
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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 30, 2024

BigBear.ai Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-40031
(Commission
File Number)

85-4164597
(I.R.S. Employer
Identification Number)

**6811 Benjamin Franklin Drive, Suite 200
Columbia, MD 21046**
(Address of principal executive offices, including zip code)

(410) 312-0885
(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:

- 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 Symbol(s)	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.

Item 1.01. Entry Into or Amendment of a Material Definitive Agreement.*Exchange Agreements*

On December 19, 2024, BigBear.ai Holdings, Inc. (the “Company”) announced it has entered into privately negotiated exchange agreements (each, an “Exchange Agreement”) with a limited number of holders of the Company’s existing 6.00% Convertible Senior Notes due 2026 (the “2026 Notes”), to exchange approximately \$182.3 million principal amount of the 2026 Notes for \$182.3 million in aggregate principal amount of the Company’s new 6.00% Convertible Senior Secured Notes due 2029 (the “2029 Notes”) and approximately \$0.4 million in cash, with such cash payment representing the accrued and unpaid interest on such 2026 Notes (the “Exchange Transaction”). The 2029 Notes were issued pursuant to, and are governed by, an indenture (the “Indenture”), dated as of December 27, 2024, among the Company, certain of its existing and future direct and indirect subsidiaries, subject to certain exceptions (the “guarantors”) and Wilmington Trust, National Association, as trustee and collateral agent.

The foregoing description of the Exchange Agreements is only a summary and is qualified in its entirety by reference to the full text of the form of Exchange Agreement, which was filed as Exhibit 10.1 to the Current Report on Form 8-K dated December 19, 2024, and such form of Exchange Agreement is incorporated by reference herein.

Third Supplemental Indenture

In connection with the Exchange Transaction, the Company obtained consents from certain holders of the 2026 Notes sufficient to amend certain terms of the indenture governing the 2026 Notes (the “Existing Indenture”). On December 27, 2024, the Company, the guarantors and the trustee of the 2026 Notes entered into the Third Supplemental Indenture (the “Third Supplemental Indenture”) to the Existing Indenture to effect such amendments, including amendments to eliminate certain restrictive covenants and limitations, as further described in the Third Supplemental Indenture.

Indenture and Notes

The 2029 Notes are fully and unconditionally guaranteed, on a senior, secured basis, by the Company and the guarantors. The 2029 Notes are the Company’s senior, secured obligations and will accrue interest at a rate of (i) 6.00% per annum, if interest is paid in cash and (ii) 7.00% per annum, if the Company elects, subject to certain conditions, to pay interest in kind with the shares of its common stock, in each case payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2025; provided, that to the extent that the certain liquidity condition of the Company and its subsidiaries is not satisfied as of the last business day of any calendar month, then with respect to the period applicable to the interest payment date immediately following the month in which such liquidity condition is not satisfied, the interest rate will be (i) 9.00% per annum, if interest is paid in cash and (ii) 10.00% per annum, if the Company elects, subject to certain conditions, to pay interest in kind with the shares of its common stock (it being understood that such increased rate shall apply solely for such six-month period applicable to such interest payment date). The 2029 Notes will mature on December 15, 2029, unless earlier converted, redeemed or repurchased. At any time before the close of business on the second scheduled trading day immediately before the maturity date, noteholders may convert their notes at their option into shares of the Company’s common stock, together, if applicable, with cash in lieu of any fractional share, at the then applicable conversion rate. However, until the Company has obtained the stockholder approval contemplated by certain listing standards of the New York Stock Exchange (the “Requisite Stockholder Approval”), the number of shares of common stock deliverable upon conversion of the 2029 Notes will be limited to comply with these listing standards, and any shares of common stock that would otherwise have been deliverable upon conversion will instead be settled in cash. The initial conversion rate is 281.4491

shares of common stock per \$1,000 principal amount of 2029 Notes, which represents an initial conversion price of \$3.5530 per share of the Company's common stock. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a "Make-Whole Fundamental Change" (as defined in the Indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time.

Noteholders who convert their 2029 Notes will also be entitled to an interest make-whole payment of up to 7.50% of the aggregate principal amount of notes converted, subject to reduction as further described in the Indenture. Interest make-whole payments are payable in cash or shares of common stock at the Company's election, subject to certain limitations including a limitation on the number of shares of common stock deliverable upon conversion of the 2029 Notes to comply with New York Stock Exchange listing standards. Payment of the interest make-whole in shares will be at a price equal to 95% of the average of the daily volume-weighted average price per share of the Company's common stock over an agreed upon period.

The 2029 Notes will not be redeemable at the Company's election before December 27, 2025. The 2029 Notes will be redeemable, in whole but not in part (subject to certain limitations) for cash, at the Company's option at any time, and from time to time, December 27, 2025 and prior to the close of business on November 16, 2029, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price for a specified period of time and certain other conditions are satisfied. The redemption price will be equal to the principal amount of the 2029 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

If certain corporate events that constitute a "Fundamental Change" (as defined in the Indenture) occur, then, noteholders may require the Company to repurchase their 2029 Notes for cash. The repurchase price will be equal to the principal amount of the 2029 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the applicable repurchase date, plus any remaining amounts that would be owed to, but excluding, the maturity date.

The Notes are guaranteed by the guarantors and secured on a first-priority basis by substantially all assets of the Company and such guarantors, subject to certain exceptions. The Indenture contains certain specified events of default, the occurrence of which would entitle the holders of the 2029 Notes to demand repayment of all outstanding principal and accrued interest on the Notes, together with a make-whole payment as determined pursuant to the Indenture. Such events of default include, among others, failure to make any payment under the Notes when due, failure to observe or perform certain covenants under the Notes or the other transaction documents related thereto (subject in certain cases to specified cure periods), the failure of the Company to be able to pay debts as they come due, the commencement of bankruptcy or insolvency proceedings against the Company or its significant subsidiary, a material judgment levied against the Company or its significant subsidiary, any event of default in excess of a specified amount by the Company or its significant subsidiary under other indebtedness, failure to perfect certain collateral securing the 2029 Notes and failure of the guarantees to be enforceable.

The Indenture contains a number of restrictive covenants and limitations, including restrictions on the Company's ability to incur indebtedness or liens, make restricted payments, issue preferred stock or disqualified stock, transact with affiliates, sell material intellectual property, or make investments or dispositions, as further described in the Indenture. The Company will also be required to comply with a minimum liquidity covenant.

Pursuant to the Exchange Agreements, the Company agrees to register the shares of common stock issuable upon conversion of the 2029 Notes and the "Interest Shares" (as defined in the Indenture) under the Securities Act of 1933, as amended (the "Securities Act").

The Exchange Transaction and the guarantees have not been, and will not be, registered under the Securities Act or any other securities laws. The shares of common stock issuable upon conversion of the 2029 Notes have not been registered under the Securities Act or any other securities laws, and the 2029 Notes and such shares cannot be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any other applicable securities laws.

A copy of the Third Supplemental Indenture, the Indenture, the form of the certificate representing the 2029 Notes are filed as exhibits 4.1, 4.2 and 4.3, respectively, to this Current Report on Form 8-K. The foregoing description of the Third Supplemental Indenture, the Indenture and the 2029 Notes does not purport to be complete and is qualified in its entirety by reference to such exhibits.

Item 1.02 Termination of a Material Definitive Agreement.

In connection with the Exchange Transaction, the Company entered into an agreement to terminate the existing senior secured revolving credit facility established under the credit agreement entered into on December 7, 2021, as amended from time to time, by and among the Company, the other borrowers party thereto from time to time, the lenders from time to time party thereto and Bank of America N.A. as administrative agent and collateral agent for the lenders (the “Secured Revolving Credit Facility”). Such termination is effective substantially concurrently with the closing of the Exchange Transaction. There were no outstanding borrowings under the Secured Revolving Credit Facility prior to its termination.

The foregoing discussion, to the extent involving the Secured Revolving Credit Facility, does not purport to be complete and is qualified in its entirety by reference to the original Secured Revolving Credit Facility as well as the first, second and third amendments thereto and is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this Current Report on Form 8-K regarding the Exchange Transaction and the 2029 Notes is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
4.1	<u>Third Supplemental Indenture, dated December 27, 2024 among BigBear.ai Holdings, Inc., BigBear.ai Intermediate Holdings, LLC, BigBear.ai, LLC, BigBear.ai Federal, LLC (f/k/a NuWave Solutions, L.L.C.), ProModel, LLC, Pangiam Purchaser, LLC, Pangiam Intermediate II Holdings, LLC, Pangiam Holdings, LLC, Pangiam Labs, LLC, Linkware, LLC, Pre, LLC, veriScan LLC, 214 Technologies, Inc. d/b/a Trueface and Wilmington Trust National Association, as trustee.</u>
4.2	<u>Indenture, dated as of December 27, 2024, among BigBear.ai Holdings, Inc., BigBear.ai Intermediate Holdings, LLC, BigBear.ai, LLC, BigBear.ai Federal, LLC (f/k/a NuWave Solutions, L.L.C.), ProModel, LLC, Pangiam Purchaser, LLC, Pangiam Intermediate II Holdings, LLC, Pangiam Holdings, LLC, Pangiam Labs, LLC, Linkware, LLC, Pre, LLC, veriScan LLC, 214 Technologies, Inc. d/b/a Trueface and Wilmington Trust, National Association, as trustee and collateral agent</u>
4.3	<u>Form of certificate representing the 6.00% Convertible Senior Secured Notes due 2029 (included as Exhibit A to Exhibit 4.2)</u>
104	Cover page interactive data file (embedded within the inline XBRL document).

SIGNATURES

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

BigBear.ai Holdings, Inc.

Date: December 30, 2024

By: /s/ Sean Ricker
Sean Ricker
Chief Accounting Officer

THIRD SUPPLEMENTAL INDENTURE

BIGBEAR.AI HOLDINGS, INC.,

THE GUARANTORS PARTY HERETO

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as Trustee

Dated as of December 27, 2024

6.00% Convertible Senior Notes due 2026

THIS THIRD SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), entered into as of December 27, 2024, among BIGBEAR.AI HOLDINGS, INC., a Delaware corporation (the “**Company**”), BigBear.ai Intermediate Holdings, LLC, a Delaware limited liability company, BigBear.ai, LLC, a Delaware limited liability company, BigBear.ai Federal, LLC (f/k/a NuWave Solutions, L.L.C.), a Maryland limited liability company, ProModel LLC, a Pennsylvania limited liability company, Pangiam Purchaser, LLC, a Delaware limited liability company, Pangiam Intermediate II Holdings, LLC, a Delaware limited liability company, Pangiam Holdings, LLC, a Delaware limited liability company, Pangiam Labs, LLC, a Virginia limited liability company, Linkware, LLC, a Virginia limited liability company, Pre, LLC, a Delaware limited liability company, veriScan, LLC, a Delaware limited liability company, and 214 Technologies, Inc. d/b/a Trueface, a Delaware corporation (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 (as amended, supplemented, or otherwise modified prior to the date hereof, the “**Indenture**”), relating to the Company’s 6.00% Convertible Senior Notes due 2026 (the “**Notes**”);

WHEREAS, Section 10.02 of the Indenture provides, subject to certain exceptions, that the Indenture may be amended and supplemented with the written consent of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes) (the “**Requisite Consents**”);

WHEREAS, the Company and the Guarantors entered into those certain exchange agreements, each dated as of December 19, 2024 (the “**Exchange Agreements**”), each by and among the Company, the Guarantors and certain of the beneficial owners of the Notes named therein (collectively, the “**Exchanging Holders**”), pursuant to which the Company agrees to exchange the Exchanging Holders’ Notes specified therein for new convertible senior secured notes to be issued pursuant to that certain indenture, to be dated as of the date hereof, by and among the Company, the Guarantors and Wilmington Trust, National Association, as trustee and collateral agent;

WHEREAS, the Company has distributed this Supplemental Indenture, including the Proposed Amendments (as defined below) to the Indenture, to the Exchanging Holders in connection with the solicitation of the Requisite Consents from such Exchanging Holders as to the Proposed Amendments;

WHEREAS, certain of the Exchanging Holders representing more than a majority in aggregate principal amount of Notes outstanding, have consented to the amendments, deletions and revisions provided in Section 2 of this Supplemental Indenture (collectively, the “**Proposed Amendments**”);

WHEREAS, the Board of Directors (or similar governing body) of the Company and the Guarantors have approved the Proposed Amendments and the execution of this Supplemental Indenture;

WHEREAS, the Company has heretofore delivered, or is delivering contemporaneously herewith, to the Trustee, (i) evidence that the Requisite Consents have been received and (ii) the Officer's Certificate and the Opinion of Counsel described in Sections 7.02, 7.07, 10.05, and 17.05 of the Indenture with respect to this Supplemental Indenture;

WHEREAS, all other acts and proceedings required by law and the Indenture necessary to authorize the execution and delivery of this Supplemental Indenture and to make this Supplemental Indenture a valid and binding agreement for the purposes expressed herein, in accordance with its terms, have been complied with or have been duly done or performed;

WHEREAS, having received the Requisite Consents pursuant to Section 10.02 of the Indenture, the Company and the Guarantors desire to amend the Indenture to effectuate the Proposed Amendments immediately prior to, and subject to the occurrence of, the consummation of transactions contemplated in the Exchange Agreements to be consummated (or substantially consummated) on the date hereof, in accordance with the terms set forth in the Indenture; and

WHEREAS, pursuant to Section 10.02 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

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. The Indenture is hereby amended to delete the following sections or clauses, as applicable, in their entirety, and, in the case of each such section or clause, as applicable, insert in lieu thereof the phrase "[Intentionally Omitted]", and any and all references thereto (including any definitions the references to which would be eliminated as a result of such deletions), and any and all obligations thereunder, and any events of default related thereto, are hereby deleted throughout the Indenture, and such sections, clauses and references shall be of no further force or effect.

(a) Section 4.08 entitled "Limitation on Certain Restricted Payments."

(b) Section 4.09 entitled "Limitation on Incurrence of Indebtedness and Issuance of Preferred Stock or Disqualified Stock."

(c) Section 4.10 entitled "Limitation on Liens."

(d) Section 4.11 entitled "Transactions with Affiliates."

(e) Section 4.12 entitled "Material Intellectual Property."

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. Except as expressly amended hereby, the Indenture shall remain in full force and effect.

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 for the recitals.

[Signature Page Follows]

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: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

BIGBEAR.AI INTERMEDIATE HOLDINGS, LLC, as a
Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

BIGBEAR.AI, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

BIGBEAR.AI, LCC (F/K/A/ NUWAVE SOLUTIONS,
L.L.C.), as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PROMODEL LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM PURCHASER, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM INTERMEDIATE II HOLDINGS, LLC, as a
Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM HOLDINGS, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM LABS, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

LINKWARE, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PRE, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

VERISCAN, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

214 TECHNOLOGIES, INC. D/B/A TRUEFACE, as a
Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

WILMINGTON TRUST, NATIONAL ASSOCIATION, as
Trustee

By: /s/ Quinton M. DePompolo
Name: Quinton M. DePompolo
Title: Assistant Vice President

BIGBEAR.AI HOLDINGS, INC.,
THE GUARANTORS PARTY HERETO
AND
WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee and Collateral Agent
INDENTURE
Dated as of December 27, 2024
6.00% Convertible Senior Secured Notes due 2029

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INDENTURE dated as of December 27, 2024 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**) and as collateral agent (the “**Collateral Agent**,” as more fully set forth in **Section 1.01**).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 6.00% Convertible Senior Secured Notes due 2029 (the “**Notes**”), initially in an aggregate principal amount not to exceed \$182,332,000, 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, the Trustee and the Collateral Agent, 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 and the Collateral Agent 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. Except as context shall otherwise require, the words “include,” “includes” and “including” as used in this Indenture shall be deemed to be followed by the phrase “without limitation.”

“**2026 Notes**” means the Company’s 6.00% Convertible Senior Notes due 2026, issued pursuant to the Indenture dated as of December 7, 2021, by and among the Company, the Guarantors party thereto and Wilmington Trust, National Association, as trustee, as amended, modified or supplemented from time to time.

“**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.

“**After-Acquired Collateral**” shall have the meaning specified in **Section 4.15(b)**.

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

“**Approved Foreign Bank**” shall have the meaning specified in the definition of Cash Equivalents.

“Approved Intercreditor Agreement” means an intercreditor agreement entered into pursuant to **Section 17.07** substantially in the form of **Exhibit C** hereto, with (i) such administrative changes as may be requested by the agents party thereto and/or (ii) such updates to the bracketed items reflecting the terms of the applicable Revolving Facility; *provided* that, such changes shall not be materially adverse to Holders, taken as a whole, as reasonably determined by the Company in good faith and also means any intercreditor agreement reasonably approved by the Holders holding at least a majority in an aggregate principal amount of the Notes, which approval shall not be unreasonably withheld, conditioned or delayed, and in a form that is reasonably acceptable to the Collateral Agent.

“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.

“Bank Lender” means any commercial bank, as reasonably determined by the Company in good faith.

“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.

“**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 Company or any Subsidiary:

(a) Dollars, Euros, Pounds Sterling, Canadian Dollars, Mexican Pesos, Singapore Dollars or any national currency of any member 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.

“**Casualty Event**” means any event that gives rise to the receipt by a Note Party of any property or casualty insurance proceeds or any condemnation awards, in each case, in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**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).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Collateral**” has the meaning assigned to such term in the Security Agreement.

“**Collateral Agent**” means the Person named as the “Collateral Agent” in the first paragraph of this Indenture until a successor collateral agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Collateral Agent” shall mean or include each Person who is then a Collateral Agent hereunder.

“**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 Issue Date and (ii) at such time as may be designated therein, pursuant to the Collateral Documents or **Article 17**, subject, in each case, and as applicable, to the limitations and exceptions of this Indenture and the other Note Documents, if applicable, duly executed by each Note Party a party thereto;

(b) all Note Obligations shall have been unconditionally guaranteed by the Company (other than with respect to the Note Obligations of the Company) and each existing and subsequently acquired or organized (including, without limitation, by division) Subsidiary that is a direct or indirect Subsidiary (other than any Excluded Subsidiary);

(c) the Note Obligations and the Guarantees shall have been secured by a first-priority security interest (subject to Permitted Liens) in (i) all of the Capital Stock of the Company and of each Subsidiary Guarantor (if directly owned by a Note Party) and (ii) all of the Capital Stock of each Subsidiary directly owned by the Company or any Subsidiary Guarantor (other Excluded Assets); and

(d) except to the extent otherwise provided hereunder, including subject to Permitted Liens, or under any Collateral Document, the Obligations and the Guarantees 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 filing intellectual property security agreements with the United States Patent and Trademark Office or United States Copyright Office as required in the Security Agreement) in substantially all assets (other than Excluded Assets) of the Company 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 Indenture and the Collateral Documents;

provided, however, that (i) the foregoing definition (other than as expressly set forth in **clause (b)** above) shall not require, and the Note 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 Indenture and the Collateral Documents.

The Collateral Agent (acting at the direction of the Holders holding at least a majority in an aggregate principal amount of the Notes) 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 Issue Date for the perfection of security interests in the assets of the Note Parties on such date) or any other compliance with the requirements of this definition where it reasonably determines, in consultation with the Company, 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 Indenture, the Collateral Documents or any other Note Documents.

Notwithstanding anything herein to the contrary, if the Company and the required Holders holding at least a majority in an aggregate principal amount of the Notes 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 Note Documents. Such determination shall be evidenced to the Trustee and Collateral Agent in an Officer's Certificate of the Company.

Notwithstanding anything herein to the contrary (other than as expressly set forth in **clause (b)** above), the Company and the Guarantors shall not be required, nor shall the Collateral Agent be authorized (unless otherwise approved by the Company), (i) to take any perfection actions inconsistent with the Perfection Requirements (as defined in the Security Agreement), (ii) [reserved], (iii) other than with respect to a Foreign Subsidiary that becomes a Guarantor pursuant to **Section 4.14** solely with respect to assets arising under the law of the jurisdiction of incorporation of such Foreign Subsidiary (A) 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 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) [reserved], (v) to enter into any mortgages and fixture filings relating to any Real Estate Asset that does not constitute Material Real Property, (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 Company may elect to perform any of the foregoing in its sole discretion.

“**Collateral Documents**” means, collectively, the Security Agreement, each control agreement and all other security agreements, pledge agreements, collateral assignments, patent, copyright and trademark security agreements, and other grants or transfers for security executed and delivered by the Company or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent, and all amendments, restatements, modifications or supplements thereof or thereto, by or among the Company, any Guarantor, and the Collateral Agent and any Approved Intercreditor Agreement.

“**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 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 IP Rights 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, the amortization of capitalized fees or costs related to any Permitted Receivables Financing 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,

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- (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, this Indenture, 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
- (xvii) (A) losses or discounts in connection with any Permitted Receivables Financing or otherwise in connection with factoring arrangements or the sale of Permitted Receivables Financing Assets and (B) expenses and amortization of capitalized fees in connection with any Permitted Receivables Financing, 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, (x) 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); and (y) all amounts added to Consolidated Adjusted EBITDA pursuant to **clauses (a)(iv), (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, 20% 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 this Indenture),

(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 this Indenture or any Specified Transactions or the implementation of an operational initiative or operational change (including, to the extent applicable, from this Indenture 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, (i) all amounts added to Consolidated Adjusted EBITDA pursuant to **clauses (a)(iv), (a)(vi) and (a)(vii)** of such definition and (ii) all amounts added to Consolidated Adjusted Ratio Debt EBITDA pursuant to **clause (a)** above, shall not exceed, in the aggregate, 20% 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 Event 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 entry into this Indenture, 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 this Indenture, 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 this Indenture 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 or, to the extent not constituting Indebtedness, obligations under a Permitted Receivables Financings 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 the Unrestricted Cash Amount as of such date to (b) with respect to the calculation of Consolidated 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.

“**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**.

“**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**.

“**Corporate Trust Office**” means the corporate trust office of the Trustee or the Collateral Agent, as applicable 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 or the Collateral Agent, as applicable, 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 successor collateral agent (or such other address as such successor trustee or successor collateral agent may designate from time to time by notice to the Holders and the Company).

“**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 Redemption Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“**Depository**” means, with respect to each Global Note, the Person specified in **Section 2.05(b)** as the Depository 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, “**Depository**” shall mean or include such successor.

“**Designated Non-Cash Consideration**” means the Fair Market Value (as determined by the Company in good faith) of non-Cash consideration received by the Company or any Subsidiary in connection with any Disposition pursuant to **Section 4.18(g)** that is designated from time to time as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, 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 (including any sale or issuance of Equity Interests of any Persons); provided, that the sale or issuance of Equity Interests of the Company shall be deemed not to constitute a Disposition.

“**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.

“**DTC**” means The Depository Trust Company or its designee.

“**Effective Date**” shall have the meaning specified in **Section 14.14(b)**, 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 Exchange Agreements 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 (or all Interest Shares, as applicable) of the applicable Notes held by a Person that is not a Rule 144 Affiliate 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 or all Interest Shares, as applicable) 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 and all Interest Shares on a timely basis in accordance herewith and to the extent required hereby in all material respects; (iv) the Company shall have obtained the Requisite Stockholder Approval; (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 Exchange Agreements 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 and all Interest Shares in accordance with the terms of the Exchange Agreements or (2) any shares of Common Stock issuable upon conversion (or all Interest Shares, as applicable) of the applicable Notes held by a Person that is not a Rule 144 Affiliate to not be eligible for sale pursuant to Rule 144 or the Company to not be 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.”

“**Equity Interests**” 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, including any limited or general partnership interest and any limited liability company membership interest) 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).

“**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 Agreements**” means, collectively, that certain exchange agreements, dated December 19, 2024, between the Company and that certain investors named therein.

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

“**Excluded Assets**” has the meaning assigned to such term in the Security Agreement.

“**Excluded Subsidiary**” means, unless otherwise elected by the Company, (a) any Receivables Subsidiary, (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 Issue Date or, following the Issue 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 Company and the Holders holding at least a majority in an aggregate principal amount of the Notes the burden or cost of providing a Guarantee shall be excessive in view of the benefits to be obtained by the Holders holding at least a majority in an aggregate principal amount of the Notes therefrom (giving due consideration to regulatory, accounting and tax consequences), such judgment to be evidenced to the Trustee in an Officer’s Certificate, (d) [reserved], (e) [reserved], (f) [reserved], (g) [reserved], (h) [reserved], (i) [reserved], (j) any Subsidiary that is not a Material Subsidiary, (k) [reserved], (l) [reserved] and (m) any Subsidiary acquired pursuant to an Investment permitted under this Indenture and financed with assumed Indebtedness permitted to be incurred pursuant to this Indenture (and not incurred in contemplation of such Investment), and each Subsidiary acquired in such 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 Note Obligations and such prohibition is not created in contemplation of such Investment permitted hereunder.

“**Existing Revolving Facility**” means, that certain Credit Agreement, dated as of December 7, 2021, by and among the Company, certain subsidiaries of the Company and other parties party thereto, Bank of America, N.A., as administrative agent and collateral agent, and the lenders party thereto, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

“**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.

“**Floor Price**” means, initially, \$1.00 per share, which shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted under **Section 14.04**. The adjusted Floor Price shall equal the Floor Price 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 Floor Price adjustment and the denominator of which is the Conversion Rate as so adjusted.

“**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.

“**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 14.07(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).

“**Fundamental Change Company Notice**” shall have the meaning specified in **Section 15.02(c)**.

“**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(b)(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)**.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Group**” means a “group” as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-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 18** of this Indenture.

“**Guarantor**” means collectively, each Subsidiary that is not an Excluded Subsidiary that executes this Indenture as a Guarantor on the Issue Date and each other Subsidiary that is not an Excluded Subsidiary that incurs a Guarantee; *provided* that upon the release or discharge of such Person from its Guarantee in accordance with the terms of this Indenture, such Subsidiary automatically ceases to be 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 14.13** and the definitions of the terms Attribution Parties and Equity Conditions, the indirect holder or beneficial owner 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.

"Interest Make-Whole Amount" means, with respect to the conversion of any Note, in an amount, denominated in U.S. dollars, equal to (a) if such Conversion Date is prior to December 27, 2025, an amount equal to 4.1% of the principal amount of such Note; (b) if such Conversion Date is on or after December 27, 2025, and prior to December 15, 2027, an amount equal to 7.5% of the principal amount of such Note; (c) if such Conversion Date is on or after December 15, 2027 but prior to December 15, 2028, an amount equal to 6.0% of the principal amount of such Note; and (d) if such Conversion Date is on or after December 15, 2028, an amount equal to zero.

"Interest Payment Date" means each June 15 and December 15 of each year, beginning on June 15, 2025, with the last such payment on the Maturity Date.

"Interest Shares" shall have the meaning specified in **Section 2.03(d)**.

"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 the Company or any Subsidiary in any Person

through substantially concurrent interim transfers of any amount through the Company or any Subsidiary, then such other substantially concurrent interim transfers shall be disregarded for purposes of **Section 4.17**. 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 (other than returns which are funded from proceeds of any Indebtedness or Equity Interests, including preferred stock).

“**Investment Grade Securities**” shall mean:

(a) securities issued or directly, fully and unconditionally guaranteed by the United States government or any agency or instrumentality thereof (other than Cash Equivalents),

(b) debt securities or debt instruments with an investment grade rating, but excluding any debt securities or instruments constituting loans or advances among the Company and its Subsidiaries, and

(c) 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.

“**IP Rights**” means all rights in patents, patent applications, trademarks, service marks copyrights, trade names, trade secrets, know-how, database rights and other intellectual property rights.

“**Issue Date**” means December 27, 2024.

“**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).

“**Junior Indebtedness**” means any Indebtedness (other than Indebtedness among the Company and/or its Subsidiaries) (x) of the Note Parties that is unsecured or (y) that is expressly subordinated in right of payment to the Note Obligations.

“**Junior Lien Indebtedness**” means any Indebtedness that is secured by a security interest on the Collateral (other than Indebtedness among the Company and/or its Subsidiaries) that is expressly junior or subordinated to the Lien securing the Notes with respect to the Collateral.

“**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; *provided* that in no event shall an operating lease or an agreement to sell in and of itself be deemed to or give rise to a Lien.

“**Liquidity**” means, as of any date, the average of sum of (x) the Unrestricted Cash Amount plus (y) the aggregate amount of any undrawn revolving credit commitments pursuant to any revolving credit facility to which the Company or any of its Subsidiaries is a party (with respect to which the Company is able to draw, including, being able to satisfy the conditions to draw with respect thereto), for such date and the immediately preceding four (4) Business Days plus (z) (without duplication of amounts under clause (x)) receipts of cash from any Permitted Receivables Financing.

“**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 14.14(a)**.

“**Margin Stock**” has the meaning assigned to such term in Regulation U of the Board of Governors of the Federal Reserve System of the United States as from time to time in effect.

“**Market Disruption Event**” means (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 Adverse Effect**” means 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 Company and its Subsidiaries, taken as a whole, (ii) a material adverse effect on material remedies (taken as a whole) of the Holders under this Indenture and the other Note Documents or (iii) a material adverse effect on the ability of the Company and its Subsidiaries, taken as a whole, to perform their material payment obligations under this Indenture and the other Note Documents.

“**Material Subsidiary**” means, at any date of determination, each 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, 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 5.00% 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 5.00% 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 Subsidiaries as “Material 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 IP Rights 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 IP Rights 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 Real Property**” means any fee-owned real property located in the United States and subsequently acquired by the Company or any Guarantor (or owned by an acquired or newly created Guarantor, if applicable) after the Issue Date with a fair market value in excess of \$2.5 million at the time of acquisition (if acquired by the Company or any Guarantor after the Issue Date) and which is improved with a facility owned by the Company or any Guarantor that is open for commercial operations; *provided* that for the avoidance of doubt, Material Real Property will not include any Excluded Assets.

“**Maturity Date**” means December 15, 2029.

“**Net Proceeds**” means, with respect to the Disposition of any asset by the Company or any Subsidiary, the excess, if any, of:

(a) the sum of cash and Cash Equivalents received in connection with such Disposition (including any cash and Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received), over

(b) the sum of,

(i) the principal amount, premium or penalty, if any, interest, breakage costs and other amounts on any (1) Indebtedness that is secured by the asset subject to such Disposition and required to be repaid in connection with such Disposition (other than Indebtedness under the Note Documents, pari passu lien Indebtedness or junior lien Indebtedness), (2) Indebtedness that was secured by a Lien on the assets that were the subject of such Disposition that was senior (by operation of law or otherwise) to the Liens created by the Collateral Documents and (3) Indebtedness of Subsidiaries that are not Note Parties,

(ii) the out-of-pocket fees and expenses (including attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and re-cording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by the Company or such Subsidiary in connection with such Disposition,

(iii) taxes or distributions made pursuant to this Indenture paid or reasonably estimated to be payable in connection therewith (including taxes imposed on the distribution or repatriation of any such Net Cash Proceeds),

(iv) in the case of any Disposition by a non-wholly owned Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof (calculated without regard to this **clause (b)**) attributable to minority interests and not available for distribution to or for the account of the Company or a wholly owned Subsidiary as a result thereof,

(v) any reserve for adjustment in respect of (1) the sale price of such asset or assets established in accordance with GAAP and (2) any liabilities associated with such asset or assets and retained by the Company or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that “**Net Proceeds**” shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this **clause (v)**; and

(vi) any costs associated with unwinding any related hedge agreements in connection with such transaction.

“**Non-Note Party Investment Amount**” means an aggregate amount of Investments made in respect of Subsidiaries that are not Note Parties, in reliance on **Section 4.17(b)** and **(e)**, equal to \$5,640,000.

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

“**Note Documents**” means this Indenture, the Notes, the Collateral Documents and any Approved Intercreditor Agreement.

“**Note Obligations**” means the Obligations of the Company and the other obligors (including the Guarantors) under this Indenture and the Note Documents to pay principal, premium, if any, and interest (including all interest accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding, whether or not a claim for such post-petition interest is allowed or allowable in such proceeding), fees, expenses and indemnities when due and payable, and all other amounts due or to become due under or in connection with this Indenture and the Note Documents and the performance of all other obligations of the Company and the Guarantors under this Indenture and the Note Documents, according to the respective terms thereof.

“**Note Party**” means the Company and the Guarantors.

“**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)**.

“**NYSE**” means The New York Stock Exchange.

“**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 or any Guarantor, means a certificate that is delivered to the Trustee or the Collateral Agent, as applicable, and that is signed on behalf of the Company by an Officer of the Company that meets the requirements of **Section 19.05**.

“**OID Legend**” means a legend substantially in the following form:

THIS NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR U.S. FEDERAL INCOME TAX PURPOSES PURSUANT TO TREASURY REGULATIONS SECTIONS 1.1272-1 AND 1.1273-1. IF THIS NOTE WAS ISSUED WITH OID, HOLDERS MAY OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTES BY CONTACTING THE CHIEF FINANCIAL OFFICER OF THE COMPANY AT 6811 BENJAMIN FRANKLIN DRIVE, SUITE 200, COLUMBIA, MD.

“**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 and the Collateral Agent, if applicable.

“**Optional Redemption**” means a redemption pursuant to **Section 16.01(a)**.

“**Optional Redemption Condition**” means the conditions required for the Company to cause Notes to be redeemed pursuant to **Section 16.01(a)**.

“**Optional Redemption Determination Date**” shall have the meaning specified in **Section 16.01(a)**.

“**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**;

(f) Notes redeemed pursuant to **Article 16**; and

(g) 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**.

“**Parent Company**” means any Person of which the Company is a direct or indirect Wholly Owned Subsidiary.

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

“**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) 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 Subsidiary (other than an Excluded Subsidiary) shall become a Guarantor, in each case, in accordance with and subject to **Section 4.14**; (iii) the aggregate amount of Investments by Note 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 Note Party or in Capital Stock of Persons that do not become Note Parties at any time outstanding shall not exceed the Non-Note Party Investment Amount; (iv) the assets and/or Person acquired are used in, or conduct, a Permitted Business; (v) [reserved]; (vi) [reserved]; (vii) such acquisition shall be non hostile; and (viii) subject to **clause (iii)** above and **Section 4.19**, any such acquired Person shall become a Subsidiary; provided, that if any Investment made pursuant to **clause (iii)** is in Capital Stock of a Person that subsequently becomes a Note Party, such Investment shall thereafter be deemed permitted under **Section 4.17** and shall not be included as having been made pursuant to **clause (iii)** above.

“**Permitted Business**” means any business, the majority of whose revenues are derived from (a) business or activities conducted by the Company and the Subsidiaries on the Issue Date, (b) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (b) any business that in the Company’s good faith business judgment constitutes a reasonable diversification of businesses conducted by the Company and the Subsidiaries.

“**Permitted Factoring Arrangement**” means, collectively, any customary factoring program so long as such transactions are (i) non-recourse to the Issuer and the Note Parties except for customary seller obligations, (ii) treated as a true sale of receivables, (iii) subject to customary lien release agreements in form and substance reasonably acceptable to the Trustee and Collateral Agent in accordance with **Section 17.05** and (iv) substantially on terms and conditions in Schedule I.

“**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 (i) created pursuant to any Note Document and (ii) on the Collateral securing the Note 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 the Company 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 of set-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 Company or any of the Subsidiaries or (y) leases or licenses of property otherwise permitted by this Indenture 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 Company or any of the 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 or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding **clause (iii)**;

(g) Liens (i) solely on any Cash earned money deposits (including as part of any escrow arrangement) made by the Company and/or any of their 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 4.18** and/or (B) the pledge of Cash as part of an escrow arrangement required in any Disposition permitted under **Section 4.18**;

(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 4.09** and elsewhere under **Section 4.10** 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 Permitted Refinancing Indebtedness; *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 Capitalized Lease Obligation or purchase money Indebtedness as permitted under this Indenture 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 Permitted 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 Company) or (B) the intercreditor arrangements governing the Lien securing the relevant Refinancing Indebtedness shall be set forth in an Approved 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 Issue Date that secure Indebtedness or other obligations not in excess of \$2,000,000 in the aggregate (when taken together with all other Liens securing obligations outstanding in reliance on this **clause (l)**) and any modifications, replacements, renewals, restructurings, refinancings or extensions thereof; *provided* that (I) except as otherwise permitted by another clause of this definition (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 Capitalized Lease Obligation or purchase money Indebtedness as permitted under this Indenture, (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 4.09**;

(m) Liens on accounts receivable, royalty and any other assets arising in connection with a Permitted Receivables Financing;

(n) Liens arising from precautionary UCC financing statements or any similar filings made in respect of (i) operating leases or consignment or bailee arrangements entered into by the Issuer or any Subsidiary, (ii) the sale of accounts receivable and/or (iii) the sale of Permitted Receivables Financing Assets and related assets in connection with any Permitted Receivables Financing;

(o) Liens securing Indebtedness permitted pursuant to **Section 4.17(e)** on the relevant acquired assets or on the Capital Stock and assets of the relevant newly acquired 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) 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 Company or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company or any Subsidiary, (C) purchase orders and other agreements entered into with customers of the Company or any 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 Note Parties (including Capital Stock owned by such Persons) securing Indebtedness or other obligations of foreign Subsidiaries that are not Note Parties permitted under this Indenture 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 Company and/or their Subsidiaries;

(s) Liens (i) in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business, (ii) on Permitted Receivables Financing Assets or Liens on other assets granted pursuant to Standard Securitization Undertakings, in each case, incurred in connection with Permitted Receivables Financings permitted under this Indenture and (iii) securing Permitted Refinancing Indebtedness of the foregoing;

(t) [reserved];

(u) Liens with respect to property of the Company or any of the Subsidiaries securing obligations in an aggregate principal amount outstanding at any time not to exceed \$4,700,000 (which Lien, if extending to the Collateral, shall be junior to the Liens securing the Note Obligations);

(v) Liens (i) securing judgments, awards, attachments and/or decrees for the payment of money not constituting an Event of Default under **Section 6.01(h)**, (ii) arising out of judgments or awards against the Company or any of 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;

(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 Company or any 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 4.18**;

(x) Liens deemed to exist in connection with Investments in repurchase agreements under **Section 4.17**;

(y) Liens securing obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments permitted under this Indenture;

(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 Indenture 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 Note Party and/or (ii) granted by any non-Note Party in favor of any Subsidiary that is not a Note Party, in each case of the foregoing **clauses (i) and (ii)**, securing intercompany Indebtedness permitted under **Section 4.09**;

(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 Company 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) [reserved];

(ee) (i) Liens on Capital Stock of joint ventures or 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 Company or any 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 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;

(ii) deposits of cash with the owner or lessor of premises leased and operated by a Company or any of its Subsidiaries to secure the performance of the Company'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 definition; *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);

(kk) Liens on property of any Subsidiary that is not a Note Party, which Liens secure Indebtedness permitted to be incurred by such Subsidiary that is not a Note Party under **Section 4.09**;

(ll) Lien securing Indebtedness permitted by **Section 4.09(b)(i)(B)**;

(mm) Liens securing 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 Company or any Subsidiary granted in the ordinary course of business to such 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 Receivables Financing" means any securitization or other similar financing (including any factoring program including a Permitted Factoring Arrangement) of Permitted Receivables Financing Assets that is non-recourse to the Issuer and its Subsidiaries other than the applicable Receivables Subsidiary (except for (i) recourse to any foreign Subsidiaries that own the assets underlying such financing (or have sold such assets in connection with such financing), (ii) any customary limited recourse pursuant to the Standard Securitization Undertakings or, to the extent applicable only to foreign Subsidiaries, recourse that is customary in the relevant local market, (iii) any customary performance undertaking or Guarantee and (iv) an unsecured parent Guarantee by the Issuer or any of its Subsidiaries that is a parent company of a foreign Subsidiary of obligations of such foreign Subsidiaries), and in each case, reasonable extensions thereof.

“Permitted Receivables Financing Assets” means (a) any accounts receivable, loan receivables, mortgage receivables, receivables or loans relating to the financing of insurance premiums, royalty, patent and other reasonably related assets and the proceeds thereof and (b) all assets securing or reasonably related to any such receivable or asset, guarantees or other obligations in respect of any such receivable or asset, lockbox accounts and records with respect to any such receivable or assets and any other assets (including inventory and proceeds thereof) customarily transferred (or in respect of which security interests are customarily granted) together with receivables or assets in connection with a securitization, factoring or receivables financing or sale transaction.

“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 (*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);

(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;

(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.

“**Permitted Tax Restructuring**” means any re-organizations and other activities among the Company and its Subsidiaries related to tax planning and re-organization so long as such Permitted Tax Restructuring is not materially adverse to the Holders of Notes (as determined by the Company in good faith), and does not result in the release of any material amount of assets from being Collateral or any Guarantors from guaranteeing the Note Obligations.

“**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.

“**Pledged Collateral**” has the meaning assigned to such term in the Security Agreement.

“**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.

“**Prepayment Asset Disposition**” means any Disposition pursuant to **Sections 4.18(g)** and **4.18(p)(i)**.

“**Prepayment Asset Sale Offer**” means an offer to purchase required to be made by the Company pursuant to **Section 4.21** to all Holders.

“**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).

“**Receivables Subsidiary**” means any special purpose entity established in connection with a Permitted Receivables Financing and any other subsidiary (other than any Issuer or Subsidiary) involved in a Permitted Receivables Financing which is not permitted by the terms of such Permitted Receivables Financing to guarantee the Note Obligations or provide Collateral.

“**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).

“**Redemption Date**” shall have the meaning specified in **Section 16.01(c)**.

“**Redemption Notice**” shall have the meaning specified in **Section 16.01(b)**.

“**Redemption Period**” means, with respect to any Optional Redemption, the period from, and including, the date the Company delivers the Redemption Notice for an Optional Redemption until the close of business on the Scheduled Trading Day immediately preceding the related Redemption Date (or, if the Company defaults in the payment of the Redemption Price, until the close of business on the Scheduled Trading Day immediately preceding the date on which the Redemption Price has been paid or duly provided for).

“**Redemption Price**” means, for any Notes to be redeemed pursuant to **Section 16.01**, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date (unless the Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case interest accrued on such Notes to the Interest Payment Date will be paid to Holders of record of such Notes as of the close of business on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes).

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

“**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.

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

“**Registrable Securities**” shall have the meaning set forth in the applicable Exchange Agreement.

“**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.

“**Requisite Stockholder Approval**” means the stockholder approval contemplated by NYSE Listing Standard Rule 312.03(c) with respect to the issuance of shares of Common Stock upon conversion of the Notes and the Interest Shares in excess of the limitations imposed by such rule; *provided, however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of the NYSE, such stockholder approval is no longer required for the Company to settle all conversions of the Notes by Physical Settlement and to pay all stated interest in the form of Interest Shares, assuming, for these purposes, that the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 14.14**, the maximum amount of shares are issuable in respect of the Interest Make-Whole Amount pursuant to **Section 14.02** and the maximum amount of shares are issuable in respect of the Interest Shares. The Company shall deliver written notice to the Trustee upon obtaining the Requisite Stockholder Approval.

“**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 Debt**” means any Junior Indebtedness and any Junior Lien Indebtedness.

“**Restricted Securities**” shall have the meaning specified in **Section 2.05(e)**.

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

“**Revolving Facility**” shall have the meaning specified in **Section 4.09(b)(i)(B)(1)**.

“**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 144 Affiliate**” means, at the relevant time of determination, any Person that is an “affiliate” (as defined in Rule 144) of the Company or has been an “affiliate” (as defined in Rule 144) of the Company during the immediately preceding three (3) months.

“**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.

“**Secured Parties**” has the meaning assigned to such term in the Security Agreement.

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

“**Security Agreement**” means the Notes Security Agreement, dated as of the Issue Date, among the Company, the Guarantors and the Collateral Agent, together with supplements or joinder executed and delivered pursuant to the Collateral and Guarantee Requirement.

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

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

“**Share Issuance Cap**” has the meaning specified in **Section 14.15**.

“**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, (iii) any Disposition that results in a Subsidiary ceasing to be a Subsidiary of the Company, (iv) 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 any Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, (v) any incurrence or repayment of Indebtedness, (vi) any Restricted Payment or (vii) 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)**.

“**Standard Securitization Undertakings**” means all representations, warranties, covenants, pledges, transfers, purchases, dispositions, guaranties and indemnities (including repurchase obligations in the event of a breach of representation and warranty) and other undertakings made or provided, and servicing obligations undertaken, by any Subsidiary or Subsidiary thereof that the Issuer has determined in good faith to be customary in connection with a Permitted Receivables Financing.

“**Stated Interest Rate**” shall have the meaning specified in **Section 2.03(a)**.

“**Stock Payment Notice**” shall have the meaning specified in **Section 2.03(d)**.

“**Stock Price**” shall have the meaning specified in **Section 14.14(b)**.

“**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)**.

“**Surviving Guarantor**” shall have the meaning specified in **Section 11.02**.

“**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 New York Stock Exchange or, if the Common Stock (or such other security) is not then listed on The New York Stock Exchange, 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 New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange, 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.

“**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.

“**UCC**” has the meaning assigned to such term in the Security Agreement.

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

“**Unrestricted Cash Amount**” means, when referring to cash or Cash Equivalents of the Company and its Subsidiaries, that such cash or Cash Equivalents does not appear (or would not be required to appear) as “restricted” on a consolidated balance sheet of the Company or such Subsidiary (unless such appearance is related to a restriction in favor of, the Trustee, the Collateral Agent or any Holder).

“**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 which the Common Stock is listed or admitted for trading 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 Issue 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 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 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, such Specified Transaction (and in respect of any subsequent pro forma calculation in which such initiative or change, 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 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, 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)(iv), (a)(vi) and (a)(vii)** of such definition (and all amounts excluded from thereof) and (ii) all amounts added to Consolidated Adjusted 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, 20% 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 Total Net Leverage 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).

Section 1.05 *Factoring Arrangements*. Notwithstanding anything to the contrary contained in this Indenture or in any other Note Document, (i) in no event shall this Indenture, any other Note Document or any provision hereof or thereof be interpreted to prohibit any Permitted Factoring Arrangement in an aggregate principal amount not to exceed \$15,000,000 at any time outstanding, (ii) the consummation of the Permitted Factoring Arrangement will not, on their own, result in a breach or default under this Indenture or any other Note Documents, and (iii) the consummation of the Permitted Factoring Arrangement (a) shall be permitted under this Indenture and the other Note Documents, (b) shall have a facility limit in respect of the purchase price paid for purchased receivables at any time outstanding not to exceed \$15,000,000, (c) shall not have applicable fees or interest on such Permitted Receivables Financing greater than the secured overnight financing rate (calculated in a customary manner) plus 500 basis points per annum (including any discounts, but excluding any customary fees such as enrollment fee and unused fee or default fees) as determined by the Company in good faith taking into account the expected

duration of the relevant receivables at the time of sale and (d) shall not have an advance rate less than 85% on any receivables (which shall apply to receivables sold, Disposed or otherwise contributed or transferred to any such Receivables Subsidiary). If such Permitted Factoring Arrangement is not structured as a “true sale”, any Indebtedness incurred under any Permitted Factoring Arrangement shall be treated for all purposes of this Indenture as Indebtedness incurred pursuant to **Section 4.09(b)(i)(B)(2)** except to the extent otherwise permitted hereunder. If any Permitted Factoring Arrangement that is a “true sale” and does not represent Indebtedness is in effect, then no Indebtedness may be incurred pursuant to **Section 4.09(b)(i)(B)(1) or (2)** while such Permitted Factoring Arrangement is in 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 Secured Notes due 2029.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$182,332,000, 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 Depository, 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 (including, with respect to any Physical Notes, the OID Legend) 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 redemptions, 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 Redemption Price and 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; Defaulted Amounts and Company's Election to Pay Stated Interest in Common Stock.

(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 at a rate per annum equal to 6.00% (as increased pursuant to this **Section 2.03(a)**, the “**Stated Interest Rate**”); *provided* that to the extent the Liquidity of the Company and its Subsidiaries is less than \$30,000,000 (the “**Minimum Liquidity Interest Rate Threshold**”), as of the last Business Day of any calendar month, then the Stated Interest Rate with respect to the period applicable to the Interest Payment Date immediately following the month in which the Minimum Liquidity Interest Rate Threshold shall have not been satisfied shall be deemed to be a rate per annum equal to 9.00% (it being understood that such increased rate shall apply solely for such six-month period applicable to such Interest Payment Date). Upon the occurrence of any increase in the Stated Interest Rate as the result of the Minimum Liquidity Interest Rate Threshold provisions of this **Section 2.03(a)**, the Company shall deliver a notice in writing to the Trustee and the Holders stating the new Stated Interest Rate applicable to the Notes and specifying the period during which such Stated Interest Rate is applicable. 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 a 30-day month. Subject to **Section 2.03(d)** below, if the Company elects to pay any interest payment in cash, the Company shall pay such 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.

(d) Interest shall be payable on each Interest Payment Date in cash or, subject to the limitations in this **Section 2.03(d)** and **Section 14.13**, at the Company's election, in shares of Common Stock. At least ten (10) Trading Days (but no more than twenty (20) Trading Days) prior to a Regular Record Date, the Company, if it desires to elect to make a payment of interest payable on the Notes due on the related Interest Payment Date in shares of Common Stock, shall (i) deliver to the Holders and the Trustee a written notice of such election (a "**Stock Payment Notice**") (and, except as otherwise set forth in this **Section 2.03(d)**, such election shall be irrevocable as to such Interest Payment Date) and (ii) publicly disclose such election through a press release or filing a Current Report on Form 8-K with the Commission. Failure to timely deliver such written notice to the Holders and the Trustee or to make such required public disclosure shall be deemed an election by the Company to pay such interest on such Interest Payment Date in cash.

If the Company notifies Holders and the Trustee that it will make an interest payment with respect to any Interest Payment Date in shares of Common Stock, and either (i) (A) such Holder (or any indirect holder or beneficial owner) is in possession of any material, non-public information regarding the Company or its securities provided to any of them by or on behalf of the Company and (B) such Holder (or any indirect holder or beneficial owner) elects to not receive such interest payment in shares of Common Stock or (ii) all or a portion of such payment would cause such Holder (or any indirect holder or beneficial owner) and the related Attribution Parties to exceed the Maximum Percentage applicable to such Holder, indirect holder, beneficial owner and related Attribution Parties, such Holder, indirect holder or beneficial owner shall notify the Company via email at carolyn.blankenship@bigbear.ai, with a copy to OGC@bigbear.ai (with a copy to the Trustee via email at qdepompolo@wilmingtontrust.com, with a copy to WTCorporateDebtTeam@WilmingtonTrust.com, unless an alternate email address is provided to the Company and Holders) no later than the second Trading Day following the Regular Record Date for such Interest Payment Date, which notice shall specify the number of shares of Common Stock such Holder, indirect holder or beneficial owner, as applicable, and the related Attribution Parties may receive without exceeding the limitations in **Section 14.13** with respect to such Holder, indirect holder, beneficial owner and the related Attribution Parties. Any portion of any interest payment which cannot be made in shares of Common Stock as a result of the limitations in this paragraph will instead be paid in cash directly by the Company to such Holder, indirect holder or beneficial owner.

With respect to any Interest Payment Date for which the Company has elected to make a payment of interest payable on the Notes in shares of Common Stock in accordance with this **Section 2.03(d)**, the Company shall issue to the Holders, indirect holders or beneficial owners, on each of the three (3) Trading Days ending on and including the fifth (5th) Trading Day preceding such Interest Payment Date (each such Trading Day, an "**Interest Shares Delivery Date**"), in lieu of making such payment in cash, a number of duly authorized, validly issued, fully paid and non-assessable shares of Common Stock equal to the quotient (rounded up to the closest whole number) obtained by dividing such interest payment (*provided* that, solely with respect to the interest being paid in the form of Common Stock as provided herein, the amount of accrued and unpaid interest shall be deemed to be have accrued at an interest rate that is 1.00% higher than the Stated Interest Rate in lieu of the Stated Interest Rate that would have applied had such interest payment been made in cash, for the avoidance of doubt, and as may be increased pursuant to **Section 2.03(a)**) by the product of (x) three, (y) 95%, (z) the Daily VWAP for the Trading Day immediately preceding the Interest Shares Delivery Date (the "**Interest Shares**"). Notwithstanding anything herein to the contrary, the Company will not have the right to, and will not, make any interest payment in shares of Common Stock (and, for the avoidance of doubt, will make such interest payment in cash at the Stated Interest Rate) unless, as of each Scheduled Trading Day occurring between the day of the

delivery of the Stock Payment Notice and the applicable Interest Payment Date, no Equity Conditions Failure then exists; *provided* that on any Interest Shares Delivery Date, any portion of any interest payment made by the delivery of Interest Shares that occurs prior to an Equity Conditions Failure (for the avoidance of doubt, including the situation where an Equity Conditions Failure occurs on an Interest Shares Delivery Date) shall continue to be paid in shares, and the Holder, indirect holder or beneficial owner shall not be required to return any such Interest Shares to the Company. If on any Interest Shares Delivery Date, the Daily VWAP for the Trading Day immediately preceding the Interest Shares Delivery Date is less than the Floor Price, then the Company will not make such interest payment in shares of Common Stock (and, for the avoidance of doubt, will make such payment in cash at the Stated Interest Rate).

For each Regular Record Date for which the Company has validly delivered a Stock Payment Notice (and made the associated public disclosures), each Holder shall promptly notify the indirect holders or beneficial owners on its records, and each indirect holder or beneficial owner shall promptly, but no later than the second Trading Day following such Regular Record Date, deliver to the Company via email at carolyn.blankenship@bigbear.ai, with a copy to OGC@bigbear.ai (with a copy to the Trustee via email at qdepompolo@wilmingtontrust.com, with a copy to WTCorporateDebtTeam@WilmingtonTrust.com, unless an alternate email address is provided to the Company and Holders) (i) a duly executed certificate stating the principal amount of the Notes such indirect holder or beneficial owner, as applicable, holds or beneficially owns as of such Regular Record Date; (ii) a customary representation letter from the broker of such indirect holder or beneficial owner, representing that, among others, the shares of Common Stock that may be received as interest payment will be sold pursuant to an effective registration statement registering the resale of such shares of Common Stock or pursuant to Rule 144 under the Securities Act and (iii) the broker name and contact information, the DTC participant number, and the account information where such shares of Common Stock are to be delivered. Once the Company has received and is reasonably satisfied with the foregoing documents from an indirect holder or beneficial owner, with respect to any shares of Common Stock to be issued in payment of interest to such holder or owner on the Notes in accordance with this **Section 2.03(d)**, the Company shall cause its stock transfer agent to credit such aggregate number of shares of Common Stock to which each such indirect holder or beneficial owner shall be entitled in accordance with the DTC information provided to the Company by such indirect holder or beneficial owners by Deposit/Withdrawal at Custodian (or such other method as such indirect holder or beneficial owner shall agree), without any associated restrictive legend and in an unrestricted CUSIP fungible with the publicly traded Common Stock. The Person or Persons entitled to receive such Common Stock pursuant to a payment of interest on the Notes in shares of Common Stock shall be treated for all purposes as the holder or holders of such Common Stock as of the close of business on the applicable Interest Payment Date; *provided, however*, that no such payment of interest in shares of Common Stock on any Interest Payment Date when the stock transfer books of the Company shall be closed shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock upon such payment as the holder or holders of such shares of Common Stock on such date, but such payment shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; *provided further* that such payment shall be in the amount in effect on the Interest Payment Date as if the stock transfer books of the Company had not been closed.

If any indirect holder or beneficial owner fails to deliver to the Company the documents pursuant to **clause (i)** of the first sentence of the preceding paragraph, the Company shall issue, or cause to be issued, the full number of shares of Common Stock to which such indirect holder or beneficial owner shall be entitled in accordance with this **Section 2.03(d)** to a separate restricted shares reserve established on the Company's stock transfer agent's books and records and shall cause such shares to be delivered to the applicable indirect holder or beneficial owner no later than two Trading Days after such indirect holder or beneficial owner provides the documents pursuant to **clause (i)** of the first sentence of the preceding paragraph. If any indirect holder or beneficial owner fails to deliver to the Company the documents pursuant to **clauses (ii) or (iii)** of the first sentence of the preceding paragraph, the Company shall issue, or cause to be issued, the full number of shares of Common Stock to which such indirect holder or beneficial owner shall be entitled in accordance with this **Section 2.03(d)** to an account in the name of such indirect holder or beneficial owner maintained on the books and records of the Company's stock transfer agent, which shares shall have associated with them restrictive legends unless and until such time as such indirect holder or beneficial owner provides the documents pursuant to **clauses (ii)** of the first sentence of the preceding paragraph. Payment into a share reserve as provided in this paragraph shall constitute timely payment of interest unless and until the affected indirect holder or beneficial owner delivers the notices required hereby, and then shall constitute timely payment of interest if the Company delivers such shares no later than two Trading Days after receipt of such documents by such indirect holder or beneficial owner.

If, after delivery of a Stock Payment Notice, the Company is prohibited from paying interest in the form of Interest Shares, the Company shall notify the Trustee in writing at least five (5) Trading Days prior to the Interest Payment Date that payment will be made in cash and shall deposit such cash with the Trustee or Paying Agent in accordance with **Section 4.01**.

Substantially concurrently with making any payment in the form of Interest Shares (and/or cash for portions of the interest payment that cannot be made in shares of Common Stock), the Company shall deliver an Officer's Certificate to the Trustee stating that the interest payment has been made in compliance with the Indenture (and including the amount of such payment), such Interest Shares have been distributed and any cash payable has been paid.

The Trustee shall have no duty to monitor, or independently verify or determine whether and to what extent, the Equity Conditions, the Floor Price, Liquidity, any Holder, indirect holder or beneficial owner's Maximum Percentage or any of the determinations or calculations leading to any of the foregoing, have been achieved, shall have no duty to calculate or verify the Company's calculations of the amount of Interest Shares to be paid and shall have no duty to solicit from, Holders, indirect holders or beneficial owners, or verify the accuracy of, any of the information to be provided by such Holders, indirect holders or beneficial owners as provided in this **Section 2.03(d)**. The Trustee shall be entitled to conclusively rely on the notices and Officer's Certificates delivered to it by the Company.

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 19.10**), 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 (including, with respect to any Physical Notes, the OID Legend) 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, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with **Article 15** or (iii) any Notes selected for redemption in accordance with **Article 16**.

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 Depository, 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 Depository or the nominee of the Depository. 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 Depository (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 RELATED GUARANTEES 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, 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 REGULATIONS 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 (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.

[INCLUDE FOLLOWING LEGEND IF A PHYSICAL NOTE]

THIS NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR U.S. FEDERAL INCOME TAX PURPOSES PURSUANT TO TREASURY REGULATIONS SECTIONS 1.1272-1 AND 1.1273-1. IF THIS NOTE WAS ISSUED WITH OID, HOLDERS MAY OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTES BY CONTACTING THE CHIEF FINANCIAL OFFICER OF THE COMPANY AT 6811 BENJAMIN FRANKLIN DRIVE, SUITE 200, COLUMBIA, MD.

Any Note (or security issued in exchange or substitution therefor) (i) [reserved], (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 Depository 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 Depository, 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, redeemed 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, redeemed 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 or Interest Shares 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 or Interest Shares, as applicable, 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, 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 REGULATIONS 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 (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) [reserved], (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(d)**.

(e) Any Note, Common Stock issued upon conversion or exchange of a Note or Interest Shares 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, redemption, 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, redemption, 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, redemption, 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) as permitted pursuant to **Section 4.09(b)(i)(A)**; *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 **19.05**, as the Trustee shall reasonably request. In addition, subject to **Section 4.22**, the Company may, with the consent of Holders holding 75% in aggregate principal amount of the Notes, 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 the Redemption 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 and the Collateral Agent 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 Redemption Price and 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, in **Section 2.03(d)** 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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; Annual Reports; Cash Reporting and Quarterly Reporting*.

(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, any shares of Common Stock issuable upon conversion thereof or any Interest Shares shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide without cost to any Holder, beneficial owner or prospective purchaser of such Notes, any shares of Common Stock issuable upon conversion of such Notes or any Interest Shares, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) The Company shall deliver to the Holders, 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).

(d) As soon as reasonably practicable following each calendar month, and no later than five (5) Business days following each calendar month, the Company shall deliver to the Holders, a report reflecting the Liquidity of the Company and its Subsidiaries as of each Business Day of the prior month.

(e) The Company shall, once per calendar quarter, invite each Holder of the Notes to a conference call with company management to discuss the Company's most recently reported earnings.

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, 2024) 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 Restricted Debt, 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 Restricted Debt 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 this Indenture;

(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 Restricted Debt 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 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 Restricted Debt 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**;

(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; and

(xiv) distributions or payments made directly or by means of discounts with respect to any Permitted Receivables Financing Assets or participation interest therein sold, Disposed, contributed or otherwise transferred in connection with, and other fees, charges or expenses paid in connection with, any Permitted Receivables Financing.

Notwithstanding the foregoing, or anything else herein to the contrary, the Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, purchase, repay, prepay, repurchase, redeem, defease, acquire or retire for value, including at the scheduled maturity thereof, the 2026 Notes, except (i) any refinancing of the 2026 Notes from the proceeds of additional Notes on a dollar-for-dollar basis, (ii) any repayment of the 2026 Notes from the proceeds of the sale or issuance of Equity Interests of the Company, and (iii) any repayment of the 2026 Notes with cash in an amount not to exceed \$5 million.

(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 2026 Notes and additional Notes issued to refinance the 2026 Notes; and

(B) (1) 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)(1)** (including any Permitted Refinancing Indebtedness in respect thereof) not to exceed \$15,000,000 at any time outstanding; provided that, at the option of the Company, such Revolving Facility may be secured on a senior basis to the Liens securing the Note Obligations with respect to the accounts receivable, inventory and customarily related assets with respect

thereto pursuant to an Approved Intercreditor Agreement, provided, further, that any such Revolving Facility will (x) have an interest rate margin of no greater than the secured overnight financing rate (calculated in a customary manner) plus 500 basis points per annum and (y) have advance rates in the borrowing base no greater than the corresponding advance rates in the Existing Revolving Facility; or

(2) Indebtedness in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables or payables for credit management purposes, in each case incurred or undertaken consistent with past practice or in the ordinary course of business, or any Permitted Receivables Financing which (i) shall have a facility limit in respect of the purchase price paid for purchased receivables at any time outstanding not to exceed \$15,000,000, (ii) shall not have applicable fees and interest on such Permitted Receivables Financing greater than the secured overnight financing rate (calculated in a customary manner) plus 500 basis points per annum (including any discounts, but excluding any customary fees such as enrollment fee and unused fee or default fees) as determined by the Company in good faith and (iii) shall not have an advance rate less than 85% on any receivables (which shall apply to receivables sold, Disposed, transferred or otherwise contributed to any such Receivables Subsidiary);

provided that the Company shall only be permitted to incur Indebtedness at any time outstanding under one of **Section 4.09(b)(i)(B)(1)** and **Section 4.09(b)(i)(B)(2)**, but not both;

(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 set forth on **Schedule 4.09**;

(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 IP Rights) 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 **(ii)(A)** 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; provided, that such Indebtedness shall have a stated maturity at least 91 days later than the Maturity Date, shall not have any amortization payments, and shall have no obligors other than the Note Parties;

(xx) [reserved]; 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 entry into this Indenture, 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. 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).

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 \$2,500,000, 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 and set forth on **Schedule 4.10** hereto, 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) entry into this Indenture and the payment of all fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related to entry into this Indenture;

(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;

(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)**; and

(xviii) sales or other transfers of Permitted Receivables Financing Assets, in connection with any Permitted Receivables Financing.

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).

Notwithstanding the foregoing or anything else herein to the contrary, the Company shall not, and shall not permit any of its Subsidiaries, to pay any management, monitoring, consulting or similar fee to any of the Permitted Holders.

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 license 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 6 of the Exchange Agreement. By its acceptance thereof, the Holder of Registrable Securities will have agreed to be bound by the terms of the applicable Exchange Agreement relating to such Registrable Securities.

Section 4.14 *Additional Guarantors; Prohibition on Certain Subsidiaries*.

(a) On and after the date hereof, the Company will cause each of the Company's Subsidiaries that is not an Excluded Subsidiary to promptly (but in any event within thirty (30) calendar days of (i) such Subsidiary that was previously deemed an Excluded Subsidiary ceasing to be an Excluded Subsidiary or (ii) the acquisition or formation of a Subsidiary which is not an Excluded Subsidiary):

(i) execute and deliver a supplemental indenture to this Indenture, pursuant to which such Subsidiary will agree to be a Guarantor under this Indenture and be bound by the terms of this Indenture applicable to Guarantors, including, but not limited to, **Article 18**; provided that such Guarantor shall deliver to the Trustee and the Collateral Agent an Opinion of Counsel to the effect that: (A) such Guarantee has been duly executed and authorized by such Guarantor; and (B) such Guarantee and joinders to any applicable Collateral Documents pursuant to **Section 4.15(c)** constitute a valid, binding and enforceable obligation of such Guarantor, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is sought in equity or at law) and other exceptions; and

(ii) waive and not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Subsidiary as a result of any payment by such Subsidiary under its Guarantee.

(b) In addition, subject to the provisions of the Collateral and Guarantee Requirement, the Company shall cause each Guarantor to become a party to the applicable Collateral Documents and take such actions required thereby to grant to the Collateral Agent, for the benefit of itself, the Trustee and the Holders, a perfected security interest in any Collateral held by such Guarantor, subject to Permitted Liens.

(c) 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.

(d) If any Guarantor becomes an Excluded Subsidiary, the Company shall have the right, by delivery of a supplemental indenture executed by the Company to the Trustee, to cause such Excluded Subsidiary 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 Subsidiary *provided* that such Excluded Subsidiary 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.

(a) 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.

(b) Promptly following (and in any event, within the applicable time periods specified by any Collateral Document) the Company's or any Guarantor's acquisition of any assets or property (other than Excluded Assets after the date hereof), which in each case constitutes Collateral ("**After-Acquired Collateral**"), the Company or such Guarantor shall execute and deliver such customary security instruments and financing statements as shall be reasonably necessary to vest in the Collateral Agent a perfected security interest in such After-Acquired Collateral and to have such After-Acquired Collateral added to the Collateral, in each case to the extent required by the Collateral and Guarantee Requirements and subject to the limitations under this Indenture and the Collateral Documents, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Collateral to the same extent and with the same force and effect.

(c) The Company shall, and shall cause each Guarantor to, at its own cost and expense, execute any and all further Collateral Documents, financing statements, agreements and instruments and take all further action that may be required under applicable law, or that the Collateral Agent may reasonably request (including without limitation, the delivery of Officer's Certificates and Opinions of Counsel), in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Collateral Documents, in each case, to the extent required by the Collateral and Guarantee Requirements and subject to the limitations set forth in this Indenture and the Collateral Documents.

Section 4.16 *Minimum Cash*. the Company shall not permit Liquidity of the Company and its Subsidiaries, in the aggregate, to be less than \$15,000,000, measured as of the last Business Day of any month.

Section 4.17 *Investments*. The Company shall not, nor shall it permit any of its Subsidiaries to, make or hold any Investment except:

(a) Cash or Investments that were Cash Equivalents at the time made;

(b) Investments (i) by the Company or any Subsidiary in any Note Party, (ii) by any Subsidiary that is not a Note Party in any other Subsidiary that is not a Note Party and (iii) by any Note Party in any Subsidiary that is not a Note 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-Note 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 Company or any Subsidiary;

(d) Investments made in respect of joint ventures or other similar agreements or partnerships not to exceed at any time outstanding \$3,760,000;

(e) Permitted Acquisitions;

(f) (i) Investments existing on, or contractually committed to as of, the Issue Date (A) in an amount not to exceed \$2,000,000 in the aggregate (when taken together with all other Investments outstanding in reliance on this **clause (f)(i)(A)**) or (B) set forth on **Schedule 4.17** and (ii) 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 4.17**) on the Issue 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 4.18** 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 the Company or any Subsidiary that is a Note 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 Company 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 (h)** shall not exceed \$2,500,000;

(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 4.09** (other than Indebtedness permitted under **Section 4.09(b)**), Permitted Liens, Restricted Payments permitted under **Section 4.08** (other than **Section 4.08(b)(ix)**), Restricted Payments permitted by **Section 4.08** and mergers, consolidations, amalgamations, liquidations, windings up, dissolutions or Dispositions permitted by **Section 4.18** (other than **Section 4.18(b), Section 4.18(c) and Section 4.18(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 Company and/or its subsidiaries)), the Company 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) Investments in or relating to a Receivables Subsidiary that, in the good faith determination of the Issuer are necessary or advisable to effect any Permitted Receivables Financing (including any contribution of replacement or substitute assets to such subsidiary) or any repurchase obligation in connection therewith;

(p) loans made to the Company in lieu of any Restricted Payment otherwise permitted to be made to the Company under **Section 4.08**; 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 Issue Date by the Company and/or any of its Subsidiaries in an aggregate amount outstanding pursuant to this **Section 4.17(q)** at any time not to exceed \$5,640,000; provided, that in the event that (A) the Company or any of its Subsidiaries makes any Investment after the Issue Date under this **Section 4.17(q)** in any Person that is not a Subsidiary and (B) such Person subsequently becomes a Note Party, such Investment shall thereafter be deemed permitted under **Section 4.17(b)(i)**;

(r) Investments in connection with any Permitted Receivables Financing permitted under this Indenture, the contribution, sale or other transfer of Permitted Receivables Financing Assets, Cash or Cash Equivalents made in connection with a Permitted Receivables Financing permitted under this Indenture or repurchases in connection with the foregoing (including the contribution or lending of Cash and Cash Equivalents to Subsidiaries to finance the purchase of receivables or related assets from the Issuer or any Subsidiary or to otherwise fund required reserves, the contribution of replacement or substitute assets to a Subsidiary and Investments of funds held in accounts permitted or required by the arrangements governing such Permitted Receivables Financing or any related Indebtedness);

(s) (i) Guarantees by the Company or any of the other Subsidiaries in the ordinary course of business of leases (other than Capitalized Lease Obligations), contracts or of other obligations of the Company or any other Subsidiary that do not constitute Indebtedness and (ii) guarantee obligations of the Company or any other Subsidiary in respect of letters of support, bank guarantees or similar obligations issued, made or incurred for the benefit of any 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 4.08(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 4.08(a)**;

(u) [reserved];

(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 4.09(b)(ix)** and (ii) banking services;

(x) Investments consisting of (i) the non-exclusive 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) non-exclusive 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 Company and any 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 Company, its subsidiaries and/or any Joint Venture;

(cc) [reserved];

(dd) [reserved];

(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 Company and the Subsidiaries in the ordinary course of business;

(gg) (i) Notes and (ii) Permitted Refinancing Indebtedness, in each case, repurchased by the Company or any other Subsidiary pursuant to and in accordance with the terms of this Indenture, as applicable; and

(hh) [reserved].

Section 4.18 *Dispositions*. The Company shall not, nor shall it permit any of its Subsidiaries to, make any Disposition, except:

(a) any Subsidiary may Dispose (including of Capital Stock) of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to any another Subsidiary; provided, that if the transferor in such a transaction is a Guarantor, then (i) the transferee must be a Guarantor or the Company or (ii) such Disposition must be in the form of an Investment in a Subsidiary which is not a Note Party in accordance with **Sections 4.17** (other than in reliance on **clause (j)** thereof);

(b) To the extent constituting a Disposition, (i) (A) any Subsidiary that is not a Note Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Note Party, (B) any Subsidiary (other than the Company) may liquidate or dissolve and (C) any Subsidiary of the Company may change its legal form if, with respect to **clauses (B) and (C)**, the Company determines in good faith that such action is in the best interest of the Company 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 4.18** (other than **Sections 4.18(a), (b) or (c)**), (B) a Permitted Tax Restructuring or (C) any Investment permitted under **Section 4.17** (other than in reliance on **clause (j)** thereof); and (iii) the conversion of the Company or any Subsidiary into another form of entity, so long as such conversion does not adversely affect the value of the Guarantee or the Collateral, taken as a whole (it being understood that in the case of any change in legal form, a Subsidiary that is a Guarantor will remain a Guarantor);

(c) (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;

(d) 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 Company or any of the Subsidiaries;

(e) Dispositions of Cash and/or Cash Equivalents and/or other assets that were Cash Equivalents when the relevant original Investment was made;

(f) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute (w) Investments permitted pursuant to **Section 4.17** (other than **Section 4.17(j)**), (x) Permitted Liens and (y) Restricted Payments permitted by **Section 4.08(a)** and (z) Liens permitted by **Section 4.10**;

(g) Dispositions of property not otherwise permitted under this **Section 4.18**; *provided* that (i) 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, (ii) (1) if the property sold or otherwise disposed of has a Fair Market Value in excess of \$2,000,000, the Company or such 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 90% of the consideration therefor received by the Company or such Subsidiary, as the case may be, is in the form of Cash or Cash Equivalents; *provided, however*, that for the purposes of this **clause (g)(ii)**, the amount of:

(i) any liabilities (as reflected on the Company's or such 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 Company'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 Company), other than Restricted Debt, 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 Company and all such Subsidiaries have been validly released by all applicable creditors in writing;

(ii) any securities, notes or other obligations or assets received by the Company or such Subsidiary from such transferee that are converted by the Company or such 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 the Company or such Subsidiary in such Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this **clause (g)** that is at that time outstanding, not to exceed \$2,820,000 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 (g)** and for no other purposes;

(h) 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;

(i) 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;

(j) 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;

(k) 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 Company and its Subsidiaries or (ii) which relate to closed facilities or the discontinuation of any product line;

(l) (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;

(m) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(n) 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;

(o) (A) dispositions or discounts without recourse of accounts receivable, notes receivable, rights to payment, other current assets or participations therein, or (B) Dispositions, contributions or transfers of any Permitted Receivables Financing Assets or any other Dispositions, contributions or transfers of Permitted Receivables Financing Assets in connection therewith pursuant to any other Permitted Receivables Financing (including Equity Interests in any Subsidiary all or substantially all of the assets of which are Permitted Receivables Financing Assets); or (C) 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;

(p) Dispositions of property to the Company or any other Subsidiary; provided, that dispositions of property from Note Parties to Subsidiaries that are not Note Parties shall be in the form of Investments permitted pursuant to **Section 4.17** (other than **Section 4.17(j)**);

(q) Dispositions of assets that do not constitute Collateral for Fair Market Value in an aggregate amount not to exceed \$1,880,000;

(r) (i) non-exclusive leases, subleases, licenses or sublicenses (including the provision of software under an open source license or thenon-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 Company and the Subsidiaries (taken as a whole) and other licenses and sublicenses that are Permitted Liens, and (ii) Dispositions, including the lapse or abandonment, of IP Rights, and of inbound and outbound licenses to IP Rights, that (x) do not materially interfere with the business of the Company and the Subsidiaries (taken as a whole) to the extent permitted by the Security Agreement or (y) are with respect to immaterial IP Rights;

(s) terminations or unwinds of derivative transactions, any swap contract, cash management obligations or banking services obligations;

(t) Dispositions of Excluded Assets;

(u) 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 Company and/or any Subsidiary;

(v) Dispositions made to comply with any order of any Governmental Authority or any applicable requirement of law;

(w) 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;

(x) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter;

(y) Dispositions of assets or any issuance or sale of Capital Stock of any Subsidiary with a fair market value in the aggregate for all such Dispositions or issuances or sales since the Issue Date of not more than \$2,500,000;

(z) [reserved];

(aa) 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 Company and its Subsidiaries as a whole, as determined in good faith by the Company;

(bb) 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;

(cc) [reserved];

(dd) the Company and any other 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 the Company or any Guarantor to a Subsidiary that is not, in each case, a Note Party or to another Note Party, (iii) settle, discount, write-off, forgive or cancel any Indebtedness owing by any present or former consultants, managers, directors, officers, employees of the Company 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 Company and its Subsidiaries);

(ee) any Disposition in connection with a Permitted Tax Restructuring;

(ff) Dispositions constituting licensing agreements to third parties in the ordinary course of business; and

(gg) [reserved].

To the extent that any Collateral is Disposed of as expressly permitted by this **Section 4.18** to any Person other than a Note Party, such Collateral shall be sold free and clear of the Liens created by this Indenture and the other Collateral Documents, which Liens shall be automatically released upon the consummation of such Disposition; it being understood and agreed that the Trustee and Collateral Agent shall be authorized to take, and shall take, upon satisfaction of the requirements of **Section 17.05**, any actions reasonably requested by the Company in order to effect the foregoing in accordance with **Section 17.05** hereof.

Section 4.19 *Requisite Stockholder Approval*. As promptly as practicable after the date of this Indenture, and in any case no later than March 31, 2025, the Company shall cause to be held a meeting of the Company's stockholders and shall cause to be presented to the Company's stockholders for their approval at such meeting, and recommend on behalf of the Company and its Board of Directors the approval of, all actions necessary to obtain the Requisite Stockholder Approval. If the Requisite Stockholder Approval is not obtained at such meeting, or an adjournment or postponement thereof, the Company shall cause proposals to all actions necessary to obtain the Requisite Stockholder Approval to be presented to the Company's stockholders for their approval at each subsequent meeting of the Company's stockholders until the Requisite Stockholder Approval is obtained, and to recommend on behalf of the Company and its Board of Directors the approval of all such actions at each such meeting. The Company agrees to use its reasonable best efforts to seek and obtain the Requisite Stockholder Approval at each such meeting at which actions necessary to obtaining the Requisite Stockholder Approval are presented to Company stockholders, including the preparation of a proxy statement and related proxy materials recommending approval of all such actions and the solicitation from stockholders of proxies in favor of all such actions.

Section 4.20 *Covenant Suspension*.

If on any date following the Issue Date, (i) the outstanding principal balance of the Notes is less than or equal to \$25,000,000 and (ii) no Default (other than any Default that would not constitute a Default following a Covenant Suspension Event) has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing **clauses (i) and (ii)** being collectively referred to as a "Covenant Suspension Event"), and **Sections 4.08, 4.09, 4.10, 4.11, 4.12, 4.14** (solely with respect to the Collateral and Collateral Documents), **4.16, 4.17, 4.18** and **4.21** shall no longer be applicable to the Notes.

Section 4.21 *Prepayment Asset Sale Offer*.

All Net Proceeds from a Prepayment Asset Disposition shall constitute Net Proceeds. When the aggregate amount of Net Proceeds exceeds \$5,000,000, the Company or the applicable Subsidiary will, within twenty (20) Business Days, make an offer (a "**Prepayment Asset Sale Offer**") to all Holders, on a *pro rata* basis (subject to adjustment to maintain the authorized denominations of the Notes), of the maximum principal amount of the Notes that may be purchased out of the Net Proceeds (it being understood that in such determination Net Proceeds shall not be applied to pay interest on any Notes). The offer price in any Prepayment Asset Sale Offer will be equal to 106% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase, and will be payable in cash.

If any Net Proceeds remain after consummation of a Prepayment Asset Sale Offer, the Company or the applicable Subsidiary may use those Net Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes tendered into such Prepayment Asset Sale Offer exceeds the amount of Net Proceeds, the Notes to be purchased will be selected by the Company on a *pro rata* basis (subject to adjustment to maintain the authorized denominations of the Notes) and in accordance with the Applicable Procedures. Upon completion of each Prepayment Asset Sale Offer, the amount of Net Proceeds hereunder will be reset at zero. To the extent Net Proceeds exceed the outstanding aggregate principal amount of the Notes, the Company need only make a Prepayment Asset Sale Offer up to the outstanding aggregate principal amount of Notes, and any additional Net Proceeds will not be subject to this covenant and will be permitted to be used for any purpose otherwise permitted hereunder in the Company's discretion.

Not later than twenty (20) Business Days after the date upon which the aggregate amount of Net Proceeds exceeds \$5,000,000, the Company shall deliver to the Trustee an Officer's Certificate as to (i) the amount of the Net Proceeds, (ii) the allocation of the Net Proceeds from the Prepayment Asset Sales pursuant to which such Prepayment Asset Sale Offer is being made and (iii) the compliance of such allocation with the provisions of this **Section 4.21**. Upon the expiration of the period for which the Prepayment Asset Sale Offer remains open (the "Offer Period"), the Company shall deliver to the Trustee for cancellation the Notes or portions thereof that have been properly tendered to and are to be accepted by the Company. No later than 11:00 a.m. (New York City time) on the date of purchase, the Company shall deposit with the Trustee (or a Paying Agent, if not the Trustee) the purchase price for the tendered Notes and the Trustee (or a Paying Agent, if not the Trustee) shall, on the date of purchase, mail or deliver payment to each tendering Holder in the amount of the purchase price. In the event that the Net Proceeds delivered by the Company to the Trustee is greater than the purchase price of the Notes tendered, the Trustee (or such Paying Agent) shall deliver the excess to the Company immediately after the expiration of the Offer Period for application in accordance with this **Section 4.21**.

Holders electing to have a Note purchased shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note duly completed, to the Company at the address specified in the notice at least three Business Days prior to the purchase date. Holders shall be entitled to withdraw their election if the Trustee or the Company receives not later than one Business Day prior to the purchase date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note which was delivered by the Holder for purchase and a statement that such Holder is withdrawing his election to have such Note purchased. If at the end of the Offer Period more Notes are tendered pursuant to a Prepayment Asset Sale Offer than the Company is required to purchase, selection of such Notes for purchase shall be made by the Company, on a pro rata basis (in compliance with the Applicable Procedures of the Depository), subject to adjustment to maintain the authorized denomination of the Notes.

Notices of a Prepayment Asset Sale Offer shall be mailed by the Company to Holders (with a copy to the Trustee) by first class mail, postage prepaid, or otherwise delivered in accordance with the applicable procedures of DTC. If any Note is to be purchased in part only, any notice of purchase that relates to such Note shall state the portion of the principal amount thereof that is to be purchased. The Prepayment Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law. If the date of purchase is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, up to but excluding the date of purchase, shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Prepayment Asset Sale Offer.

A new Note in principal amount equal to the unpurchased portion of any Note purchased in part shall be issued in the name of the Holder thereof upon cancellation of the original Note. On and after the purchase date, unless the Company defaults in payment of the purchase price, interest shall cease to accrue on Notes or portions thereof purchased.

The Company or the applicable Subsidiary will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to a Prepayment Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with this **Section 4.21**, the Company or the applicable Subsidiary will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this **Section 4.21** by virtue of such conflict.

Section 4.22 Payment for Consent.

Without the consent of Holders holding 75% in aggregate principal amount of the Notes, the Company will not, and will not permit any of its Subsidiaries to, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the provisions of this Indenture unless such consideration (which shall be deemed to include the opportunity to participate in any debt or equity financing, including any “double-dip” financing, entered into in connection with such consent, waiver or amendment whether entered into on the same date as such consent or as part of a series of related transactions) is offered to all holders of Notes on the same terms.

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, 2025, 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 Optional Redemption, 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) (x) 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; or (y) failure by the Company to comply with **Section 4.16** of this Indenture, unless waived by the Holders of at least 75% in aggregate principal amount of the Notes then outstanding;
- (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;

(k) any Collateral Document with respect to a material portion of the Collateral after delivery thereof for any reason (other than pursuant to the terms this Indenture or the Collateral Document including as a result of a transaction not prohibited under this Indenture) ceases to create, a valid and perfected Lien with the priority required by the Collateral Document (or other security purported to be created on the applicable Collateral) on and security interest in any material portion of the Collateral purported to be covered thereby, subject to Permitted Liens and Liens permitted under **Section 4.10**, except to the extent that any such loss of perfection or priority is not required pursuant to the Collateral and Guarantee Requirement or results from the failure of the Collateral Agent to maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents and except as to Collateral consisting of real property to the extent that such losses are covered by the proceeds from a lender's title insurance policy and such insurer has not denied coverage; or

(l) except as permitted by this Indenture, the Guarantee of any Guarantor that is a Significant Subsidiary ceases to be in full force and effect (except as contemplated pursuant to **Article 18** of this Indenture) or is declared null and void in a judicial proceeding or any Guarantor that is a Significant Subsidiary denies or disaffirms in writing its obligations under this Indenture or its Guarantee.

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 and Collateral Agent 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 Redemption Price and 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 and Collateral Agent 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 and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their 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 and Collateral Agent 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 each of the Trustee and Collateral Agent 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 and Collateral Agent 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, the Collateral Agent, their 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 and the Collateral Agent 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 and the Collateral Agent 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 and the Collateral Agent, including their 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 Redemption Price and 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 the Collateral Agent exercising any trust or power conferred on the Trustee or the Collateral Agent 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 and Collateral Agent, as applicable, may take any other action deemed proper by the Trustee or Collateral Agent, as applicable that is not inconsistent with such direction. Each of the Trustee and Collateral Agent 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 or Collateral Agent in personal liability or for which it has not received indemnity or security satisfactory to the Trustee and Collateral Agent against loss, liability or expense (it being understood that neither the Trustee nor the Collateral Agent has 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 Redemption Price and 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, the Collateral Agent 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 Redemption Price and 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 Redemption Price and 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 AND COLLATERAL AGENT

Section 7.01 *Duties and Responsibilities of Trustee and Collateral Agent*. 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 and Collateral Agent shall be determined solely by the express provisions of this Indenture and the other Note Documents, and the Trustee and Collateral Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and the other Note Documents and no implied covenants or obligations shall be read into this Indenture against the Trustee and Collateral Agent; and

(ii) in the absence of gross negligence or willful misconduct on the part of the Trustee or the Collateral Agent, the Trustee and the Collateral Agent 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 or the Collateral Agent 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 or the Collateral Agent, the Trustee or the Collateral Agent 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) neither the Trustee nor the Collateral Agent shall be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee or the Collateral Agent, respectively, unless it shall be proved that the Trustee or the Collateral Agent, as applicable, was grossly negligent in ascertaining the pertinent facts;

(c) neither the Trustee nor the Collateral Agent shall 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 and the Collateral Agent, or exercising any trust or power conferred upon the Trustee and the Collateral Agents, under this Indenture or the other Note Documents;

(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 and the Collateral Agent shall be subject to the provisions of this Section;

(e) neither the Trustee nor the Collateral Agent shall 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 or any actions or omissions of the transfer agent for the Common Stock;

(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 or the Collateral Agent, the Trustee or the Collateral Agent, as the case may be, 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 or the Collateral Agent shall be placed in a non-interest bearing trust account, and in no event shall the Trustee or the Collateral Agent 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 and Collateral Agent 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 entity serving as Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent, Collateral 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, Collateral Agent or transfer agent.

None of the provisions contained in this Indenture or the other Note Documents shall require the Trustee or Collateral Agent 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 and Collateral Agent 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 or Collateral Agent by a copy thereof certified by the Secretary or an Assistant Secretary of the Company. Before the Trustee or Collateral Agent acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. Neither the Trustee nor Collateral Agent shall 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 and Collateral Agent 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) Neither the Trustee nor the Collateral Agent shall 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 or Collateral Agent, as applicable, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee or Collateral Agent, as applicable, 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 and Collateral Agent 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 neither the Trustee nor the Collateral Agent shall be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder.

(f) The permissive rights of the Trustee or Collateral Agent enumerated herein or in any other Note Document shall not be construed as duties.

(g) 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.

(h) 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.

(i) 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 in cash on, any Note and then, only if, the Trustee is the Paying Agent) 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**". The Collateral Agent 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 Collateral Agent at the Corporate Trust Office of the Collateral Agent, as applicable, from the Company or any Holder of the Notes, and such notice references the Notes and this Indenture and states that it is a "Notice of Default."

(j) Neither the Trustee nor the Collateral Agent shall 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.

(k) Neither the Trustee nor the Collateral Agent shall 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 Collateral Agent, as applicable, or the exercising of any power conferred by this Indenture.

(l) None of the Trustee, the Collateral Agent or any of their 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. Neither the Trustee nor the Collateral Agent shall 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 or Collateral Agent to perform its duties as set forth herein as a result of any inaccuracy or incompleteness.

(m) In no event shall the Trustee or Collateral Agent 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 or Collateral Agent, as applicable, has been advised of the likelihood of such loss or damage and regardless of the form of action.

(n) None of the Trustee, the Collateral Agent or any other agent shall have any responsibility or liability for any actions taken or not taken by the Depository or the Company's stock transfer agent.

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, the Notes, the other Notes Documents 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, Collateral Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Note Registrar or Collateral Agent (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, Note Registrar or Collateral Agent.

Section 7.05 *Monies to Be Held in Trust.* All monies 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 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 and Collateral Agent from time to time, and the Trustee and Collateral Agent 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, Collateral Agent and the Company, and the Company will pay or reimburse the Trustee and Collateral Agent upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee and Collateral Agent in accordance with any of the provisions of this Indenture or the Note Documents in any capacity hereunder or thereunder (including the compensation and the reasonable expenses and disbursements of their 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 the Trustee's or Collateral Agent's, as applicable, own 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 and Collateral Agent in any capacity under this Indenture, the Collateral Documents and any other document or transaction entered into in connection herewith and their 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 or Collateral Agent, as the case may be, 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, the Collateral Documents 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 Collateral Agent and to pay or reimburse the Trustee and Collateral Agent 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 and Collateral Agent'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 or Collateral Agent, as applicable. 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 and Collateral Agent.

Without prejudice to any other rights available to the Trustee and Collateral Agent under applicable law, when the Trustee, Collateral Agent and their 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 or Collateral Agent 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 or Collateral Agent, as applicable, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee and Collateral Agent, if applicable, and such Officer's Certificate, in the absence of gross negligence or willful misconduct on the part of the Trustee or Collateral Agent, as applicable, shall be full warrant to the Trustee and Collateral Agent, if applicable for any action taken or omitted by it under the provisions of this Indenture and the Collateral Documents 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.

(b) 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.

(c) 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.

(d) 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.

Section 7.13 *Limitation on Duty of Trustee and Collateral Agent in Respect of Collateral* The Trustee and Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Company to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral (except with respect to certificates actually delivered to the Collateral Agent representing securities pledged under the Collateral

Documents). The Trustee and Collateral Agent shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or the Collateral Documents by the Company or any Guarantor. Neither the Trustee nor the Collateral Agent shall be responsible for filing any UCC financing statement, continuation statement or amendment thereto or any other filing to perfect or maintain the perfection of the security interest in the Collateral.

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 or the Collateral Agent solicits the taking of any action by the Holders of the Notes, the Company or the Trustee or the Collateral Agent, 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, the Collateral Agent, 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 Redemption Price and 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 the Collateral Agent 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 Depository 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 Depository 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 and the Collateral Agent, at the Company's sole expense, may from time to time and at any time amend or supplement this Indenture, the Notes or the Collateral Documents in writing for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture, the Notes or the Collateral Documents;
- (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 18.06**;
- (c) to add a Guarantor or release a Guarantor in accordance with this Indenture, the Notes or the Collateral Documents;
- (d) to add additional assets as Collateral 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) [reserved];
- (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, Conversion Agent or Collateral Agent;
- (k) comply with the rules of any applicable securities depository 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;

(n) to release Collateral in accordance with the terms of this Indenture and the Collateral Documents, including in connection with the Permitted Factoring Arrangements and any Permitted Receivables Financing;

(o) to make, complete or confirm any grant of Collateral permitted or required under this Indenture, the Notes or any of the Collateral Documents or enter into additional or supplemental Collateral Documents in accordance with this Indenture and the Collateral Documents; or

(p) to make any change to comply with rules of the Depository, 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 and, as applicable, the Collateral Agent, are hereby authorized to, and shall, join with the Company and the Guarantors in the execution of any such supplemental indenture or amendment, to make any further appropriate agreements and stipulations that may be therein contained, but neither the Trustee nor the Collateral Agent shall not be obligated to, but may in its discretion, enter into any supplemental indenture or amendment that affects such Person's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture or amendment to any Collateral Document authorized by the provisions of this **Section 10.01** may be executed by the Company, the Guarantors and the Trustee and, as applicable, the Collateral Agent, 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, or to enter into any amendment to any Collateral Document 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, the Notes or any Collateral Document or of modifying in any manner the rights of the Holders;

provided, however, that, without the consent of (i) in the case of **clause (k)** and **(m)** 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, except as otherwise explicitly set forth in **Section 2.03**;

(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 Redemption Price or 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, or the Company's right to redeem the Notes, 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) make any amendment to this Indenture causing any Notes to be senior in right of payment, or senior pursuant to any waterfall, to any other 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 Redemption Price and 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 consent of each Holder or consent of Holders holding 75% in aggregate principal amount of the Notes or in the waiver provisions in **Section 6.02** or **Section 6.09**;

(j) release, or amend, waive or modify any provision of this Indenture or any other Note Document having the effect of releasing, all or substantially all of the value of the Guarantors or all or substantially all of the Collateral;

(k) amend, waive or modify any provision of this Indenture or any other Note Document which shall have the effect of releasing any material Guarantor or a material portion of the Collateral, otherwise than in accordance with the terms contained in this Indenture (as of the Issue Date), without the consent of Holders of 75% in aggregate principal amount of the Notes;

(l) amend, waive or modify **Section 4.12** or **Section 4.22**; or

(m) other than in connection with any debtor-in-possession financing or in connection with any Revolving Facility pursuant to Section 4.09(b)(i)(B) (1), subordinate (x) the Liens securing any of the Note Obligations on a material portion of the Collateral to the Liens securing any other Indebtedness or (y) any Note Obligations in contractual right of payment to any other Indebtedness, in either the case of **subclause (x)** or **(y)**, unless (i) Holders holding 75% in aggregate principal amount of the Notes shall have consented to such financing and (ii) each Holder shall have been offered a *bona fide* opportunity to fund or otherwise provide its *pro rata*

share of such senior Indebtedness on the same terms (other than *bona fide* backstop fees, any arrangement or restructuring fees and reimbursement of counsel fees and other expenses in connection with the negotiation of the terms of such transaction; such fees and expenses, "Ancillary Fees") as offered to all other providers (or their Affiliates) of such senior Indebtedness and to the extent such adversely affected Holder elects to participate in such senior Indebtedness, receive its *pro rata* share of the fees and any other similar benefit (other than Ancillary Fees) of such senior Indebtedness afforded to the providers of such senior Indebtedness (or any of their Affiliates) in connection with providing such senior Indebtedness pursuant to a written offer made to such Holders describing the material terms of the arrangements pursuant to which the senior Indebtedness is to be provided, which offer shall remain open to such Holders for a period of not less than five (5) Business Days; provided, that such offer may also be made on a post-closing basis pursuant to a syndication and/or assignment mechanic.

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 and, if applicable, the Collateral Agent shall join with the Company and the Guarantors in the execution of such supplemental indenture or amendment unless such supplemental indenture or amendment affects the Trustee's or the Collateral Agent's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee or the Collateral Agent may in its discretion, but shall not be obligated to, enter into such supplemental indenture or such amendment.

Holders do not need under this **Section 10.02** to approve the particular form of any proposed supplemental indenture or amendment to any Collateral Document. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture or amendment becomes effective, the Company shall deliver to the Holders a notice briefly describing such supplemental indenture or amendment. 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 Collateral Agent, 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 19.10**) 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 and Collateral Agent.* In addition to the documents required by **Section 19.05**, the Trustee and Collateral Agent, shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture or amendment to any Collateral Documents executed pursuant hereto complies with the requirements of this **Article 10** and is permitted or authorized by this Indenture and the Collateral Documents 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 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, this Indenture and the Collateral Documents and causes such amendments, supplements or other instruments to be executed, filed and recorded in such jurisdictions as may be required by applicable law (subject to the limitations set forth in this Indenture and the Collateral Documents) to preserve and protect the Lien on the Collateral owned by or transferred to the surviving Person, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the UCC or other similar statute or regulation of the relevant states or jurisdictions;

(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 and Collateral Agent 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 and such other supplements and amendments are authorized or permitted by this Indenture and the Collateral Documents 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; and

(iv) to the extent the Company is not the Successor Company, each Guarantor (unless it is a party to the transactions in this **Section 11.01**, in which case **Section 11.02** shall apply) shall have by supplemental indenture confirmed that its Guarantee shall apply to the successor Person's obligations in respect of this Indenture and the Notes and shall have by written agreement confirmed that its obligations under the Collateral Documents shall continue to be in effect and shall cause such amendments, supplements or other instruments to be executed, filed and recorded in such jurisdictions as may be required by applicable law (subject to the limitations set forth in this Indenture and the Collateral Documents) to preserve and protect the Liens on the Collateral owned by such Guarantor, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral that may be perfected by the filing of a financing statement or similar document under the UCC or other similar statute or regulation of the relevant statutes or jurisdictions.

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 18.06**, 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) or a Surviving Guarantor (if not the applicable Guarantor), by supplemental indenture, executed and delivered to the Trustee and the Collateral Agent and 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 and the Collateral Documents to be performed by the Company or Surviving Guarantor, as applicable, such Successor Company (if not the Company) or Surviving Guarantor, as applicable shall succeed to and, except in the case of a lease of all or substantially all of the consolidated assets of the Company or the applicable Guarantor, taken as a whole, shall be substituted for the Company or the applicable Guarantor, as applicable, with the same effect as if it had been named herein as the party of the first part, and the Company or the applicable Guarantor, as applicable, shall be discharged from its obligations under the Notes, this Indenture and the Collateral Documents (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
[INTENTIONALLY OMITTED]

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 281.4491 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**"). Notwithstanding anything to the contrary in this **Section 14.01** and **Section 14.15**, the Notes will not be convertible at such Holder's option during the period beginning on the date the aggregate number of shares of Common Stock issued (or pending issuance following a Conversion Date) pursuant to this Indenture equals the Share Issuance Cap and ending on the earlier of (i) March 31, 2025 and (ii) the date the Requisite Stockholder Approval is obtained (such earlier date, the "**Conversion Limit End Date**"); *provided that*, to the extent the Conversion Date of one or more Notes occurred prior to the Conversion Limit End Date and the settlement of such conversions would result in the aggregate number of shares of Common Stock issued pursuant to this Indenture in excess of the Share Issuance Cap, the Company will not issue a number of shares of Common Stock greater than the Share Issuance Cap and instead the conversion of the amount of Notes that correspond to such excess shall be null and void and treated as if never made and the settlement of such conversions shall occur on a *pro rata* basis among the Holders who have submitted their Notes on such Conversion Date.

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 a conversion in connection with a Redemption Notice (with the determination of whether a conversion is "in connection with" a Redemption Notice being made in the same manner as set forth in **Section 14.14**), 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 a conversion in connection with a Redemption Notice (with the determination of whether a conversion is “in connection with” a Redemption Notice being made in the same manner as set forth in **Section 14.14**), the Interest Make-Whole Amount, (x) if the arithmetic average of the Daily VWAPs for the three (3) Trading Days immediately preceding the Conversion Date is greater than the Floor Price, a number of shares of Common Stock determined by dividing the Interest Make-Whole Amount by the product of (i) 95% and (ii) the arithmetic average of the Daily VWAPs for the three (3) Trading Days immediately preceding the Conversion Date (plus cash in lieu of any fractional shares of Common Stock); or (y) otherwise, 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 Depository 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 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 Depository 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 specified a Redemption 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 14.04 *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,

CR₀ = 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;

CR₁ = the Conversion Rate in effect immediately after the open of business on such Record Date or Effective Date, as applicable;

OS₀ = 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

OS₁ = 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,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such issuance;

CR₁ = the Conversion Rate in effect immediately after the open of business on such Record Date;

OS₀ = 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,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such distribution;

CR₁ = the Conversion Rate in effect immediately after the open of business on such Record Date;

SP₀ = 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 “**SP0**” (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,

CR₀ = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR₁ = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV₀ = 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

MP₀ = 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,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such dividend or distribution;

CR₁ = the Conversion Rate in effect immediately after the open of business on the Record Date for such dividend or distribution;

SP₀ = 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 “SP₀” (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,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the tenth (10th) 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”);
- CR₁ = the Conversion Rate in effect immediately after the close of business on the tenth (10th) 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;
- OS₀ = 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);
- OS₁ = 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
- SP₁ = 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 (10th) 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 (10th)” 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 (10th) 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 (10th)” 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) [Reserved].

(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 nearest one-tenth 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.

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**) and to provide for delivery of the Interest Shares from time to time.

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 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 and the Interest Shares will be fully paid and non-assessable by the Company and free from all 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 or any Interest Shares 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 or such Interest Shares may be validly issued on an Interest Payment Date, 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 and any Interest Shares.

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 or winding-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 or in Payment of Interest.* The Company shall not (a) 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, and (b) issue any shares of Common Stock in payment of any portion of any interest due and payable on any Interest Payment Date, and such shares of Common Stock shall be null and void and treated as never having been issued (and the related portion of the interest payment, if not made in cash, as having never been made), to the extent that after giving effect to such conversion or issuance of shares of Common Stock in payment of any portion of any such interest payment, 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 or such issuance of shares of Common Stock in payment of any portion of any such interest payment to such Holder, as applicable. 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 or issuable to such Holder and its Attribution Parties 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 or the issuance by the Company of shares of Common Stock in payment of any portion of any interest due and payable on any Interest Payment Date 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, reporting such number of outstanding shares of Common Stock, (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 Notice of Conversion from a Holder or elects to pay any portion of any interest due and payable on any Interest Payment Date in shares of Common Stock 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 (or, in the case of any such interest payment, include in the Stock Payment Notice and the related public disclosures) of the number of shares of Common Stock then outstanding and, to the extent that such Notice of Conversion 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 Notice of Conversion. 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 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 or receive shares of Common Stock in payment of any amount of interest 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 or similar receipt of shares of Common Stock. 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 conversion in connection with a Redemption Notice (with the determination of whether a conversion is “in connection with” a Redemption Notice being made in the same manner as set forth in **Section 14.14**) 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 Changes or Redemption Notice.

(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 Redemption Notice as provided under **Section 16.01(b)** and a Holder elects to convert its Notes in connection with such Redemption Notice, 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 (i) “in connection with” such Make-Whole Fundamental Change 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) “in connection with” such “Redemption Notice” if the relevant Conversion Date occurs during the related Redemption Period. Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or in connection with a Redemption Notice, 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 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 Redemption Notice 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 Redemption 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 Redemption 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 conversion in connection with a Redemption Notice 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 Redemption 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:

Effective Date	Stock Price								
	\$3.0896	\$3.2132	\$3.3986	\$3.7075	\$4.3254	\$5.5613	\$7.4150	\$9.8867	\$18.5376
December 27, 2024	42.2173	42.2173	42.2173	42.2173	42.2173	27.6426	12.2904	3.8907	0.0000
December 15, 2025	42.2173	42.2173	42.2173	42.2173	42.2173	25.0898	10.6330	3.0684	0.0000
December 15, 2026	42.2173	42.2173	42.2173	42.2173	41.0984	21.0615	8.1679	1.9332	0.0000
December 15, 2027	42.2173	42.2173	42.2173	42.2173	33.1625	15.1440	4.8926	0.6394	0.0000
December 15, 2028	42.2173	42.2173	42.2173	35.9353	19.7484	6.2001	1.0531	0.0000	0.0000
December 15, 2029	42.2173	29.7687	12.7931	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 \$18.5376 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 \$3.0896 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 323.6246 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.

Section 14.15 NYSE Blocker. Notwithstanding anything to the contrary in this Indenture or the Notes, prior to obtaining the Requisite Stockholder Approval, the Company will not be permitted to settle any conversion of Notes with shares of its Common Stock if and to the extent the settlement of such conversion (together with all previous conversions of Notes) would result in the issuance of greater than 69,849,071 shares of Common Stock (the “**Share Issuance Cap**”), subject to adjustment in the same manner and at the same time as the Conversion Rate pursuant to **Section 14.04** to the extent required to comply with the share issuance limitation imposed by NYSE Listing Standard Rule 312.03(c). The Company will promptly (and within one Business

Day) publicly disclose through a press release or filing a Current Report on Form 8-K with the Commission once an aggregate principal amount of Notes has been converted such that any conversion of Notes has been, or any future conversion of Notes would be, limited by the application of the Share Issuance Cap pursuant to this **Section 14.15**. To the extent the Requisite Stockholder Approval has not been obtained and the Conversion Obligation due upon any conversion of Notes would otherwise result in the issuance of a number of shares of Common Stock greater than the Share Issuance Cap, the Company agrees it will not issue a number of shares of Common Stock greater than the Share Issuance Cap and will instead pay cash in an amount equal to the Daily VWAP on the Conversion Date per share of Common Stock otherwise due; *provided* that if the Conversion Date is not a Trading Day, the Company will instead pay cash in an amount equal to the Daily VWAP on the Trading Day immediately succeeding the Conversion Date per share of Common Stock otherwise due. The Trustee shall have no obligation to monitor the Share Issuance Cap or any compliance therewith.

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 (including all regularly scheduled interest payments thereafter) 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**, plus any remaining amounts (including all regularly scheduled interest payments but excluding any such accrued and unpaid interest) that would be owed to, but excluding, the Maturity Date. 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 Depository, 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 Depository. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;

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- (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, depository, 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 Depository.

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 Depository shall be made by wire transfer of immediately available funds to the account of the Depository 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 Depository, (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 unreurchased 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
OPTIONAL REDEMPTION

Section 16.01 *Optional Redemption.*

(a) No sinking fund is provided for the Notes. The Notes shall not be redeemable by the Company prior to December 27, 2025. On or after December 27, 2025 and prior to the close of business on November 16, 2029, the Company may, at its option, elect to redeem (an “**Optional Redemption**”) for cash the original principal amount of the Notes in whole but not in part, at the Redemption Price, 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 “**Optional Redemption 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 Optional Redemption Determination Date is greater than or equal to \$2,000,000 (the “**Optional Redemption Condition**”).

(b) To exercise its Optional Redemption right, the Company will send notice of the Company’s election (a “**Redemption Notice**”) to Holders, the Trustee and the Conversion Agent no later than the fifth (5th) Business Day following the Optional Redemption Determination Date.

Such Redemption Notice must state:

- (i) that the Notes have been called for Optional Redemption, briefly describing the Company’s Optional Redemption right under this Indenture;
- (ii) the Redemption Date;
- (iii) the Redemption Price;
- (iv) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date (except as provided in the parenthetical of the definition of Redemption Price);
- (v) the place or places where such Notes are to be surrendered for payment of the Redemption Price;
- (vi) that Holders may surrender their Notes for conversion at any time prior to the close of business on the second Scheduled Trading Day immediately preceding the Redemption Date;
- (vii) the current Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate in accordance with **Section 14.14**;
- (viii) the procedures a converting Holder must follow to convert its Notes;
- (ix) the name and address of the Paying Agent and the Conversion Agent; and

(x) the CUSIP and ISIN numbers, if any, of the Notes.

Except as set forth in **Section 16.01(e)**, (A) the Redemption Notice shall be irrevocable and (B) an Optional Redemption may not be conditional.

(c) If the Company exercises its Optional Redemption right in accordance with this **Section 16.01**, it shall fix a date for redemption (the “**Redemption Date**”). The Redemption 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 Redemption Notice; *provided* that the Redemption Date shall be no later than November 16, 2029. Notwithstanding anything herein to the contrary, the Company (i) shall not be permitted to effect any Optional Redemption hereunder unless as of each Scheduled Trading Day during the Redemption Period no Equity Conditions Failure then exists and (ii) shall not be required to pay any Interest Make-Whole Amount in connection with any conversion in connection with a Redemption Notice (with the determination of whether a conversion is “in connection with” a Redemption Notice being made in the same manner as set forth in **Section 14.14**).

Section 16.02 Payment of Notes Called for Redemption.

(a) If the Redemption Notice has been given in respect of the Notes in accordance with **Section 16.01**, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Prior to the open of business on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in **Section 7.05** an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 16.03 Restrictions on Redemption. The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 17
COLLATERAL AND SECURITY

Section 17.01 Security Interest; Collateral Agent. The due and punctual payment of the principal (including the Fundamental Change Repurchase Price or Redemption Price, if applicable) of, and accrued and unpaid interest on, and Conversion Obligation with respect to, the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at

maturity, by acceleration, repurchase, redemption, prepayment, demand or otherwise, and interest on the overdue principal (including the Fundamental Change Repurchase Price or Redemption Price, if applicable) of, and accrued and unpaid interest on, the Notes and performance of all other obligations of the Company to the Holders, the Trustee and the Collateral Agent under this Indenture, the Notes and the Guarantees, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents.

(a) Each Holder of Notes, by its acceptance thereof, and the Trustee hereby appoints Wilmington Trust, National Association as Collateral Agent, and consents and agrees to the terms of the Collateral Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral and authorizing the Collateral Agent to enter into any Collateral Document on its behalf) as the same may be in effect or may be amended or otherwise modified from time to time in accordance with their terms and this Indenture and authorizes and appoints Wilmington Trust, National Association as the Collateral Agent, and (without creating any express or implied obligation for the Collateral Agent) authorizes the Collateral Agent to enter into the Collateral Documents and to perform its obligations and exercise its rights thereunder in accordance therewith, including, without limitation, to execute and file any financing statements (including continuation statements and amendments to financing statements), on behalf of the Issuer and the Guarantors with respect to all or any part of the Collateral without the signature of the Issuer or the Guarantors to maintain the Lien of the Collateral Documents. The Collateral Agent shall be entitled to all rights, privileges, immunities and protections of the Trustee set forth in this Indenture, including but not limited to the right to be compensated, reimbursed and indemnified under **Section 7.06**, in the acceptance, execution, delivery and performance of its role as Collateral Agent hereunder and under the Collateral Documents as though fully set forth therein. Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the other Note Documents, the Collateral Agent shall not have any duties or responsibilities hereunder or thereunder nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with the Trustee, any Holder or the Company, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture and the other Note Documents or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Company consents and agrees to be bound, and, subject to **Section 17.05**, to cause the Guarantors, to the extent required by the Collateral and Guarantee Requirement, to consent and agree to be bound by the terms of the Collateral Documents, as the same may be in effect from time to time, and agrees to perform its, and to cause the Guarantors to perform their, obligations thereunder in accordance therewith. The Company will deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Collateral Documents, and the Company will, and, subject to **Section 17.05**, the Company will cause each Guarantor to, do or cause to be done all such acts and things as may be required by the provisions of the Collateral Documents to assure and confirm to the Trustee that the Collateral Agent holds for the benefit of the Trustee and the Holders duly created, enforceable and perfected Liens as contemplated by the Collateral Documents or any part thereof, as from time to time constituted.

(c) Neither the Trustee nor the Collateral Agent shall (i) be liable for any action taken or omitted to be taken by it under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction) or under or in connection with any Note Document or the transactions contemplated thereby (except for its own gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction), or (ii) be responsible in any manner to any of the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Company or any Affiliate of the Company, or any officer or Affiliate thereof, contained in this Indenture, any other Note Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Indenture or the other Note Documents, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture or the Collateral Documents, or for any failure of any other party to this Indenture or the other Note Documents to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture or the other Note Documents or to inspect the properties, books, or records of the Company or any of its Affiliates.

(d) No provision of this Indenture or any Note Document shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders or the Trustee if it shall have reasonable grounds for believing that repayment of such funds is not assured to it. Notwithstanding anything to the contrary contained in this Indenture or the Note Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Agent shall not be required to commence any such action or exercise any remedy or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances unless the Collateral Agent in its sole discretion has received security or indemnity from the Holders in an amount and in a form satisfactory to the Collateral Agent, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(e) Subject to **Section 17.05** hereof, in each case that the Collateral Agent may or is required hereunder to take any action (an "Action"), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Collateral Document, the Collateral Agent may seek direction from the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes. Neither the Trustee nor the Collateral Agent shall be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. If the Trustee or the Collateral Agent shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Trustee and the Collateral Agent shall be entitled to refrain from such Action unless and until the Trustee or Collateral Agent, as applicable, shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and neither the Trustee nor the Collateral Agent shall incur liability to any Person by reason of so refraining.

(f) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with **Article 6** or the Holders of a majority in aggregate principal amount of the Notes subject to this **Article 17**.

(g) Beyond the exercise of reasonable care in the custody thereof, neither the Trustee nor the Collateral Agent shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and neither the Trustee nor the Collateral Agent shall be responsible for filing any financing or continuation statements or amendments thereto or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. Each of the Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or the Collateral Agent, as applicable, in good faith.

(h) Each successor Trustee may become the successor Collateral Agent as and when the successor Trustee becomes the Trustee.

Section 17.02 *Recording and Opinion*. The Company shall furnish to the Trustee and the Collateral Agent (if other than the Trustee), on or within one month of December 15 of each year, commencing December 15, 2024, (a) an Opinion of Counsel to the effect that no further action was necessary to maintain the perfection of the security interest in the Collateral described in both the applicable UCC-1 financing statement and the Security Agreement and for which perfection under the UCC of the Company’s or applicable Guarantor’s jurisdiction of organization may occur by the filing of a UCC-1 financing statement with the appropriate filing office of the applicable party’s jurisdiction of organization, and (b) an Officer’s Certificate stating that all action required by the Collateral Documents to maintain and perfect or continue the perfection of the security interests created by the Collateral Documents have been taken, and reciting the details of such action or referring to prior Officer’s Certificates in which such details are given.

Section 17.03 *Authorization of Actions to Be Taken by the Trustee or the Collateral Agent Under the Collateral Documents*

(a) Subject to the provisions of **Section 7.01** and the terms of the Collateral Documents, the Trustee may (but shall have no obligation to), in its sole discretion and without the consent of the Holders, the Collateral Agent to take all actions it deems necessary or appropriate in order to:

- (i) enforce any of the terms of the Collateral Document; and
- (ii) collect and receive any and all amounts payable in respect of the obligations of the Company and the Guarantors under this Indenture, the Notes and the Collateral Documents.

(b) Subject to the provisions of this Indenture and the Note Documents, the Trustee and/or the Collateral Agent will have power (but not the obligation) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of this Indenture or the Note Documents, and such suits and proceedings as may be necessary to preserve or protect the interests of the Trustee, the Collateral Agent and the interests of the Holders of Notes in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest under the Collateral Documents or be prejudicial to the interests of the Holders or of the Trustee and/or the Collateral Agent).

Section 17.04 Authorization of Receipt of Funds by the Trustee under the Collateral Documents The Trustee and/or the Collateral Agent is authorized to receive any funds for the benefit of the Collateral Agent and the Holders distributed under the Collateral Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture with respect to the Collateral.

Section 17.05 Termination of Security Interest; Release of Collateral

(a) Collateral will be released automatically from the Liens securing the Note Obligations of the Company and the Guarantors under this Indenture, the Notes, the Guarantees and the Collateral Documents and the Issuer and the Guarantors will be entitled to (i) the release of property and other assets constituting Collateral from the Liens securing the Notes and the Note Obligations and/or (ii) any disclaimer of interest in connection with any release permitted under this Section 17.05 without the consent or further action of any Person:

- (i) in whole or in part, as applicable, upon the sale, transfer or other Disposition of such property or assets (including a Disposition resulting from eminent domain, condemnation or similar circumstances and Dispositions of property or assets to the extent consummated in accordance with, or not prohibited by **Section 4.18** hereof) by the Company or any Guarantor to a Person whom is not a Note Party to the extent permitted pursuant to this Indenture and the Collateral Documents; provided that, solely to the extent that such transaction constitutes the sale, conveyance, assignment, transfer or other Disposition of all or substantially all of the Company's or Guarantor's property and assets, in one transaction or a series of related transactions, such transaction complies with **Article 11**; and that the Company has delivered to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel stating that such transaction complies with the provisions of this **Section 17.05**;

(ii) in whole or in part, as applicable, upon the sale, transfer or other Disposition of such property or assets to a Person that is not a Note Party pursuant to any Permitted Receivables Financing or any factoring arrangement pursuant to Section 1.05,

(iii) with the consent of the Holders required pursuant to **Section 10.02**;

(iv) with respect to any Collateral securing the Guarantee of any Guarantor, when such Guarantor is released in accordance with the terms of **Section 18.06**;

(v) upon the occurrence of a Fundamental Change described in **clauses (a) or (b)** of the definition thereof; or

(vi) in accordance with the applicable provisions of the Collateral Documents.

(b) Neither the Trustee nor the Collateral Agent shall have any duty or liability for determining the Company's compliance with this **Section 17.05**, but instead may rely on the Officer's Certificates issued by the Company under this **Section 17.05**.

(c) The security interests granted under this Indenture and all Collateral Documents will terminate upon the full and final payment and performance of all Note Obligations (other than contingent indemnification obligations for which no claim has been made) of the Company and any other obligors, if any and as applicable, under this Indenture, the Notes, the Guarantees and the Collateral Documents.

(d) The release of any Collateral from the terms of the Collateral Documents shall not be deemed to impair the security under this Indenture in contravention of the provisions hereof or affect the Lien of this Indenture or the Collateral Documents if and to the extent the Collateral is released pursuant to this Indenture or the Collateral Documents or upon the satisfaction and discharge of this Indenture. For the avoidance of doubt, the requirements of Section 314(d) of the Trust Indenture Act shall not apply to any release of the Collateral.

(e) Upon such release or any release of Collateral or any part thereof in accordance with the provisions of this Indenture or the Collateral Documents, including pursuant to a Covenant Suspension Event, any Permitted Receivables Financing or any factoring arrangement pursuant to Section 1.05 of this Indenture, upon the request and at the sole cost and expense of the Company and the Guarantors and upon receipt of an Officer's Certificate stating that such release of Collateral is in accordance with the provisions of this Indenture and the Collateral Documents, the Trustee shall direct the Collateral Agent to and upon such request and direction and receipt of such Officer's Certificate, the Collateral Agent shall execute, deliver or acknowledge (at the Issuer's expense) such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Collateral Documents or any Approved Intercreditor Agreements and shall do or cause to be done (at the Issuers' expense) all acts reasonably requested of them to release such Lien as soon as is reasonably practicable, including:

(i) assign, transfer and deliver to the Company or the applicable Guarantor, as the case may be, against receipt and without recourse to or warranty by the Collateral Agent except as to the fact that the Collateral Agent has not encumbered the released assets, such of the Collateral or any part thereof to be released as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms of the Collateral Documents;

(ii) execute and deliver and/or authorize the filing of UCC financing statement amendments or releases (which shall be prepared by the Company or any Guarantor) to the extent necessary to terminate any previously filed financing statements or delete such Collateral or any part thereof to be released from the description of assets in any previously filed financing statements; and

(iii) execute and deliver such documents, instruments or statements (which shall be prepared by the Company) and take such other action as the Company may request to cause to be released and reconveyed to the Company, or the applicable Guarantor, as the case may be, such Collateral or any part thereof to be released and to evidence or confirm that such Collateral or any part thereof to be released has been released from the Liens of each of this Indenture and each of the Collateral Documents.

Section 17.06 *Maintenance of Collateral.* The Company shall, and shall cause each of its Subsidiaries to keep and maintain all properties material to the conduct of its business or the business of any of its Subsidiaries in good working order and condition (ordinary wear and tear excepted), except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Company and its Subsidiaries' businesses, taken as a whole; provided that nothing in this **Section 17.06** shall prevent the Company or any Subsidiary from discontinuing the maintenance of any of such property if such discontinuance is, in the judgment of the Company, desirable to the conduct of the business of the Company and its Subsidiaries, taken as a whole.

Section 17.07 *Concerning the Collateral Agent.* The Collateral Agent shall be entitled to all of the rights, privileges, immunities and indemnities afforded to the Trustee under **Article 7**. The Collateral Agent may resign or be removed in accordance with **Sections 7.09, 7.10 and 7.11**, with references to Trustee therein deemed to be references to Collateral Agent.

Section 17.08 *Intercreditor Agreements.* If the Company or any Guarantor (i) incurs any obligations in respect of a Revolving Facility permitted under Section 4.09(b)(i)(B) at any time when no Approved Intercreditor Agreement is in effect or at any time when Permitted Indebtedness constituting a Revolving Facility entitled to the benefit of an Approved Intercreditor Agreement is not outstanding and (ii) delivers to the Trustee and the Collateral Agent an Officer's Certificate so stating and requesting the Trustee, if applicable, and the Collateral Agent to enter into an Approved Intercreditor Agreement not prohibited hereunder in favor of a designated agent or representative for the holders of the Revolving Facility so incurred, in each case, together with an Opinion of Counsel, the Collateral Agent and the Trustee, if applicable, shall (and are hereby authorized and directed to) enter into such Approved Intercreditor Agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Trustee and Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder.

By acceptance of the Notes, each Holder is deemed to authorize and direct the Collateral Agent and the Trustee, if applicable, to enter into any Approved Intercreditor Agreement upon compliance with the terms of this Section 17.07.

ARTICLE 18 GUARANTEES

Section 18.01 *Guarantee*. Subject to this **Article 18**, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees, on a senior basis, to each Holder, the Trustee and the Collateral Agent and each of their successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (i) the principal (including the Fundamental Change Repurchase Price or Redemption Price, if applicable) of and accrued and unpaid interest on each of the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders, the Trustee or the Collateral Agent hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(a) The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver, amendment or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, the Collateral Documents and this Indenture, or pursuant to **Section 18.06**.

(b) If any Holder, the Trustee or the Collateral Agent is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantors, any amount paid either to the Trustee, the Collateral Agent or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(c) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Note Obligations guaranteed hereby until payment in full of all Note Obligations (other than contingent indemnity obligations) guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Note Obligations guaranteed hereby may be accelerated as provided in **Article 6** for the purposes of this Guarantee,

notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Note Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Note Obligations as provided in **Article 6**, such Note Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees following payment in full of all Note Obligations (other than contingent indemnity obligations).

(d) Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(e) In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(f) Each payment to be made by a Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(g) Neither the Company nor any Guarantor shall be required to make a notation on the Notes to reflect any such Guarantee or any such release, termination or discharge.

(h) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this **Section 18.01**.

Section 18.02 *Limitation on Guarantor Liability*. 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 does not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar U.S. federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Collateral Agent, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this **Article 18**, result in the obligations

of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with U.S. GAAP.

Section 18.03 *Execution and Delivery*. To evidence a Guarantee set forth in **Section 18.01**, each Guarantor shall execute this Indenture or, if after the date hereof, a supplemental indenture pursuant to which it will agree to be a Guarantor and become bound by the terms of this Indenture applicable to Guarantors, including without limitation, this **Article 18**.

(a) Pursuant to any such supplemental indenture, each Guarantor shall agree that its Guarantee set forth in **Section 18.01** shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(b) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of the Guarantors.

(c) If required by **Section 4.14**, the Company shall cause any newly created or acquired Subsidiary that is not an Excluded Subsidiary, or any Subsidiary previously deemed to be an Excluded Subsidiary that ceases to be an Excluded Subsidiary, to comply with the provisions of **Section 4.14** and this **Article 18**, to the extent applicable, within 30 calendar days on which such Subsidiary that is not an Excluded Subsidiary is created or acquired or ceases to be an Excluded Subsidiary.

Section 18.04 *Subrogation*. Each Guarantor shall be subrogated to all rights of Holders against the Company in respect of any amounts paid by any Guarantor pursuant to the provisions of **Section 18.01**; provided that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Company under this Indenture or the Notes shall have been paid in full.

Section 18.05 *Benefits Acknowledged*. Each Guarantor acknowledges that it will 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 18.06 *Release of Guarantees*. A Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and such Guarantee shall thereupon terminate and be discharged and of no further force and effect, and no further action by such Guarantor, the Company or the Trustee shall be required for the release of such Guarantor's Guarantee:

(a) concurrently with any sale, exchange, Disposition or transfer (by merger or otherwise) of (x) any Capital Stock of such Guarantor following which such Guarantor is no longer a Subsidiary of the Company or (y) all or substantially all assets of such Guarantor to a Person other than the Company or one of its Subsidiaries;

(i) upon the merger or consolidation of such Guarantor with and into either the Company or any other Guarantor wherein the Company or such other Guarantor, as applicable, is the surviving Person in such merger or consolidation;

(ii) upon the dissolution or liquidation of such Guarantor following the transfer of all or substantially all of its assets to either the Company or another Guarantor;

(iii) concurrently with such Subsidiary becoming an Excluded Subsidiary (subject to the proviso thereof) (provided that, in the case of a Subsidiary becoming an Excluded Subsidiary, such release shall only apply if such transaction is entered into for a bona fide business purpose and not to circumvent the requirement to provide a Guarantee or grant security); or

(iv) upon the occurrence of a Fundamental Change described in **clauses (a) or (b)** of the definition thereof.

(b) Upon the Company delivering to the Trustee an Officer's Certificate, each stating that all conditions precedent provided for in this **Section 18.06** relating to such release have been complied with and at the sole cost and expense, of the Company, the Trustee (or the Collateral Agent, if applicable) shall execute and deliver any documents reasonably requested by the Company in order to evidence such release, discharge and termination in respect of the applicable Guarantee.

ARTICLE 19 MISCELLANEOUS PROVISIONS

Section 19.01 *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 19.02 *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 19.03 *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, Collateral Agent 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 or Collateral Agent) to BigBear.ai Holdings, Inc., 6811 Benjamin Franklin Drive, Suite 200, Columbia, Maryland 21046, Attention: Secretary, with a copy sent to Latham and Watkins LLP, 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 or the Collateral Agent shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Trustee or Collateral Agent, as applicable, at the Corporate Trust Office. In no event shall the Trustee, Collateral Agent or the Conversion Agent be obligated to monitor any website maintained by the Company or any press releases issued by the Company.

The Trustee and Collateral Agent, 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 Depository 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 DTC in accordance with its applicable procedures.

Section 19.04 *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 and the Collateral Agent, 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 19.05 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee and Collateral Agent.* Upon any application or demand by the Company to the Trustee or Collateral Agent 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) or the Collateral Documents, the Company shall furnish to the Trustee and Collateral Agent, if applicable, an Officer's Certificate and an Opinion of Counsel, stating that such action is permitted by the terms of this Indenture and the Collateral Documents, if applicable, 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 or Collateral Agent, as applicable, 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 the Collateral Documents, if applicable; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and the Collateral Documents, if applicable, and that all conditions precedent to such action have been complied with.

Section 19.06 *Legal Holidays.* In any case where any Interest Payment Date, any Redemption 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 19.07 *[Reserved]*.

Section 19.08 *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 19.09 *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 19.10 *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 19.10**, 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 19.10** shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this **Section 19.10**, 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 19.11 *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 neither the Trustee nor the Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee and Collateral Agent, if applicable, pursuant to procedures approved by the Trustee and Collateral Agent, if applicable.

Section 19.12 *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 19.13 *Waiver of Jury Trial*. EACH OF THE COMPANY, THE GUARANTORS, THE TRUSTEE AND THE COLLATERAL AGENT 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 19.14 *Force Majeure*. In no event shall the Trustee or Collateral Agent 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 and Collateral Agent 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 19.15 *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 Interest Shares, 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, the Conversion Agent and Collateral 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. None of the Trustee, the Conversion Agent or the Collateral Agent will have any responsibility to make calculations under this Indenture, nor will any 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 19.16 *USA PATRIOT Act*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee and Collateral Agent, 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 and Collateral Agent with such information as it may request in order for the Trustee and Collateral Agent to satisfy the requirements of the USA PATRIOT Act.

Section 19.17 *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 timely make such payment to the appropriate authority 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/ Julie Peffer

Name: Julie Peffer

Title: Authorized Signatory

[Signature Page to Indenture]

BIGBEAR.AI INTERMEDIATE HOLDINGS, LLC, as a
Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

BIGBEAR.AI, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

BIGBEAR.AI FEDERAL, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PROMODEL LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM PURCHASER, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM INTERMEDIATE II HOLDINGS, LLC, as a
Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PANGIAM HOLDINGS, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

[Signature Page to Indenture]

PANGIAM LABS, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

LINKWARE, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

PRE, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

VERISCAN, LLC, as a Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

214 TECHNOLOGIES, INC. D/B/A TRUEFACE, as a
Guarantor

By: /s/ Julie Peffer
Name: Julie Peffer
Title: Authorized Signatory

[Signature Page to Indenture]

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: /s/ Quinton M. DePompolo
Name: Quinton M. DePompolo
Title: Assistant Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Agent

By: /s/ Quinton M. DePompolo
Name: Quinton M. DePompolo
Title: Assistant Vice President

[Signature Page to Indenture]

[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 RELATED GUARANTEES 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, 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 REGULATIONS 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 (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.]

[INCLUDE FOLLOWING LEGEND IF A PHYSICAL NOTE]

THIS NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR U.S. FEDERAL INCOME TAX PURPOSES PURSUANT TO TREASURY REGULATIONS SECTIONS 1.1272-1 AND 1.1273-1. IF THIS NOTE WAS ISSUED WITH OID, HOLDERS MAY OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTES BY CONTACTING THE CHIEF FINANCIAL OFFICER OF THE COMPANY AT 6811 BENJAMIN FRANKLIN DRIVE, SUITE 200, COLUMBIA, MD.

BigBear.ai Holdings, Inc.
6.00% Convertible Senior Secured Note due 2029

No. []

[Initially]¹ \$[]

CUSIP No. []²

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.]³ []⁴, or registered assigns, the principal sum [as set forth in the “**Schedule of Exchanges of Notes**” attached hereto]⁵ [of \$[]]⁶, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed \$182,332,000 in aggregate at any time, in accordance with the rules and procedures of the Depository, on December 15, 2029, and interest thereon as set forth below.

This Note shall bear interest at the rate of the Stated Interest Rate (as such amount may be increased pursuant to **Section 2.03(d)**) per year from December 27, 2024, 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, 2029. 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) with the last such payment on December 15, 2029, commencing on June 15, 2025, 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) or, with respect to such last payment, on December 1, 2029 (whether or not such day is a Business Day), respectively; *provided* that pursuant to the terms and conditions of **Section 2.03(d)**, the Company may elect to pay such interest in shares of Common Stock. 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.

¹ Include if a global note.

² Subject to the procedures of the Depository, 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 [].

³ Include if a global note.

⁴ Include if a physical note.

⁵ Include if a global note.

⁶ Include if a physical note.

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 Depository 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.

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 Secured Note due 2029

This Note is one of a duly authorized issue of Notes of the Company, designated as its 6.00% Convertible Senior Secured Notes due 2029 (the “Notes”), limited to the aggregate principal amount of \$182,332,000 all issued or to be issued under and pursuant to an Indenture dated as of December 27, 2024 (the “Indenture”), among the Company, the Guarantors from time to time party thereto and Wilmington Trust, National Association, as trustee (the “Trustee”) and as collateral agent (the “Collateral Agent”), 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, the Redemption Price on the Redemption 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 Redemption Price and 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 shall be redeemable at the Company's option on or after December 27, 2025 and prior to the close of business on November 16, 2029 in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

The Notes are guaranteed by the Company's Subsidiaries other than Excluded Subsidiaries and secured by a first-priority Lien on the Collateral.

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 OF EXCHANGES OF NOTES

BigBear.ai Holdings, Inc.

6.00% Convertible Senior Secured Notes due 2029

The initial principal amount of this Global Note is [] DOLLARS (\$[]). The following increases or decreases in this Global Note have been made:

<u>Date of exchange</u>	<u>Amount of decrease in principal amount of this Global Note</u>	<u>Amount of increase in principal amount of this Global Note</u>	<u>Principal amount of this Global Note following such decrease or increase</u>	<u>Signature of authorized signatory of Trustee or Custodian</u>
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⁷ Include if a global note.

[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

[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.

[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.

[OPTION OF HOLDER TO ELECT PURCHASE]

If you want to elect to have this Note purchased by the Company pursuant to Sections 4.21 (Prepayment Asset Sale Offer) of the Indenture, check the box below:

Section 4.21

If you want to elect to have only part of the Note purchased by the Company pursuant to **Section 4.21** of the Indenture, state the amount you elect to have purchased: \$ _____

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.

[•] 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 Secured Notes due 2029

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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**”) and as collateral agent (the “**Collateral Agent**”).

RECITALS

WHEREAS, the Company, the Guarantors party thereto, the Trustee and the Collateral Agent entered into an Indenture, dated as of December 27, 2024 (the “**Indenture**”), relating to the Company’s 6.00% Convertible Senior Secured Notes due 2029 (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, the Trustee and the Collateral Agent 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 and the Collateral Agent. Neither the Trustee nor the Collateral Agent shall 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:

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BIGBEAR.AI INTERMEDIATE HOLDINGS, LLC,
as a Guarantor

By: _____
Name:
Title:

BIGBEAR.AI, LLC, as a Guarantor

By: _____
Name:
Title:

BIGBEAR.AI FEDERAL, LLC, as a Guarantor

By: _____
Name:
Title:

PROMODEL LLC, as a Guarantor

By: _____
Name:
Title:

PANGIAM PURCHASER, LLC, as a Guarantor

By: _____
Name:
Title:

PANGIAM INTERMEDIATE II HOLDINGS, LLC,
as a Guarantor

By: _____
Name:
Title:

PANGIAM HOLDINGS, LLC, as a Guarantor

By: _____
Name:
Title:

PANGIAM LABS, LLC, as a Guarantor

By: _____
Name:
Title:

LINKWARE, LLC, as a Guarantor

By: _____
Name:
Title:

PRE, LLC, as a Guarantor

By: _____
Name:
Title:

VERISCAN, LLC, as a Guarantor

By: _____
Name:
Title:

214 TECHNOLOGIES, INC. D/B/A TRUEFACE,
as a Guarantor

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent

By: _____
Name:
Title:

Form of Approved Intercreditor Agreement

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