,061**	**$112,100**	**100%**

Successor 2020 Period

	Total(2)	Percent of total revenues
Customer A	$3,957	43%
Customer B	3,045	33%
All others	2,181	24%
Total revenues	**$9,183**	**100%**

Predecessor Period

	Total(2)	Percent of total revenues
Customer A	$31,091	56%
Customer B	20,593	37%
All others	3,409	7%
Total revenues	**$55,093**	**100%**

(1) Customers that contributed in excess of 10% of consolidated revenues in any period presented have been included in all periods presented within a given fiscal year for comparability.

(2) The Successor 2020 Q3 Period, Predecessor 2020 Q3 Period, Successor 2020 Period, and Predecessor Period each comprise a single reportable segment. As a result, segment reporting for those periods is not presented.

(In thousands of U.S. dollars unless stated otherwise)

Contract Balances

Contract asset balances were $2,863 as of September 30, 2021, compared to $2,575 as of December 31, 2020. The change was primarily driven by services provided by NuWave, PCI, and Open Solution which are yet to be invoiced, offset by billings of previously unbilled services for which revenue had been recognized in ProModel. Contract liability balances were $2,136 as of September 30, 2021, compared to $541 as of December 31, 2020. The change was primarily driven by billings in excess of revenue recognized in PCI, NuWave, and ProModel. Revenue recognized in the period ended September 30, 2021 that was included in the contract liability balance as of December 31, 2020 was $541.

Remaining Performance Obligations

As of September 30, 2021, the aggregate amount of the transaction price allocated to remaining performance obligations was $158,150. The Company expects to recognize approximately 94% of its remaining performance obligations as revenue within the next 12 months and the balance thereafter.

Note O – Reportable Segment Information

The Company has determined that it operates in two operating and reportable segments, Cyber & Engineering and Analytics, as the CODM reviews financial information presented for both segments on a disaggregated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance.

Adjusted gross margin is the primary measure of segment profitability used by the CODM to assess performance and to allocate resources to the segments. Research and development costs incurred that generate marketable intellectual property ("*IP*") are added back to the gross margin to arrive at the adjusted gross margin. Customer contracts that generate lower gross margin (revenue less direct costs including fringe and overheard costs) than the thresholds set by the management are accepted as the work performed for these customer contracts also simultaneously generates reusable code and other IP that is used in the execution of future customer contracts that generate higher gross margin, or enhances the marketability of the products due to additional functionality or features.

	Successor		
	Three months ended September 30, 2021		
	Cyber & Engineering	Analytics	Total
Revenues	$ 19,229	$ 20,990	$40,219
Segment adjusted gross margin	**4,126**	**10,317**	**14,443**
	21%	49%	36%
Research and development costs excluded from segment gross margin			(3,645)
Operating expenses:			
Selling, general and administrative			12,038
Research and development			1,363
Operating loss			**(2,603)**
Interest expense			1,870
Other income			—
Loss before taxes			**$ (4,473)**

(In thousands of U.S. dollars unless stated otherwise)

	Successor		
	Nine months ended September 30, 2021		
	Cyber & Engineering	Analytics	Total
Revenues	$ 58,039	$ 54,061	$ 112,100
Segment adjusted gross margin	**12,701**	**26,042**	**38,743**
	22%	48%	35%
Research and development costs excluded from segment gross margin			(8,502)
Operating expenses:			
Selling, general and administrative			32,557
Research and development			4,158
Operating loss			**(6,474)**
Interest expense			5,579
Other income			1
Loss before taxes			**$ (12,052)**

All revenues were generated within the United States of America.

As of September 30, 2021, total assets of Cyber & Engineering, Analytics, and Corporate were $73,708, $139,239, and $11,268, respectively.

The Successor 2020 Q3 Period, Predecessor 2020 Q3 Period, Successor 2020 Period, and Predecessor Period each comprise a single reportable segment. As a result, segment reporting for those periods is not presented.

Note P – Related-Party Transactions

The Company incurred expenses related to consulting services provided by the affiliates of AE of $675during the nine months ended September 30, 2021 (Successor).

On February 4, 2021, the Company signed a teaming agreement with Gryphon Technologies, an affiliate of AE, to develop the best management and technical approach for certain solicitations with the DHS.

On March 17, 2021, the Company signed a confidential disclosure agreement with Redwire Space, Inc. (“*Redwire*”) to engage in discussions concerning a potential business relationship between the two parties. Redwire is an affiliate of AE.

On April 22, 2021, the Company entered into an agreement with Redwire to establish a Space Cyber Range capability that leverages Redwire’s Advanced Configurable Open-system Research Network and BigBear.ai’s capabilities in developing offensive and defensive solutions and techniques for security research across multiple platforms, architectures, and network links.

On July 1, 2021, the Company entered into a memorandum of understanding with UAV Factory, an affiliate of AE, whereby BigBear will develop AI/ML capabilities for UAV Factory’s unmanned systems and components use in autonomous operations within the commercial and defense markets.

During the nine months ended September 30, 2021, the Successor paid or accrued $172 as a compensation for the members of the board of directors, including aggregate fair value of $86 of Parent’s Class A Units, which is reflected in the selling, general and administrative expenses within the condensed consolidated statement of operations.

There were no related-party transactions during the Predecessor Period.

Note Q – Subsequent Events

The Company has evaluated subsequent events from the date of the interim condensed consolidated balance sheet through the date the interim condensed consolidated financial statements were issued on December 13, 2021.

On December 7, 2021, the Merger was consummated and upon closing of the Merger, GigCapital4, Inc. was renamed to BigBear.ai Holdings, Inc. ("New BigBear"). The Merger is accounted for as a reverse recapitalization in which GigCapital4 is treated as the acquired company. A reverse recapitalization does not result in a new basis of accounting, and the consolidated financial statements of the combined entity represent the continuation of the consolidated financial statements of the Company in many respects. The Company was deemed the accounting predecessor and the combined entity will be the successor SEC registrant, New BigBear.

As a result of the Merger, New BigBear issued 105,000,000 shares of common stock and paid $75,000 to BBAI Ultimate Holdings in exchange for units of the Company. New BigBear received aggregate gross proceeds of $110,021 from the trust account, $200,000 of convertible note financing, and $80,000 of PIPE financing from AE BBAI Aggregator, LP, an affiliate of AE, in exchange for the issuance of 8,000,000 New BigBear shares. New BigBear also issued 1,495,320 shares of common stock to certain advisors in lieu of cash for fees payable for services in connection with the Merger or GigCapital4's IPO. Proceeds from the Merger were partially used to fund the $114,393 repayment of the Antares Loan and transaction costs of $19,750.

The convertible note financing bears interest at a rate of 6.0% per annum, payable semi-annually, and convertible into shares of common stock at an initial Conversion Price of $11.50. The Conversion Price is subject to adjustments, including but not limited to, a Conversion Rate Reset 180 days after December 7, 2021 should certain daily volume-weighted average price thresholds be met. The convertible note financing matures five years after issuance.

As a result of Forward Share Purchase Agreements executed with certain shareholders prior to the shareholder vote, $101,021 of the proceeds from the trust account will be restricted for up to a period of three months following the Merger, at which point each shareholder will have the right to sell its shares to New BigBear for $10.15. Until the end of the three-month period, shareholders can sell shares on the open market provided the share price is at least $10.00 per share. If shareholders sell any shares in the open market within the first month of the three-month period and at a price greater than $10.05, New BigBear will pay the shareholders $0.05 per share sold.