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

FORM 8-K

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

Date of Report (Date of Earliest Event Reported): August 13, 2024 (August 7, 2024)

ANI PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-31812**	**58-2301143**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

210 Main Street West **Baudette, Minnesota**	**56623**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(218) 634-3500**

Not Applicable
(Former name or former address, if changed since last report.)

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	ANIP	Nasdaq Stock Market

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

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

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

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

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

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.

Indenture and Notes

On August 13, 2024 (the "Closing Date"), ANI Pharmaceuticals, Inc. (the "Company") issued $316.25 million principal amount of its 2.25% Convertible Senior Notes due 2029 (the "Notes"). The Notes were issued pursuant to, and are governed by, an indenture (the "Indenture"), dated as of the Closing Date, between the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"). Pursuant to the purchase agreement between the Company and the representative of the initial purchasers of the Notes, the Company granted the initial purchasers an option to purchase, for settlement within a period of 13 days from, and including, the date the Notes are first issued, up to an additional $41.25 million principal amount of Notes. The Notes issued on August 13, 2024 include $41.25 million principal amount of Notes issued pursuant to the full exercise by the initial purchasers of such option.

After deducting the initial purchasers' discounts and commissions but before deducting the Company's estimated offering expenses, the net proceeds to the Company from the offering of the Notes are estimated to be approximately $306.8 million. After payment of the cost of entering into the Capped Call Transactions (as defined below), the Company intends to use the remainder of the net proceeds from the Notes offering, together with cash on hand, to repay all outstanding loans, and terminate all commitments, under the Company's existing senior secured credit agreement, dated as of November 19, 2021, by and among the Company, certain of the Company's subsidiaries, as guarantors, Truist Bank, as administrative agent and other parties thereto, as amended, supplemented or otherwise modified from time to time (as amended, the "Existing Credit Agreement").

The Notes will be the Company's senior, unsecured obligations and will be (i) equal in right of payment with the Company's existing and future senior, unsecured indebtedness; (ii) senior in right of payment to the Company's existing and future indebtedness that is expressly subordinated to the Notes; (iii) effectively subordinated to the Company's existing and future secured indebtedness, to the extent of the value of the collateral securing that indebtedness; and (iv) structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries.

The Notes will accrue interest at a rate of 2.25% per annum, payable semi-annually in arrears on March 1 and September 1 of each year, beginning on March 1, 2025. The Notes will mature on September 1, 2029, unless earlier repurchased, redeemed or converted. Before the close of business on the business day immediately before June 1, 2029, noteholders will have the right to convert their Notes only upon the occurrence of certain events. On or after June 1, 2029 until the close of business on the second scheduled trading day immediately before the maturity date, noteholders may convert their Notes at any time at their election. The Company will have the right to elect to settle conversions either entirely in cash or in a combination of cash and shares of its common stock. The kind and amount of consideration due upon conversion will be determined based on the conversion value of the Notes, measured proportionately for each trading day in an "Observation Period" (as defined in the Indenture) consisting of 60 trading days, and settled following the completion of that Observation Period. The consideration due in respect of each trading day in the Observation Period will consist of cash, up to at least the proportional amount of the principal amount being converted, and any excess of the proportional conversion value for that trading day that will not be settled in cash will be settled in shares of the Company's common stock. The initial conversion rate is 13.4929 shares of the Company's common stock per $1,000 principal amount of Notes, which represents an initial conversion price of approximately $74.11 per share of the Company's common stock. The conversion rate and conversion price will be 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.

The Notes will be redeemable, in whole or in part (subject to certain limitations described below), at the Company's option at any time, and from time to time, on or after September 1, 2027 and on or before the 61st scheduled trading day immediately before the maturity date, but only if (i) the notes are "Freely Tradable" (as defined in the Indenture) as of the date the Company sends the related redemption notice and all accrued and unpaid additional interest, if any, has been paid in full as of the first interest payment date occurring on or before the date the Company sends the related redemption notice; and (ii) the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price on (1) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends such redemption notice; and (2) the trading day immediately before the date the Company sends such redemption notice. However, the Company may not redeem less than all of the outstanding Notes unless at least $75.0 million aggregate principal amount of Notes are outstanding and not called for redemption as of the time the Company sends the related redemption notice. The redemption price will be a cash amount equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date. In addition, calling any Note for redemption will constitute a Make-Whole Fundamental Change with respect to that Note, in which case the conversion rate applicable to the conversion of that Note will be increased in certain circumstances if it is converted with a conversion date that is on or after the date the Company sends the related redemption notice and on or before the second business day immediately before the related redemption date.

If certain corporate events that constitute a "Fundamental Change" (as defined in the Indenture) occur, then, subject to a limited exception for certain cash mergers, noteholders may require the Company to repurchase their Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. The definition of Fundamental Change includes certain business combination transactions involving the Company and certain de-listing events with respect to the Company's common stock.

The Notes will have customary provisions relating to the occurrence of "Events of Default" (as defined in the Indenture), which include the following: (i) certain payment defaults on the Notes (which, in the case of a default in the payment of interest on the Notes, will be subject to a 30-day cure period); (ii) the Company's failure to send certain notices under the Indenture within specified periods of time; (iii) the Company's failure to comply with certain covenants in the Indenture relating to the Company's ability to consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to another person; (iv) a default by the Company in its other obligations or agreements under the Indenture or the Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture; (v) certain defaults by the Company or any of its significant subsidiaries with respect to indebtedness for borrowed money of at least $40,000,000; and (vi) certain events of bankruptcy, insolvency and reorganization involving the Company significant subsidiaries.

If an Event of Default involving bankruptcy, insolvency or reorganization events with respect to the Company (and not solely with respect to a significant subsidiary of the Company) occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any person. If any other Event of Default occurs and is continuing, then, the Trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately. However, notwithstanding the foregoing, the Company may elect, at its option, that the sole remedy for an Event of Default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consists exclusively of the right of the noteholders to receive special interest on the Notes for up to 365 days at a specified rate per annum not exceeding 0.50% on the principal amount of the Notes.

The above description of the Indenture and the Notes is a summary and is not complete. A copy of the Indenture and the form of the certificate representing the Notes are filed as exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K, and the above summary is qualified by reference to the terms of the Indenture and the Notes set forth in such exhibits.

Capped Call Transactions

On August 7, 2024, in connection with the pricing of the offering of Notes, the Company entered into privately negotiated capped call transactions (the "Base Capped Call Transactions") with Bank of Montreal, Deutsche Bank AG, London Branch, Mizuho Markets Americas LLC, Nomura Global Financial Products Inc. and Royal Bank of Canada (the "Option Counterparties"). In addition, on August 8, 2024, in connection with the initial purchasers' exercise of their option to purchase additional Notes, the Company entered into additional capped call transactions (the "Additional Capped Call Transactions," and, together with the Base Capped Call Transactions, the "Capped Call Transactions") with each of the Option Counterparties. The Capped Call Transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, the aggregate number of shares of the Company's common stock that initially underlie the Notes, and are expected generally to reduce potential dilution to the Company's common stock upon any conversion of Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap, based on the cap price of the Capped Call Transactions. The cap price of the Capped Call Transactions is initially $114.02, which represents a premium of 100% over the last reported sale price of the Company's common stock on August 7, 2024. The cost of the Capped Call Transactions was approximately $40.6 million.

The Capped Call Transactions are separate transactions, each between the Company and the applicable Option Counterparty, and are not part of the terms of the Notes and will not affect any holder's rights under the Notes or the Indenture. Holders of the Notes will not have any rights with respect to the Capped Call Transactions.

The above description of the Capped Call Transactions is a summary and is not complete. A copy of the form of confirmation for the Capped Call Transactions is filed as exhibit 10.1 to this Current Report on Form 8-K, and the above summary is qualified in its entirety by reference to the terms of the form of confirmation set forth in such exhibit.

New Credit Agreement

On August 13, 2024, the Company, as lead borrower, entered into its previously announced senior secured credit agreement (the "New Credit Agreement") with JPMorgan Chase Bank, N.A., as administrative agent, and other financial institutions (together, the "Lenders"), pursuant to which such Lenders have agreed to provide a delayed draw $325 million senior secured term loan facility (the "New Term Facility") for the purpose of financing, in whole or in part, the previously announced pending acquisition of Alimera Sciences, Inc. (the "Merger") pursuant to the Agreement and Plan of Merger between the Company, Alimera Sciences, Inc. and ANIP Merger Sub Inc., dated as of June 21, 2024 (the "Merger Agreement"), and a $75 million senior secured revolving credit facility (the "New Revolving Facility" and, together with the New Term Facility, the "Facilities") on terms and subject to conditions set forth in the New Credit Agreement.

The Facilities are secured by a lien on substantially all of the personal property owned by the Company and its material wholly-owned domestic subsidiaries and is guaranteed by all of the Company's material wholly-owned domestic subsidiaries. The effectiveness of the New Credit Agreement, and the Company's ability to borrow under the New Term Facility and the New Revolving Facility, are subject to customary closing conditions, including that the Company shall have repaid in full, and terminated the commitments to lending under and released all security interests granted in connection therewith, the Existing Credit Agreement. Such closing conditions were satisfied on August 13, 2024, and the New Credit Agreement is now effective. The Company's ability to borrow under the New Term Facility, and the obligation of each Lender to make the initial term loans, are also subject to the substantially contemporaneous consummation of the Merger and certain other conditions (collectively, the "Merger Conditions") which must be satisfied no later than 11:59 p.m., New York City time, on the fifth business day after December 21, 2024.

The Facilities mature on the date that is five years following the closing date of the New Credit Agreement, provided that if any of the Notes remain outstanding on the date that is 91 days prior to the maturity date of the Notes, the Facilities will mature on such date unless certain terms are met.

At the Company's option, loans under the Facilities accrue interest at a per annum rate equal to (i) the alternate base rate or (ii) the adjusted term SOFR rate for an interest period of one, three or six months, plus a spread depending on the Company's first lien net leverage ratio, between 1.25% and 2.00% in the case of ABR loans and between 2.25% and 3.00% in the case of adjusted term SOFR rate loans. A commitment fee accrues on the unutilized commitments under the New Revolving Facility and, from and after the date that is two months after the closing date of the New Credit Agreement, the New Term Facility at a per annum rate equal between 0.25% and 0.40% depending on the Company's first lien net leverage ratio.

The New Credit Agreement contains usual and customary representations and warranties of the parties for credit facilities of this type, subject to customary exceptions and materiality standards. In addition, the Company is required to maintain a first lien net leverage ratio not to exceed 3.00:1.00 (provided, that the lead borrower under the New Credit Agreement may elect to increase the ratio to 3.50:1.00 for four consecutive fiscal quarters following the consummation of a material acquisition) and a minimum interest coverage ratio of 3.00 to 1.00.

The New Credit Agreement also contains certain customary covenants including but not limited to restrictions on the amount of debt the Company and its restricted subsidiaries may incur and payments the Company and its restricted subsidiaries may make, and events of default, as well as, in the event of an occurrence of an event of default, customary remedies for the Lenders, including the acceleration of any amounts outstanding under the New Credit Agreement. Notwithstanding the prior sentence, the obligation of each Lender to make the initial term loans is not subject to cancelation due to the failure to comply with such covenants or occurrence of events of default, so long as the Merger Conditions have been satisfied.

The foregoing description of the New Credit Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the New Credit Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K.

Item 1.02 Termination of a Material Definitive Agreement

On the Closing Date, the Company terminated the Existing Credit Agreement. In connection with the termination of the Existing Credit Agreement, the Company used proceeds from the offering of the Notes, together with cash on hand, to repay all outstanding loans, and terminate all commitments, under the Existing Credit Agreement, and to pay related accrued and unpaid interest, fees and expenses. As of the Closing Date, immediately prior to such repayment, approximately $292.5 million in aggregate principal amount was outstanding thereunder.

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

The disclosure set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth in Item 1.01 above is incorporated by reference into this Item 3.02. The Notes were issued to the initial purchasers in reliance upon Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), in transactions not involving any public offering. The Notes were resold by the initial purchasers to persons whom the initial purchasers reasonably believe are "qualified institutional buyers," as defined in, and in accordance with, Rule 144A under the Securities Act. Any shares of the Company's common stock that may be issued upon conversion of the Notes will be issued in reliance upon Section 3(a)(9) of the Securities Act as involving an exchange by the Company exclusively with its security holders. Initially, a maximum of 5,547,246 shares of the Company's common stock may be issued upon conversion of the Notes, based on the initial maximum conversion rate of 17.5407 shares of common stock per $1,000 principal amount of Notes, which is subject to customary anti-dilution adjustment provisions.

Item 8.01. Other Events.

On the Closing Date, the Company issued a press release announcing that it has completed the sale of the Notes, pursuant to the purchase agreement between the Company and the initial purchasers of the Notes. A copy of the Company's press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but are not always, made through the use of words or phrases such as "anticipate," "believe," "contemplate," "continue," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "project," "seek," "should," "target," "will," "would," or the negative of these words or other comparable terminology. Accordingly, these statements involve estimates, assumptions and uncertainties which could cause actual results to differ materially from those expressed in them. These statements may include, but are not limited to, statements about the offering and the closing thereof.

You should not rely upon forward-looking statements as predictions of future events. Such statements are based on management's expectations as of the date of this Current Report on Form 8-K and involve many risks and uncertainties that could cause our actual results, events or circumstances to differ materially from those expressed or implied in our forward-looking statements. Such risks and uncertainties include those described throughout this offering memorandum and particularly in the section titled "Risk Factors" and elsewhere in this offering memorandum and the documents incorporated by reference herein, including in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, our Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2024 and other filings made from time to time with the SEC. We undertake no obligation to update any forward-looking statements made in this Current Report on Form 8-K to reflect events or circumstances after the date of this filing or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
4.1	Indenture, dated as of August 13, 2024, between ANI Pharmaceuticals, Inc. and U.S. Bank Trust Company, National Association, as trustee.
4.2	Form of certificate representing the 2.25% Convertible Senior Notes due 2029 (included as Exhibit A to Exhibit 4.1).
10.1	Form of Capped Call Transaction Confirmation.
10.2†	Credit Agreement, dated as of August 13, 2024, among ANI Pharmaceuticals, Inc., ANIP Acquisition Company, the guarantors party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and other financial institutions as lenders.
99.1	Press Release of the Company, dated August 13, 2024.
104	Cover Page Interactive Data File (embedded with the Inline XBRL document)

† Certain schedules and certain exhibits to this exhibit have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule or exhibit will be furnished supplementally to the SEC upon request; provided, however, that the parties may request confidential treatment pursuant to Rule 24b-2 of the Exchange Act for any document so furnished.

SIGNATURES

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

Dated: August 13, 2024

ANI PHARMACEUTICALS, INC.

By: /s/ Stephen P. Carey
Name: Stephen P. Carey
Title: Senior Vice President Finance and Chief Financial Officer

Exhibit 4.1

ANI PHARMACEUTICALS, INC.

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

as Trustee

INDENTURE

Dated as of August 13, 2024

2.25% Convertible Senior Notes due 2029

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INDENTURE, dated as of August 13, 2024, between ANI Pharmaceuticals, Inc., a Delaware corporation, as issuer (the "**Company**"), and U.S. Bank Trust Company, National Association, as trustee (the "**Trustee**").

Each party to this Indenture (as defined below) agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company's 2.25% Convertible Senior Notes due 2029 (the "**Notes**").

Article 1. DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. DEFINITIONS.

"**Additional Interest**" means any interest that accrues on any Note pursuant to **Section** 3.04.

"**Affiliate**" has the meaning set forth in Rule 144 as in effect on the Issue Date.

"**Authorized Denomination**" means, with respect to a Note, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

"**Bid Solicitation Agent**" means the Person who is required to obtain bids for the Trading Price in accordance with **Section 5.01(C)(i)(2**) and the definition of "Trading Price." The initial Bid Solicitation Agent on the Issue Date will be the Company; *provided*, *however*, that the Company may appoint any other Person (including any of the Company's Subsidiaries) to be the Bid Solicitation Agent at any time after the Issue Date without prior notice.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

"**Business Day**" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into, or exchangeable for, such equity.

"**Close of Business**" means 5:00 p.m., New York City time.

"**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 or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock, $0.0001 par value per share, of the Company, subject to **Section** 5.09.

"**Company**" means the Person named as such in the first paragraph of this Indenture and, subject to **Article** 6, its successors and assigns.

"**Company Order**" means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

"**Conversion**" means, with respect to any Note, the conversion of such note pursuant to **Article** 5 into Conversion Consideration. The terms "Convert," "Converted," "Convertible," "Converting" and similar capitalized terms have meanings correlative to the foregoing.

"**Conversion Date**" means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to Convert such Note are satisfied.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means 13.4929 shares of Common Stock per $1,000 principal amount of Notes; *provided*, *however*, that the Conversion Rate is subject to adjustment pursuant to **Article** 5; *provided*, *further*, that whenever this Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

"**Conversion Share**" means any share of Common Stock issued or issuable upon Conversion of any Note.

"**Daily Cash Amount**" means, with respect to any VWAP Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such VWAP Trading Day.

"**Daily Conversion Value**" means, with respect to any VWAP Trading Day, one-sixtieth (1/60th) of the product of (A) the Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per share of Common Stock on such VWAP Trading Day.

"**Daily Maximum Cash Amount**" means, with respect to the Conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such Conversion by (B) sixty (60).

"**Daily Share Amount**" means, with respect to any VWAP Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such VWAP Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such VWAP Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such VWAP Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

"**Daily VWAP**" means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading "Bloomberg VWAP" on Bloomberg page "ANIP <EQUITY> AQR" (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company, which may be any of the Initial Purchasers). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

"**De-Legending Deadline Date**" means, with respect to any Note, the fifteenth (15th) day after the Free Trade Date of such Note; *provided*, *however*, that if the De-Legending Deadline Date determined as aforesaid would be after a Regular Record Date and before the fifth (5th) Business Day immediately after the next Interest Payment Date, then the De-Legending Deadline Date for such Note will instead be the fifth (5th) Business Day immediately after such Interest Payment Date.

"**Default**" means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

"**Default Settlement Method**" means Combination Settlement with a Specified Dollar Amount of $1,000 per $1,000 principal amount of Notes; *provided*, *however*, that (x) subject to **Section 5.03(A)(iii)**, the Company may, from time to time, change the Default Settlement Method, to any Settlement Method that the Company is then permitted to elect, by sending notice of the new Default Settlement Method to the Holders; and (y) the Default Settlement Method will be subject to **Section 5.03(A)(ii)**.

"**Depositary**" means The Depository Trust Company or its successor.

"**Depositary Participant**" means any member of, or participant in, the Depositary.

"**Depositary Procedures**" means, with respect to any Conversion, transfer, exchange or other transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depositary applicable to such Conversion, transfer, exchange or transaction.

"**Effective Date**" means, with respect to a stock split or stock combination of the Common Stock, the first date on which the shares of Common Stock trade on the relevant stock exchange, regular way, the relevant stock split or stock combination, as applicable.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable

exchange or market in respect 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 U.S. Securities Exchange Act of 1934, as amended.

"**Exempted Fundamental Change**" means any Fundamental Change with respect to which, in accordance with **Section 4.02(I)**, the Company does not offer to repurchase any Notes.

"**Free Trade Date**" means, with respect to any Note, the date that is one (1) year after the Last Original Issue Date of such Note.

"**Freely Tradable**" means, with respect to any Note, that such Note would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act (except that, during the six (6) month period beginning on, and including, the date that is six (6) months after the Last Original Issue Date of such Note, any such requirement as to the availability of current public information will be disregarded if the same is satisfied at that time); *provided*, *however*, that from and after the Free Trade Date of such Note, such Note will not be "Freely Tradable" unless such Note (x) is not identified by a "restricted" CUSIP or ISIN number; and (y) is not represented by any certificate that bears the Restricted Note Legend. For the avoidance of doubt, whether a Note is deemed to be identified by a "restricted" CUSIP or ISIN number or to bear the Restricted Note Legend is subject to **Section** 2.12.

"**Fundamental Change**" means any of the following events:

(A) a "person" or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or their respective employee benefit plans, files any report with the SEC indicating that such person or group has become the direct or indirect "beneficial owner" (as defined below) of shares of the Common Stock representing more than fifty percent (50%) of the voting power of all of the Common Stock;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person, other than solely to one or more of the Company's Wholly Owned Subsidiaries; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided*, *however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly "beneficially owned" (as defined below) all classes of the Company's Common Equity immediately before such transaction directly or indirectly "beneficially own," immediately after such transaction, more than fifty percent (50%) of all classes of Common Equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to 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 ceases to be listed on any of the New York Stock Exchange, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors);

provided, *however*, that a transaction or event described in **clause (A)** or **(B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Common Stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of shares of common stock or other corporate Common Equity interests listed (or depositary receipts representing shares of common stock or other corporate Common Equity interests, which depositary receipts are listed) on any of the New York Stock Exchange, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes a Common Stock Change Event whose Reference Property consists of such consideration.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a "**beneficial owner**," whether shares are "**beneficially owned**," and percentage beneficial ownership, will be determined in accordance with Rule 13d-3 under the Exchange Act.

For the avoidance of doubt, references to the "Common Stock" and the Company's "Common Equity" in this definition will be subject to **Section 5.09(A)(1)**.

"**Fundamental Change Repurchase Date**" means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

"**Fundamental Change Repurchase Notice**" means a notice (including a notice substantially in the form of the "Fundamental Change Repurchase Notice" set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

"**Fundamental Change Repurchase Price**" means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

"**Global Note**" means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depositary or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depositary.

"**Global Note Legend**" means a legend substantially in the form set forth in **Exhibit B-2**.

"**Holder**" means a person in whose name a Note is registered on the Registrar's books.

"**Indenture**" means this Indenture, as amended or supplemented from time to time.

"**Initial Purchasers**" means the several initial purchasers listed in Schedule 1 to the Purchase Agreement.

"**Interest Payment Date**" means, with respect to a Note, each March 1 and September 1 of each year, commencing on March 1, 2025 (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

"**Issue Date**" means August 13, 2024.

"**Last Original Issue Date**" means (A) with respect to any Notes issued pursuant to the Purchase Agreement (including any Notes issued pursuant to the exercise of the Shoe Option by the Initial Purchasers), and any Notes issued in exchange therefor or in substitution thereof, the later of (i) the Issue Date and (ii) the last date any Notes are originally issued pursuant to the exercise of the Shoe Option; and (B) with respect to any Notes issued pursuant to **Section 2.03(B)**, and any Notes issued in exchange therefor or in substitution thereof, either (i) the later of (x) the date such Notes are originally issued and (y) the last date any Notes are originally issued as part of the same offering pursuant to the exercise of an option granted to the initial purchaser(s) of such Notes to purchase additional Notes; or (ii) such other date as is specified in an Officer's Certificate delivered to the Trustee before the original issuance of such Notes.

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company, which may be any of the Initial Purchasers. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price.

"**Make-Whole Fundamental Change**" means (A) a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of such definition); or (B) the sending of a Redemption Notice pursuant to **Section 4.03(F)**; *provided*, *however*, that, subject to **Section 4.03(I)**, the

sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called for Redemption pursuant to such Redemption Notice and not with respect to any other Notes.

"**Make-Whole Fundamental Change Conversion Period**" has the following meaning:

(A) in the case of a Make-Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date); and

(B) in the case of a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the period from, and including, the Redemption Notice Date for the related Redemption to, and including, the second (2nd) Business Day immediately before the related Redemption Date;

provided, *however*, that if the Conversion Date for the Conversion of a Note that has been called for Redemption occurs during the Make-Whole Fundamental Change Conversion Period for both a Make-Whole Fundamental Change occurring pursuant to **clause (A)** of the definition of "Make-Whole Fundamental Change" and a Make-Whole Fundamental Change resulting from such Redemption pursuant to **clause (B)** of such definition, then, notwithstanding anything to the contrary in **Section** 5.07, solely for purposes of such Conversion, (x) such Conversion Date will be deemed to occur solely during the Make-Whole Fundamental Change Conversion Period for the Make-Whole Fundamental Change with the earlier Make-Whole Fundamental Change Effective Date; and (y) the Make-Whole Fundamental Change with the later Make-Whole Fundamental Change Effective Date will be deemed not to have occurred.

"**Make-Whole Fundamental Change Effective Date**" means (A) with respect to a Make-Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the date on which such Make-Whole Fundamental Change occurs or becomes effective; and (B) with respect to a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the applicable Redemption Notice Date.

"**Market Disruption Event**" means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Maturity Date**" means September 1, 2029.

"**Non-Affiliate Legend**" means a legend substantially in the form set forth in **Exhibit B-3**.

"**Note Agent**" means any Registrar, Paying Agent or Conversion Agent.

"**Notes**" has the meaning set forth in the second paragraph of this Indenture.

"**Observation Period**" means, with respect to any Note to be Converted, (A) subject to **clause (B)** below, if the Conversion Date for such Note occurs before June 1, 2029, the sixty (60) consecutive VWAP Trading Days beginning on, and including, the second (2nd) VWAP Trading Day immediately after such Conversion Date; (B) if such Conversion Date occurs on or after the date the Company has sent a Redemption Notice calling all or any Notes for Redemption pursuant to **Section 4.03(F**) and on or before the second (2nd) Business Day before the related Redemption Date, the sixty (60) consecutive VWAP Trading Days beginning on, and including, the sixty first (61st) Scheduled Trading Day immediately before such Redemption Date; and (C) subject to **clause (B)** above, if such Conversion Date occurs on or after June 1, 2029, the sixty (60) consecutive VWAP Trading Days beginning on, and including, the sixty first (61st) Scheduled Trading Day immediately before the Maturity Date.

"**Officer**" means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

"**Officer's Certificate**" means a certificate that is signed on behalf of the Company by one (1) of its Officers and that meets the requirements of **Section** 11.03.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means an opinion, from legal counsel (including an employee of, or counsel to, the Company or any of its Subsidiaries) reasonably acceptable to the Trustee, that meets the requirements of **Section** 11.03, subject to customary qualifications and exclusions.

"**Person**" or "**person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate "person" under this Indenture.

"**Physical Note**" means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

"**Purchase Agreement**" means that certain Purchase Agreement, dated August 7, 2024, between the Company and J.P. Morgan Securities LLC, as the representative of the Initial Purchasers.

"**Qualified Successor Entity**" means, with respect to a Business Combination Event, a corporation; *provided*, *however*, that a limited liability company, limited partnership or other

similar entity will also constitute a Qualified Successor Entity with respect to such Business Combination Event if either (A) such Business Combination Event is an Exempted Fundamental Change; or (B) both of the following conditions are satisfied: (i) either (x) such limited liability company, limited partnership or other similar entity, as applicable, is treated as a corporation or is a direct or indirect, Wholly Owned Subsidiary of, and disregarded as an entity separate from, a corporation, in each case for U.S. federal income tax purposes; or (y) the Company has received an opinion of a nationally recognized tax counsel to the effect that such Business Combination Event will not be treated as an exchange under Section 1001 of the Internal Revenue Code of 1986, as amended, for Holders or beneficial owners of the Notes; and (ii) such Business Combination Event constitutes a Common Stock Change Event whose Reference Property consists solely of any combination of cash in U.S. dollars and shares of common stock or other corporate Common Equity interests of an entity that is (x) treated as a corporation for U.S. federal income tax purposes; (y) duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; and (z) a direct or indirect parent of such limited liability company, limited partnership or similar entity.

"**Redemption**" means the repurchase of any Note by the Company pursuant to **Section** 4.03.

"**Redemption Date**" means the date fixed, pursuant to **Section 4.03(D)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Redemption.

"**Redemption Notice Date**" means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(F**).

"**Redemption Price**" means the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.03(E**).

"**Regular Record Date**" has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on March 1, the immediately preceding February 15; and (B) if such Interest Payment Date occurs on September 1, the immediately preceding August 15.

"**Repurchase Upon Fundamental Change**" means the repurchase of any Note by the Company pursuant to **Section** 4.02.

"**Responsible Officer**" means (A) any officer within the Corporate Trust Administration of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of such officers; and (B) with respect to a particular corporate trust matter relating to this Indenture, any other officer to whom such matter relating to this Indenture is referred because of his or her knowledge of, and familiarity with, the particular subject, and who, in each case has direct responsibility for the

administration of this Indenture.

"**Restricted Note Legend**" means a legend substantially in the form set forth in **Exhibit B-1**.

"**Restricted Stock Legend**" means, with respect to any Conversion Share, a legend substantially to the effect that the offer and sale of such Conversion Share have not been registered under the Securities Act and that such Conversion Share cannot be sold or otherwise transferred except pursuant to a transaction that is registered under the Securities Act or that is exempt from, or not subject to, the registration requirements of the Securities Act.

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

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

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal 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 traded. If the Common Stock is not so listed or traded, then "Scheduled Trading Day" means a Business Day.

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

"**Securities Act**" means the U.S. Securities Act of 1933, as amended.

"**Security**" means any Note or Conversion Share.

"**Settlement Method**" means Cash Settlement or Combination Settlement.

"**Shoe Option**" means the Initial Purchasers' option to purchase up to forty one million two hundred fifty thousand dollars ($41,250,000) aggregate principal amount of additional Notes as provided for in the Purchase Agreement.

"**Significant Subsidiary**" means, with respect to any Person, any Subsidiary of such Person that constitutes a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person; *provided*, *however*, that, if a Subsidiary meets the criteria of clause (1)(iii), but not clause (1)(i) or (1)(ii), of the definition of "significant subsidiary" in Rule 1-02(w) (or, if applicable, the respective successor clauses to the aforementioned clauses), then such Subsidiary will be deemed not to be a Significant Subsidiary unless such Subsidiary's income from continuing operations before income taxes, exclusive of amounts attributable to any non-controlling interests, for the last completed fiscal year before the date of determination exceeds twenty-five million dollars ($25,000,000).

"**Special Interest**" means any interest that accrues on any Note pursuant to **Section** 7.03.

"**Specified Dollar Amount**" means, with respect to the Conversion of a Note to which Combination Settlement applies, the maximum cash amount per $1,000 principal amount of such Note deliverable upon such Conversion (excluding cash in lieu of any fractional share of Common

Stock); *provided*, *however*, that in no event will the Specified Dollar Amount be less than $1,000 per $1,000 principal amount of such Note.

"**Stock Price**" has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to **clause (B)** of the definition of "Fundamental Change," then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

"**Subsidiary**" means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

"**Trading Day**" means any day on which (A) trading in the Common Stock generally occurs on the principal 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 traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then "Trading Day" means a Business Day.

"**Trading Price**" of the Notes on any Trading Day means the average of the secondary market bid quotations, expressed as a cash amount per $1,000 principal amount of Notes, obtained by the Bid Solicitation Agent for one million dollars ($1,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes at approximately 3:30 p.m., New York City time, on such Trading Day from three (3) nationally recognized independent securities dealers selected by the Company, which may include any of the Initial Purchasers; *provided*, *however*, that, if three (3) such bids cannot reasonably be obtained by the Bid Solicitation Agent but two (2) such bids are obtained, then the average of the two (2) bids will be used, and if only one (1) such bid can reasonably be obtained by the Bid Solicitation Agent, then that one (1) bid will be used. If, on any Trading Day, (A) the Bid Solicitation Agent cannot reasonably obtain at least one (1)

bid for one million dollars ($1,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes from a nationally recognized independent securities dealer; (B) the Company is not acting as the Bid Solicitation Agent and the Company fails to instruct the Bid Solicitation Agent to obtain bids when required; or (C) the Bid Solicitation Agent fails to solicit bids when required, then, in each case, the Trading Price per $1,000 principal amount of Notes on such Trading Day will be deemed to be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day.

"**Transfer-Restricted Security**" means any Security that constitutes a "restricted security" (as defined in Rule 144); *provided*, *however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(A) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(B) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a "restricted security" (as defined in Rule 144); and

(C) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice.

The Trustee is under no obligation to determine whether any Security is a Transfer-Restricted Security and may conclusively rely on an Officer's Certificate with respect thereto.

"**Trust Indenture Act**" means the U.S. Trust Indenture Act of 1939, as amended.

"**Trustee**" means the Person named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture and, thereafter, means such successor.

"**VWAP Market Disruption Event**" means, with respect to any date, (A) the failure by the principal 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, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"**VWAP Trading Day**" means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal 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 traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"**Wholly Owned Subsidiary**" of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02. OTHER DEFINITIONS.

Term	Defined in Section
"**Additional Shares**"	**5.07(A)**
"**Business Combination Event**"	**6.01(A)**
"**Cash Settlement**"	**5.03(A)**
"**Combination Settlement**"	**5.03(A)**
"**Common Stock Change Event**"	**5.09(A)**
"**Conversion Agent**"	**2.06(A)**
"**Conversion Consideration**"	**5.03(B)**
"**Default Interest**"	**2.05(B)**
"**Defaulted Amount**"	**2.05(B)**
"**Deferred Additional Interest**"	**3.04(C)(i)**
"**Deferred Additional Interest Demand Request**"	**3.04(C)(i)**
"**Event of Default**"	**7.01(A)**
"**Expiration Date**"	**5.05(A)(v)**
"**Expiration Time**"	**5.05(A)(v)**
"**Fundamental Change Notice**"	**4.02(E)**
"**Fundamental Change Repurchase Right**"	**4.02(A)**
"**Initial Notes**"	**2.03(A)**
"**Measurement Period**"	**5.01(C)(i)(2)**
"**Notice of Election to Pay Deferred Additional Interest**"	**3.04(C)(i)**
"**Paying Agent**"	**2.06(A)**
"**Redemption Notice**"	**4.03(F)**
"**Reference Property**"	**5.09(A)**
"**Reference Property Unit**"	**5.09(A)**
"**Register**"	**2.06(B)**
"**Registrar**"	**2.06(A)**
"**Reporting Event of Default**"	**7.03(A)**
"**Specified Courts**"	11.07
"**Spin-Off**"	**5.05(A)(iii)(2)**
"**Spin-Off Valuation Period**"	**5.05(A)(iii)(2)**

"**Stated Interest**"	**2.05(A)**
"**Successor Entity**"	**6.01(A)**
"**Successor Person**"	**5.09(A)**
"**Tender/Exchange Offer Valuation Period**"	**5.05(A)(v)**
"**Trading Price Condition**"	**5.01(C)(i)(2)**

Section 1.03. Rules of Construction.

For purposes of this Indenture:

(A) "or" is not exclusive;

(B) "including" means "including without limitation";

(C) "will" expresses a command;

(D) the "average" of a set of numerical values refers to the arithmetic average of such numerical values;

(E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;

(F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(G) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture, unless the context requires otherwise;

(H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;

(I) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture; and

(J) the term "**interest**," when used with respect to a Note, includes any Default Interest, Additional Interest (including, if applicable, Deferred Additional Interest and interest on such Deferred Additional Interest) and Special Interest, unless the context requires otherwise.

Article 2. THE NOTES

Section 2.01. Form, Dating and Denominations.

The Notes and the Trustee's certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section** 2.09 and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the

Depositary. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section** 2.10.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of this Indenture, and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, agree to such terms and to be bound thereby; *provided*, *however*, that, to the extent that any provision of any Note conflicts with the provisions of this Indenture, the provisions of this Indenture will control for purposes of this Indenture and such Note.

SECTION 2.02. EXECUTION, AUTHENTICATION AND DELIVERY.

(A) *Due Execution by the Company*. At least one (1) duly authorized Officer will sign the Notes on behalf of the Company by manual, electronic or facsimile signature. A Note's validity will not be affected by the failure of any Officer whose signature is on any Note to hold, at the time such Note is authenticated, the same or any other office at the Company.

(B) *Authentication by the Trustee and Delivery*.

(i) No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

(ii) The Trustee will cause an authorized signatory of the Trustee (or a duly appointed authenticating agent) to manually sign the certificate of authentication of a Note only if (1) the Company delivers such Note to the Trustee; (2) such Note is executed by the Company in accordance with **Section 2.02(A)**; and (3) the Company delivers a Company Order to the Trustee that (a) requests the Trustee to authenticate such Note; and (b) sets forth the name of the Holder of such Note and the date as of which such Note is to be authenticated. If such Company Order also requests the Trustee to deliver such Note to any Holder or to the Depositary, then the Trustee will promptly deliver such Note in accordance with such Company Order.

(iii) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. A duly appointed authenticating agent may authenticate Notes whenever the Trustee may do so under this Indenture, and a Note authenticated as provided in this Indenture by such an agent will be deemed, for purposes of this Indenture,

to be authenticated by the Trustee. Each duly appointed authenticating agent will have the same rights to deal with the Company as the Trustee would have if it were performing the duties that the authenticating agent was validly appointed to undertake.

Section 2.03. Initial Notes and Additional Notes.

(A) *Initial Notes*. On the Issue Date, there will be originally issued three hundred sixteen million two hundred fifty thousand dollars ($316,250,000) aggregate principal amount of Notes, subject to the provisions of this Indenture (including **Section** 2.02). Notes issued pursuant to this **Section 2.03(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in this Indenture as the "**Initial Notes**."

(B) *Additional Notes*. Without the consent of any Holder, the Company may, subject to the provisions of this Indenture (including **Section** 2.02), originally issue additional Notes with the same terms as the Initial Notes (except, to the extent applicable, with respect to the date as of which interest begins to accrue on, the first Interest Payment Date for, the Last Original Issue Date of, and, if applicable, transfer restrictions applicable to, such additional Notes), which additional Notes will, subject to the foregoing, be considered to be part of the same series of, and rank equally and ratably with all other, Notes issued under this Indenture; *provided*, *however*, that if any such additional Notes (and any Notes that are resold after such Notes have been purchased or otherwise acquired by the Company or its Subsidiaries) are not fungible with other Notes issued under this Indenture for U.S. federal income tax purposes, for U.S. federal securities law purposes or for purposes of the Depositary Procedures, then such additional or resold Notes will be identified by one or more separate CUSIP numbers or by no CUSIP number.

Section 2.04. Method of Payment.

(A) *Global Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

(B) *Physical Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Physical Note no later than the time the same is due as provided in this Indenture as follows: (i) if the principal amount of such Physical Note is at least five million dollars ($5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Paying Agent or the Trustee, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to an account of such Holder within the United States specified in such request, by wire transfer of immediately available funds to such account; and (ii) in all other cases, by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding

Regular Record Date; (y) with respect to any cash Conversion Consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

Section 2.05. Accrual of Interest; Defaulted Amounts; When Payment Date is Not a Business Day.

(A) *Accrual of Interest*. Each Note will accrue interest at a rate per annum equal to 2.25% (the "**Stated Interest**"), plus any Default Interest, Additional Interest and Special Interest that may accrue pursuant to **Sections 2.05(B)**, 3.04 and 7.03, respectively. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to **Sections 4.02(D)**, **4.03(E)** and **5.02(D)** (but without duplication of any payment of interest), payable semi-annually in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Additional Interest and Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts*. If the Company fails to pay any amount (a "**Defaulted Amount**") payable on a Note on or before the due date therefor as provided in this Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest ("**Default Interest**") will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; (iii) such Defaulted Amount and Default Interest will be paid on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that such special record date must be no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (iv) at least fifteen (15) calendar days before such special record date, the Company will send notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(C) *Delay of Payment When Payment Date is Not a Business Day*. If the due date for a payment on a Note as provided in this Indenture is not a Business Day, then, notwithstanding anything to the contrary in this Indenture or the Notes, such payment may be made on the immediately following Business Day with the same force and effect as if such payment were made on such due date (and, for the avoidance of doubt, no interest will accrue on such payment as a result of the related delay). Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a "Business Day."

Section 2.06. Registrar, Paying Agent and Conversion Agent.

(A) *Generally*. The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the "**Registrar**"); (ii) an office or agency in the continental United States where Notes may be presented for payment (the "**Paying Agent**"); and (iii) an office or agency in the continental United States where Notes may be presented for Conversion (the "**Conversion Agent**"). If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such and will receive compensation therefor in accordance with any other agreement between the Trustee and the Company. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent or Conversion Agent without prior notice to Holders. Notwithstanding anything to the contrary in this **Section 2.06(A)**, each of the Registrar, Paying Agent and Conversion Agent with respect to any Global Note must at all times be a Person that is eligible to act in that capacity under the Depositary Procedures.

(B) *Duties of the Registrar*. The Registrar will keep a record (the "**Register**") of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and Conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company's Right to Appoint Successor Registrars, Paying Agents and Conversion Agents*. The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under this Indenture. Subject to **Section 2.06(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to this Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of this Indenture that relate to such Note Agent.

(D) *Initial Appointments*. The Company appoints the Trustee as the initial Paying Agent, the initial Registrar and the initial Conversion Agent.

Section 2.07. Paying Agent and Conversion Agent to Hold Property in Trust.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of Holders or the Trustee all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent,

then (A) it will segregate and hold in a separate trust fund for the benefit of the Holders or the Trustee all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in this Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (viii)** or **(ix)** of **Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

SECTION 2.08. HOLDER LISTS.

If the Trustee is not the Registrar, then the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders.

SECTION 2.09. LEGENDS.

(A) *Global Note Legend*. Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with this Indenture, required by the Depositary for such Global Note).

(B) *Non-Affiliate Legend*. Each Note will bear the Non-Affiliate Legend.

(C) *Restricted Note Legend*. Subject to **Section** 2.12,

(i) each Note that is a Transfer-Restricted Security will bear the Restricted Note Legend; and

(ii) if a Note is issued in exchange for, in substitution of, or to effect a partial Conversion of, another Note (such other Note being referred to as the "old Note" for purposes of this **Section 2.09(C)(ii)**), including pursuant to **Section 2.10(B)**, **2.10(C)**, 2.11 or 2.13, then such Note will bear the Restricted Note Legend if such old Note bore the Restricted Note Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such Conversion, as applicable; *provided*, *however*, that such Note need not bear the Restricted Note Legend if such Note does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(D) *Other Legends*. A Note may bear any other legend or text, not inconsistent with this Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(E) *Acknowledgment and Agreement by the Holders*. A Holder's acceptance of any Note bearing any legend required by this **Section** 2.09 will constitute such Holder's

acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

(F) *Restricted Stock Legend*.

(i) Each Conversion Share will bear the Restricted Stock Legend if the Note upon the Conversion of which such Conversion Share was issued was (or would have been had it not been Converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided*, *however*, that such Conversion Share need not bear the Restricted Stock Legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear the Restricted Stock Legend.

(ii) Notwithstanding anything to the contrary in this **Section 2.09(F**), a Conversion Share need not bear a Restricted Stock Legend if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto, *provided* the Company takes measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in the Restricted Stock Legend.

SECTION 2.10. TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS.

(A) *Provisions Applicable to All Transfers and Exchanges*.

(i) *Generally*. Subject to this **Section** 2.10, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time, and the Registrar will record each such transfer or exchange of Physical Notes in the Register.

(ii) *Transferred and Exchanged Notes Remain Valid Obligations of the Company*. Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the "old Note" for purposes of this **Section 2.10(A)(ii)**) or portion thereof in accordance with this Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under this Indenture, as such old Note or portion thereof, as applicable.

(iii) *No Services Charge; Transfer Taxes*. The Company, the Trustee and the Note Agents will not impose any service charge on any Holder for any transfer, exchange or Conversion of Notes, but the Company, the Trustee, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or Conversion of Notes, other than exchanges pursuant to **Section** 2.11, 2.17 or 8.05 not involving any transfer.

(iv) *Transfers and Exchanges Must Be in Authorized Denominations*. Notwithstanding anything to the contrary in this Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) *Trustee's Disclaimer*. The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed under

this Indenture or applicable law with respect to any Security, other than to require the delivery of such certificates or other documentation or evidence as expressly required by this Indenture and to examine the same to determine substantial compliance as to form with the requirements of this Indenture. Neither the Trustee nor any of its agents will have responsibility for any actions taken or not taken by the Depositary. The Trustee will have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in, the Depositary or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice (including any Redemption Notice) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All payments to be made to Holders in respect of the Notes will be given or made only to or upon the order of the registered Holders (which is the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note will be exercised only through the Depositary subject to the applicable Depositary Procedures. The Trustee may rely and will be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(vi) *Legends*. Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section** 2.09.

(vii) *Settlement of Transfers and Exchanges*. Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Note, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(viii) *Interpretation*. For the avoidance of doubt, and subject to the terms of this Indenture, as used in this **Section** 2.10, an "exchange" of a Global Note or a Physical Note includes (x) an exchange effected for the sole purpose of removing any Restricted Note Legend affixed to such Global Note or Physical Note; and (y) if such Global Note or Physical Note is identified by a "restricted" CUSIP number, an exchange effected for the sole purpose of causing such Global Note or Physical Note to be identified by an "unrestricted" CUSIP number.

(B) *Transfers and Exchanges of Global Notes.*

(i) *Certain Restrictions*. Subject to the immediately following sentence, no Global Note may be transferred or exchanged in whole except (x) by the Depositary to a nominee of the Depositary; (y) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary; or (z) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided*, *however*, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depositary notifies the Company or the Trustee that the

Depositary is unwilling or unable to continue as depositary for such Global Note or (y) the Depositary ceases to be a "clearing agency" registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depositary within ninety (90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depositary, or from a holder of a beneficial interest in such Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

(ii) *Effecting Transfers and Exchanges*. Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, then the Company may (but is not required to) instruct the Trustee to cancel such Global Note pursuant to **Section** 2.15);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, a new Global Note bearing each legend, if any, required by **Section** 2.09; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Global Note to be so exchanged; (y) are registered in such name(s) as the Depositary specifies (or as otherwise determined pursuant to customary procedures); and (z) bear each legend, if any, required by **Section** 2.09.

(iii) *Compliance with Depositary Procedures*. Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) *Requirements for Transfers and Exchanges*. Subject to this **Section** 2.10, a Holder of a Physical Note may (x) transfer such Physical Note (or any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes; *provided*, *however*, that, to effect any such transfer or exchange, such Holder must:

(1) surrender such Physical Note to be transferred or exchanged to the office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee or the Registrar; and

(2) deliver such certificates, documentation or evidence as may be required pursuant to **Section 2.10(D)**.

(ii) *Effecting Transfers and Exchanges*. Upon the satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the "old Physical Note" for purposes of this **Section 2.10(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

(1) such old Physical Note will be promptly cancelled pursuant to **Section** 2.15;

(2) if such old Physical Note is to be so transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section** 2.09;

(3) in the case of a transfer:

(a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note(s), which increase(s) are in Authorized Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section** 2.09; *provided*, *however*, that if such transfer cannot be so effected by

notation on one or more existing Global Notes (whether because no Global Notes bearing each legend, if any, required by **Section** 2.09 then exist, because any such increase will result in any Global Note having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depositary or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, one or more Global Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount that is to be so transferred but that is not effected by notation as provided above; and (y) bear each legend, if any, required by **Section** 2.09; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section** 2.09; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section** 2.09.

(D) *Requirement to Deliver Documentation and Other Evidence*. If a Holder of any Note that is identified by a "restricted" CUSIP number or that bears a Restricted Note Legend or is a Transfer-Restricted Security requests to:

(i) cause such Note to be identified by an "unrestricted" CUSIP number;

(ii) remove such Restricted Note Legend; or

(iii) register the transfer of such Note to the name of another Person,

then the Company, the Trustee and the Registrar may refuse to effect such identification, removal or transfer, as applicable, unless there is delivered to the Company, the Trustee and the Registrar such certificates or other documentation or evidence as the Company, the Trustee and the Registrar may reasonably require in order for the Company to determine that such identification, removal or transfer, as applicable, complies with the Securities Act and other applicable securities laws; *provided*, *however*, that no such certificates, documentation or evidence need be so delivered on or after the Free Trade Date with respect to such Note unless the Company determines, in its reasonable discretion, that such Note is not eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise without any requirements as to volume, manner of sale,

availability of current public information or notice under the Securities Act.

(E) *Transfers of Notes Subject to Redemption, Repurchase or Conversion*. Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for Conversion, except to the extent that any portion of such Note is not subject to Conversion; (ii) is subject to a Fundamental Change Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F**), except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price when due; or (iii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

Section 2.11. Exchange and Cancellation of Notes to Be Converted or to Be Repurchased Pursuant to a Repurchase Upon Fundamental Change or Redemption.

(A) *Partial Conversions of Physical Notes and Partial Repurchases of Physical Notes Pursuant to a Repurchase Upon Fundamental Change or Redemption*. If only a portion of a Physical Note of a Holder is to be Converted pursuant to **Article** 5 or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for such Conversion or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.10(C**), for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so Converted or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so Converted or repurchased, as applicable, which Physical Note will be Converted or repurchased, as applicable, pursuant to the terms of this Indenture; *provided*, *however*, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such Conversion or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section** 2.18.

(B) *Cancellation of Notes that Are Converted and Notes that Are Repurchased Pursuant to a Repurchase Upon Fundamental Change or Redemption*.

(i) *Physical Notes*. If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.11(A**)) of a Holder is to be Converted pursuant to **Article** 5 or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section** 2.18 and the time such Physical Note is surrendered for such Conversion or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to **Section** 2.15; and (2) in the case of a partial Conversion or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so Converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section** 2.09.

(ii) *Global Notes*. If a Global Note (or any portion thereof) is to be Converted pursuant to **Article** 5 or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section** 2.18, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so Converted or repurchased, as applicable, by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to **Section** 2.15).

SECTION 2.12. REMOVAL OF TRANSFER RESTRICTIONS.

Without limiting the generality of any other provision of this Indenture (including **Section** 3.04), the Restricted Note Legend affixed to any Note will be deemed, pursuant to this **Section** 2.12 and the footnote to such Restricted Note Legend, to be removed therefrom upon the Company's delivery to the Trustee of notice, signed on behalf of the Company by one (1) of its Officers, to such effect (and, for the avoidance of doubt, such notice need not be accompanied by an Officer's Certificate or an Opinion of Counsel in order to be effective to cause such Restricted Note Legend to be deemed to be removed from such Note). If such Note bears a "restricted" CUSIP or ISIN number at the time of such delivery, then, upon such delivery, such Note will be deemed, pursuant to this **Section** 2.12 and the footnotes to the CUSIP and ISIN numbers set forth on the face of the certificate representing such Note, to thereafter bear the "unrestricted" CUSIP and ISIN numbers identified in such footnotes; *provided*, *however*, that if such Note is a Global Note and the Depositary thereof requires a mandatory exchange or other procedure to cause such Global Note to be identified by "unrestricted" CUSIP and ISIN numbers in the facilities of such Depositary, then (i) the Company will effect such exchange or procedure as soon as reasonably practicable; and (ii) for purposes of **Section** 3.04 and the definition of Freely Tradable, such Global Note will not be deemed to be identified by "unrestricted" CUSIP and ISIN numbers until such time as such exchange or procedure is effected.

SECTION 2.13. REPLACEMENT NOTES.

If a Holder of any Note claims that such Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, a replacement Note upon surrender to the Trustee of such mutilated Note, or upon delivery to the Trustee of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Trustee and the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company and the Trustee may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company and the Trustee to protect the Company and the Trustee from any loss that any of them may suffer if such Note is replaced. The Company may charge for its and the Trustee's expenses in replacing a Note.

Every replacement Note issued pursuant to this **Section** 2.13 will be an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and ratably with all other Notes issued under this Indenture.

Section 2.14. Registered Holders; Certain Rights with Respect to Global Notes.

Only the Holder of a Note will have rights under this Indenture as the owner of such Note. Without limiting the generality of the foregoing, Depositary Participants will have no rights as such under this Indenture with respect to any Global Note held on their behalf by the Depositary or its nominee, or by the Trustee as its custodian, and the Company, the Trustee and the Note Agents, and their respective agents, may treat the Depositary as the absolute owner of such Global Note for all purposes whatsoever; *provided*, *however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depositary Participants and Persons that hold interests in Notes through Depositary Participants, to take any action that such Holder is entitled to take with respect to such Global Note under this Indenture or the Notes; and (B) the Company and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depositary.

Section 2.15. Cancellation.

The Company may at any time deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Trustee each Note duly surrendered to them for transfer, exchange, payment or Conversion. The Trustee will promptly cancel all Notes so surrendered to it in accordance with its customary procedures. Without limiting the generality of **Section 2.03(B)**, the Company may not originally issue new Notes to replace Notes that it has paid or that have been cancelled upon transfer, exchange, payment or Conversion.

Section 2.16. Notes Held by the Company or its Affiliates.

Without limiting the generality of **Section** 2.18, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided*, *however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee knows are so owned will be so disregarded.

Section 2.17. Temporary Notes.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under this Indenture as definitive Notes.

Section 2.18. Outstanding Notes.

(A) *Generally*. The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or

portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with **Section** 2.15; (ii) assigned a principal amount of zero by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of any a Global Note representing such Note; (iii) paid in full (including upon Conversion) in accordance with this Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B**), **(C**) or **(D**) of this **Section** 2.18.

(B) *Replaced Notes*. If a Note is replaced pursuant to **Section** 2.13, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a "*bona fide* purchaser" under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase*. If, on a Redemption Date, a Fundamental Change Repurchase Date or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price or principal amount, respectively, together, in each case, with the aggregate interest, in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Section 4.02(D**), **4.03(E**) or **5.02(D**); and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price or principal amount, as applicable, of, and accrued and unpaid interest on, such Notes (or such portions thereof), in each case as provided in this Indenture.

(D) *Notes to Be Converted*. At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be Converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B**) or **Section 5.02(D**), upon such Conversion) be deemed to cease to be outstanding, except to the extent provided in **Section 5.02(D**) or **Section** 5.08.

(E) *Cessation of Accrual of Interest*. Except as provided in **Section 4.02(D**), **4.03(E**) or **5.02(D**), interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section** 2.18, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

SECTION 2.19. REPURCHASES BY THE COMPANY.

Without limiting the generality of **Section** 2.15, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders.

SECTION 2.20. CUSIP AND ISIN NUMBERS.

Subject to **Section** 2.12, the Company may use one or more CUSIP or ISIN numbers to identify any of the Notes, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided*, *however*, that (i) the Trustee makes no representation

as to the correctness or accuracy of any such CUSIP or ISIN number; and (ii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee of any change in the CUSIP or ISIN number(s) identifying any Notes.

Article 3. COVENANTS

Section 3.01. Payment on Notes.

(A) *Generally*. The Company will pay or cause to be paid all the principal of, the Fundamental Change Repurchase Price and Redemption Price for, interest on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in this Indenture.

(B) *Deposit of Funds*. Before 11:00 A.M., New York City time, on each Redemption Date, Fundamental Change Repurchase Date or Interest Payment Date, and on the Maturity Date or any other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

Section 3.02. Exchange Act Reports.

(A) *Generally*. The Company will send to the Trustee copies of all reports that the Company is required to file with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act (other than reports on Form 8-K) within fifteen (15) calendar days after the date that the Company is required to file the same (after giving effect to all applicable grace periods under the Exchange Act); *provided*, *however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC. Any such report that the Company files with the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed via the EDGAR system (or such successor). Upon the request of any Holder, the Trustee will provide to such Holder a copy of any such report that the Company has sent the Trustee pursuant to this **Section 3.02(A**), other than such a report that is deemed to be sent to the Trustee pursuant to the preceding sentence.

(B) *Trustee's Disclaimer*. The Trustee need not determine whether the Company has filed any material via the EDGAR system (or such successor). The sending or filing of reports pursuant to **Section 3.02(A**) will not be deemed to constitute actual or constructive notice to the Trustee of any information contained, or determinable from information contained, therein, including the Company's compliance with any of its covenants under this Indenture.

Section 3.03. Rule 144A Information.

If the Company is not subject to Section 13 or 15(d) of the Exchange Act at any time when any Notes or shares of Common Stock issuable upon Conversion of the Notes are outstanding and constitute "restricted securities" (as defined in Rule 144), then the Company (or its successor) will promptly provide, to the Trustee and, upon written request, to any Holder, beneficial owner or prospective purchaser of such Notes or shares, the information required to be delivered pursuant

to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares pursuant to Rule 144A.

SECTION 3.04. ADDITIONAL INTEREST.

(A) *Accrual of Additional Interest*.

(i) If, at any time during the six (6) month period beginning on, and including, the date that is six (6) months after the Last Original Issue Date of any Note,

(1) the Company fails to timely file any report (other than Form 8-K reports) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to all applicable grace periods thereunder); or

(2) such Note is not otherwise Freely Tradable,

then Additional Interest will accrue on such Note for each day during such period on which such failure is continuing or such Note is not Freely Tradable.

(ii) In addition, Additional Interest will accrue on a Note on each day on which such Note is not Freely Tradable on or after the De-Legending Deadline Date for such Note.

(B) *Amount and Payment of Additional Interest*. Subject to **Section 3.04(C**), any Additional Interest that accrues on a Note pursuant to **Section 3.04(A**) will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Additional Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided*, *however*, that in no event will Additional Interest that accrues pursuant to this **Section 3.04(B**) (excluding any interest that accrues on any Deferred Additional Interest pursuant to **Section 3.04(C)**) as a result of the Company's failure to timely file any document or report that it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (other than reports on Form 8-K), together with any Special Interest that accrues at the Company's election pursuant to **Section** 7.03 for a Reporting Event of Default, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Additional Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note and, subject to the proviso of the immediately preceding sentence, in addition to any Special Interest that accrues on such Note.

(C) *Deferral of Additional Interest*.

(i) *Generally*. Notwithstanding anything to the contrary in this **Section** 3.04, but subject to **Section 3.04(C)(iii**), Additional Interest that accrues on any Note for any period on or after the De-Legending Deadline Date of such Note will not be payable on any Interest Payment Date occurring on or after such De-Legending Deadline Date unless (1) a Holder (or an owner of a beneficial interest in a Global Note) has delivered to the

Company and the Trustee, before the Regular Record Date immediately before such Interest Payment Date, a written notice (a "**Deferred Additional Interest Demand Request**") demanding payment of Additional Interest; or (2) the Company, in its sole and absolute discretion, elects, by sending notice of such election (a "**Notice of Election to Pay Deferred Additional Interest**") to Holders before such Regular Record Date (with a copy to the Trustee), to pay such Additional Interest on such Interest Payment Date (any accrued and unpaid Additional Interest that, in accordance with this sentence, is not paid on such Interest Payment Date, "**Deferred Additional Interest**"). Without further action by the Company, or any other Person, interest will automatically accrue on such Deferred Additional Interest from, and including, such Interest Payment Date at a rate per annum equal to the rate per annum at which Stated Interest accrues on the Notes to, but excluding, the date on which such Deferred Additional Interest, together with accrued interest thereon, is paid. Once any accrued and unpaid Additional Interest becomes payable on an Interest Payment Date (whether as a result of the delivery of a written notice pursuant to **clause (1)** above or, if earlier, the Company's election to pay the same pursuant to **clause (2)** above), Additional Interest will thereafter not be subject to deferral pursuant to this **Section 3.04(C)**.

(ii) *Interpretive Provisions*. Each reference in this Indenture or the Notes to any accrued interest (including in the definitions of the Redemption Price and the Fundamental Change Repurchase Price for any Note) or to any accrued Additional Interest includes, to the extent applicable, and without duplication, any Deferred Additional Interest, together with accrued and unpaid interest thereon. For the avoidance of doubt, the failure to pay any accrued and unpaid Additional Interest on an Interest Payment Date will not constitute a Default or an Event of Default under this Indenture or the Notes if such payment is deferred in accordance with **Section 3.04(C)(i)**. Otherwise, such a failure to pay will be subject to **Section 7.01(A)(ii)**.

(iii) *Payment or Extinguishment Upon Maturity*. Notwithstanding anything to the contrary in this Indenture or the Notes, if (1) any unpaid Deferred Additional Interest exists on any Notes as of the Close of Business on the Regular Record Date immediately preceding the Maturity Date; (2) no Holder (or owner of a beneficial interest in a Global Note) has delivered a Deferred Additional Interest Demand Request in the manner set forth in **Section 3.04(C)(i)** before such Regular Record Date; and (3) the Company has not sent a Notice of Election to Pay Deferred Additional Interest in the manner set forth in **Section 3.04(C)(i)** before such Regular Record Date, then Deferred Additional Interest on each Note then outstanding will cease to accrue, and all Deferred Additional Interest, together with interest thereon, on such Note will be deemed to be extinguished on the following date: (a) if such Note is to be Converted, the Conversion Date for such Conversion (it being understood, for the avoidance of doubt, that the Conversion Consideration therefor need not include, and the amount referred to in **clause (i)** of **Section 5.02(D)** need not include, the payment of any such Deferred Additional Interest or any interest thereon); and (b) in all other cases, the later of (x) the Maturity Date; and (y) the first date on which the Company has repaid the principal of, and accrued and unpaid interest (other than such Deferred Additional Interest and any interest thereon) on, such Note in full.

(D) *Notice of Accrual of Additional Interest; Trustee's Disclaimer*. The Company will

send notice to the Holder of each Note, and to the Trustee, of the commencement and termination of any period in which Additional Interest accrues on such Note, except that no such notice is required in respect of any Additional Interest that is deferred in accordance with **Section 3.04(C)**. In addition, if Additional Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Additional Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Additional Interest on such Note on such date of payment; and (ii) the amount of such Additional Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Additional Interest is payable (or whether the same is deferred or is accruing interest) or the amount thereof and may assume without inquiry that no Additional Interest is payable or has been deferred until written notice of such Additional Interest has been provided to the Trustee by the Company.

(E) *Exclusive Remedy*. The accrual of Additional Interest will be the exclusive remedy available to Holders for the failure of their Notes to become Freely Tradable.

Section 3.05. Compliance and Default Certificates.

(A) *Annual Compliance Certificate*. Within ninety (90) days after the last day of each fiscal year of the Company, beginning with the first such fiscal year ending after the date of this Indenture, the Company will deliver an Officer's Certificate to the Trustee stating (i) that the signatory thereto has supervised a review of the activities of the Company and its Subsidiaries during such fiscal year with a view towards determining whether any Default or Event of Default has occurred; and (ii) whether, to such signatory's knowledge, a Default or Event of Default has occurred or is continuing (and, if so, describing all such Defaults or Events of Default and what action the Company is taking or proposes to take with respect thereto).

(B) *Default Certificate*. If a Default or Event of Default occurs, then the Company will, within thirty (30) days after its first occurrence, deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto.

Section 3.06. Stay, Extension and Usury Laws.

To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee by this Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.07. Acquisition of Notes by the Company and its Affiliates.

Without limiting the generality of **Section** 2.18, Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired will be deemed to remain outstanding (except to the extent provided in **Section** 2.16) until such time as such Notes are delivered to the Trustee

for cancellation. The Company will use commercially reasonable efforts to prevent any of its controlled Affiliates from acquiring any Note (or any beneficial interest therein).

Section 3.08. Existence.

Subject to **Article** 6, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Article 4. REPURCHASE AND REDEMPTION

Section 4.01. No Sinking Fund.

No sinking fund is required to be provided for the Notes.

Section 4.02. Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change*. Subject to the other terms of this **Section** 4.02, if a Fundamental Change occurs, then each Holder will have the right (the "**Fundamental Change Repurchase Right**") to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (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), then (i) the Company may not repurchase any Notes pursuant to this **Section** 4.02; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase Upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depositary Procedures).

(C) *Fundamental Change Repurchase Date*. The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company's choosing that is no more than thirty five (35), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price*. The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided*, *however*, that if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company's

election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C**) and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C**), on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Fundamental Change Repurchase Price will include interest on Notes to be repurchased from, and including, such Interest Payment Date.

(E) *Fundamental Change Notice*. On or before the twentieth (20th) calendar day after the effective date of a Fundamental Change, the Company will send to each Holder, the Trustee, the Conversion Agent and the Paying Agent a notice of such Fundamental Change (a "**Fundamental Change Notice**").

Such Fundamental Change Notice must state:

(i) briefly, the events causing such Fundamental Change;

(ii) the effective date of such Fundamental Change;

(iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section** 4.02, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;

(iv) the Fundamental Change Repurchase Date for such Fundamental Change;

(v) the Fundamental Change Repurchase Price per $1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to the first sentence of **Section 4.02(D**));

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) the Conversion Rate in effect on the date of such Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section** 5.07);

(viii) that Notes for which a Fundamental Change Repurchase Notice has been duly surrendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;

(ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly surrendered may be Converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Indenture; and

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

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right*.

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased*. To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices*. Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note;

provided, *however*, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depositary Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice*. A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal

to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and

(3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

provided, *however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section** 2.11, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(G) *Payment of the Fundamental Change Repurchase Price*. Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to the first sentence of **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Third Party May Conduct Repurchase Offer In Lieu of the Company*. Notwithstanding anything to the contrary in this **Section** 4.02, the Company will be deemed to satisfy its obligations under this **Section** 4.02 if (i) one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Notes otherwise required by this **Section** 4.02 in a manner that would have satisfied the requirements of this **Section** 4.02 if

conducted directly by the Company; and (ii) an owner of a beneficial interest in any Note repurchased by such third party or parties will not receive a lesser amount (as a result of withholding or other similar taxes) than such owner would have received had the Company repurchased such Note.

(I) *No Requirement to Conduct an Offer to Repurchase Notes if the Fundamental Change Results in the Notes Becoming Convertible into an Amount of Cash Exceeding the Fundamental Change Repurchase Price*. Notwithstanding anything to the contrary in this **Section** 4.02, the Company will not be required to send a Fundamental Change Notice pursuant to **Section 4.02(E**), or offer to repurchase or repurchase any Notes pursuant to this **Section** 4.02, in connection with a Common Stock Change Event that constitutes a Fundamental Change pursuant to **clause (B)(ii)** of the definition thereof (regardless of whether such Common Stock Change Event also constitutes a Fundamental Change pursuant to any other clause of such definition), if (i) the Reference Property of such Common Stock Change Event consists entirely of cash in U.S. dollars; (ii) immediately after such Fundamental Change, the Notes become Convertible, pursuant to **Section 5.09(A**) and, if applicable, **Section** 5.07, into consideration that consists solely of U.S. dollars in an amount per $1,000 aggregate principal amount of Notes that equals or exceeds the Fundamental Change Repurchase Price per $1,000 aggregate principal amount of Notes (calculated assuming that the same includes the maximum amount of accrued interest payable as part of the related Fundamental Change Repurchase Price); and (iii) the Company timely sends the notice relating to such Fundamental Change required pursuant to **Section 5.01(C)(i)(3)(b**) and includes, in such notice, a statement that the Company is relying on this **Section 4.02(I)**. For the avoidance of doubt, the maximum amount of accrued interest referred to in clause (ii) above will be determined (x) by assuming that the Fundamental Change Repurchase Date occurs on the latest possible date permitted for the applicable Fundamental Change pursuant to **Section 4.02(E**) and **Section 4.02(C**); and (y) without regard to the proviso to the first sentence of **Section 4.02(D**).

(J) *Compliance with Applicable Securities Laws*. To the extent applicable, the Company will comply, in all material respects, with all U.S. federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in this Indenture; *provided*, *however*, that, to the extent that the Company's obligations pursuant to this **Section** 4.02 conflict with any law or regulation that is applicable to the Company and enacted after the Issue Date, the Company's compliance with such law or regulation will not be considered to be a Default of such obligations; rather, the Company will be deemed to be in compliance with such obligations if the Company complies with its obligation to effect Repurchases Upon a Fundamental Change in accordance with this **Section** 4.02, modified as necessary by the Company in good faith to permit compliance with such law or regulation.

(K) *Repurchase in Part*. Subject to the terms of this **Section** 4.02, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section** 4.02 applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

Section 4.03. Right of the Company to Redeem the Notes.

(A) *No Right to Redeem Before September 1, 2027.* The Company may not redeem the Notes at its option at any time before September 1, 2027.

(B) *Right to Redeem the Notes on or After September 1, 2027.* Subject to the terms of this **Section** 4.03, the Company has the right, at its election, to redeem all, or any portion in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date on or after September 1, 2027 and on or before the sixty first (61st) Scheduled Trading Day immediately before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if (i) the Notes are Freely Tradable as of the related Redemption Notice Date and all accrued and unpaid Additional Interest, if any, has been paid in full as of the first Interest Payment Date occurring on or before such Redemption Notice Date; and (ii) the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price on (x) each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before such Redemption Notice Date; and (y) the Trading Day immediately before such Redemption Notice Date; *provided*, *however*, that the Company will not call less than all of the outstanding Notes for Redemption unless the excess of the principal amount of Notes outstanding as of the time the Company sends the related Redemption Notice over the aggregate principal amount of Notes set forth in such Redemption Notice as being subject to such Redemption is at least seventy five million dollars ($75,000,000). For the avoidance of doubt, the calling of any Notes for Redemption will constitute a Make-Whole Fundamental Change with respect to such Notes pursuant to **clause (B)** of the definition thereof.

(C) *Redemption Prohibited in Certain Circumstances*. If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before 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), then (i) the Company may not call for Redemption or otherwise redeem any Notes pursuant to this **Section** 4.03; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depositary Procedures).

(D) *Redemption Date*. The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than eighty five (85), nor less than sixty five (65), Scheduled Trading Days after the Redemption Notice Date for such Redemption.

(E) *Redemption Price*. The Redemption Price for any Note called for Redemption is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption; *provided*, *however*, that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note

remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C**) and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C**), on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date.

(F) *Redemption Notice*. To call any Notes for Redemption, the Company must send to each Holder of such Notes a written notice of such Redemption (a "**Redemption Notice**").

Such Redemption Notice must state:

(i) that such Notes have been called for Redemption, briefly describing the Company's Redemption right under this Indenture;

(ii) the Redemption Date for such Redemption;

(iii) the Redemption Price per $1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to the first sentence of **Section 4.03(E**));

(iv) the name and address of the Paying Agent and the Conversion Agent;

(v) that Notes called for Redemption may be Converted at any time before the Close of Business on the second (2nd) Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);

(vi) the Conversion Rate in effect on the Redemption Notice Date for such Redemption and a description and quantification of any adjustments to the Conversion Rate that may result from such Redemption (including pursuant to **Section** 5.07);

(vii) the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the second (2nd) Business Day before such Redemption Date; and

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

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee, the Conversion Agent and the Paying Agent.

(G) *Selection and Conversion of Notes to Be Redeemed in Part*.

(i) If less than all Notes then outstanding are called for Redemption, then the

Notes to be redeemed will be selected by the Company as follows: (1) in the case of Global Notes, in accordance with the Depositary Procedures; and (2) in the case of Physical Notes, pro rata, by lot or by such other method the Company considers fair and appropriate.

(ii) If only a portion of a Note is subject to Redemption and such Note is Converted in part, then the Converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption.

(H) *Payment of the Redemption Price*. Without limiting the Company's obligation to deposit the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to the first sentence of **Section 4.03(E)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

(I) *Special Provisions for Partial Calls*. If the Company elects to redeem less than all of the outstanding Notes pursuant to this **Section** 4.03, and the Holder of any Note, or any owner of a beneficial interest in any Global Note, is reasonably not able to determine, before the Close of Business on the sixty second (62nd) Scheduled Trading Day immediately before the Redemption Date for such Redemption, whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such Redemption, then such Holder or owner, as applicable, will be entitled to Convert such Note or beneficial interest, as applicable, at any time before the Close of Business on the second (2nd) Business Day immediately before such Redemption Date, and each such Conversion will be deemed to be of a Note called for Redemption for purposes of this **Section** 4.03 and **Sections 5.01(C)(i)(4)** and 5.07. For the avoidance of doubt, each reference in this Indenture or the Notes to (x) any Note that is called for Redemption (or similar language) includes any Note that is deemed to be called for Redemption pursuant to this **Section 4.03(I)**; and (y) any Note that is not called for Redemption (or similar language) excludes any Note that is deemed to be called for Redemption pursuant to this **Section 4.03(I)**.

Article 5. THE CONVERSION OF NOTES

SECTION 5.01. RIGHT TO CONVERT.

(A) *Generally*. Subject to the provisions of this **Article** 5, each Holder may, at its option, Convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part*. Subject to the terms of this Indenture, Notes may be Converted in part, but only in Authorized Denominations. Provisions of this **Article** 5 applying to the Conversion of a Note in whole will equally apply to Conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted*.

(i) *Generally*. Subject to **Section 5.01(C)(ii)**, a Note may be Converted only in the following circumstances:

(1) *Conversion Upon Satisfaction of Common Stock Sale Price Condition*. Before the Close of Business on the Business Day immediately before

June 1, 2029, a Holder may Convert its Notes during any calendar quarter (and only during such calendar quarter) commencing after the calendar quarter ending on September 30, 2024, if the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price for each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter.

(2) *Conversion Upon Satisfaction of Note Trading Price Condition*. Before the Close of Business on the Business Day immediately before June 1, 2029, a Holder may Convert its Notes during the five (5) consecutive Business Days immediately after any ten (10) consecutive Trading Day period (such ten (10) consecutive Trading Day period, the "**Measurement Period**") if the Trading Price per $1,000 principal amount of Notes, as determined following a request by a Holder in accordance with the procedures set forth below, for each Trading Day of the Measurement Period was less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day. The condition set forth in the preceding sentence is referred to in this Indenture as the "**Trading Price Condition**."

The Trading Price will be determined by the Bid Solicitation Agent pursuant to this **Section 5.01(C)(i)(2)** and the definition of "Trading Price." The Bid Solicitation Agent (if not the Company) will have no obligation to determine the Trading Price of the Notes unless the Company has requested such determination in writing, and the Company will have no obligation to make such request (or seek bids itself) unless a Holder or Holders of at least five million dollars ($5,000,000) aggregate principal amount of Notes (or such lesser amount as may then be outstanding) provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock and the Conversion Rate. If such Holder(s) provide such evidence, then the Company will (if acting as Bid Solicitation Agent), or will instruct the Bid Solicitation Agent to, determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day. If the Trading Price Condition has been met as set forth above, then the Company will notify the Holders, the Trustee and the Conversion Agent of the same. If, on any Trading Day after the Trading Price Condition has been met as set forth above, the Trading Price per $1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day, then the Company will notify the Holders, the Trustee and the Conversion Agent of the same.

(3) *Conversion Upon Specified Corporate Events*.

(a) *Certain Distributions*. If, before the Close of Business on the Business Day immediately before June 1, 2029, the Company elects to:

(I) distribute, to all or substantially all holders of Common Stock, any rights, options or warrants (other than rights issued pursuant to a stockholder rights plan, so long as such rights have not separated from the Common Stock and are not exercisable until the occurrence of a triggering event, except that such rights will be deemed to be distributed under this **clause (I)** upon their separation from the Common Stock or upon the occurrence of such triggering event) entitling them, for a period of not more than sixty (60) calendar days after the date such distribution is first publicly announced, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is first publicly announced (determined in the manner set forth in the third paragraph of **Section 5.05(A)(ii)**); or

(II) distribute, to all or substantially all holders of Common Stock, assets or securities of the Company or rights to purchase the Company's securities, which distribution per share of Common Stock has a value, as reasonably determined by the Company in good faith, exceeding ten percent (10%) of the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before the date such distribution is first publicly announced,

then, in either case, (x) the Company will send notice of such distribution, and of the related right to Convert Notes, to Holders, the Trustee and the Conversion Agent at least sixty five (65) Scheduled Trading Days before the Ex-Dividend Date for such distribution (or, if later in the case of any such separation of rights issued pursuant to a stockholder rights plan or the occurrence of any such triggering event under a stockholder rights plan, no later than the Business Day after the Company becomes aware that such separation or triggering event has occurred or will occur); and (y) once the Company has sent such notice, Holders may Convert their Notes at any time until the earlier of the Close of Business on the Business Day immediately before such Ex-Dividend Date and the Company's announcement that such distribution will not take place; *provided*, *however*, that the Notes will not become Convertible pursuant to **clause (y)** above on account of such distribution if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder, in such distribution without having to Convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the record date for such

distribution; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such record date.

(b) *Certain Corporate Events*. If, before the Close of Business on the Business Day immediately before June 1, 2029, a Fundamental Change, Make-Whole Fundamental Change (other than a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof) or Common Stock Change Event occurs (other than a merger or other business combination transaction that is effected solely to change the Company's jurisdiction of incorporation and that does not constitute a Fundamental Change or a Make-Whole Fundamental Change), then, in each case, Holders may Convert their Notes at any time from, and including, the effective date of such transaction or event to, and including, the thirty fifth (35th) Trading Day after such effective date (or, if such transaction or event also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date); *provided*, *however*, that if the Company does not provide the notice referred to in the immediately following sentence by the Business Day after such effective date, then the last day on which the Notes are Convertible pursuant to this sentence will be extended by the number of Business Days from, and including, the Business Day after such effective date to, but excluding, the date the Company provides such notice; *provided* that such last day will not be extended beyond the second (2nd) Scheduled Trading Day immediately before the Maturity Date. No later than the Business Day after such effective date, the Company will send notice to the Holders, the Trustee and the Conversion Agent of such transaction or event, such effective date and the related right to Convert Notes.

(4) *Conversion Upon Redemption*. If the Company calls any Note for Redemption, then the Holder of such Note may Convert such Note at any time before the Close of Business on the second (2nd) Business Day immediately before the related Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full).

(5) *Conversions During Free Convertibility Period*. A Holder may Convert its Notes at any time from, and including, June 1, 2029 until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date regardless of the conditions set forth in sub-paragraphs **(1)**, **(2)**, **(3)** or **(4)** of this **Section 5.01(C)(i)**.

For the avoidance of doubt, the Notes may become Convertible pursuant to any one or more of the preceding sub-paragraphs of this **Section 5.01(C)(i)** and the Notes ceasing to be Convertible pursuant to a particular sub-paragraph of this **Section 5.01(C)(i)** will not preclude the Notes from being Convertible pursuant to any other sub-paragraph of this **Section 5.01(C)(i)**.

(ii) *Limitations and Closed Periods*. Notwithstanding anything to the contrary in this Indenture or the Notes:

(1) Notes may be surrendered for Conversion during a period when the Notes are Convertible pursuant to **Section 5.01(C**) only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be Converted after the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section** 4.03, then the Holder of such Note may not Convert such Note after the Close of Business on the second (2nd) Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with this Indenture; and

(4) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 4.02(F**) with respect to any Note, then such Note may not be Converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F**); or (c) the Company fails to pay the Fundamental Change Repurchase Price for such Note in accordance with this Indenture (or a third party fails to make such payment in lieu of the Company in accordance with **Section 4.02(H**)).

SECTION 5.02. CONVERSION PROCEDURES.

(A) *Generally*.

(i) *Global Notes*. To Convert a beneficial interest in a Global Note that is Convertible pursuant to **Section 5.01(C**), the owner of such beneficial interest must (1) comply with the Depositary Procedures for Converting such beneficial interest (at which time such Conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.02(D**) or **Section 5.02(E**).

(ii) *Physical Notes*. To Convert all or a portion of a Physical Note that is Convertible pursuant to **Section 5.01(C**), the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the Conversion Notice attached to such Physical Note or a facsimile of such Conversion Notice; (2) deliver such Physical Note to the Conversion Agent (at which time such Conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(D**) or **Section 5.02(E**).

(B) *Effect of Converting a Note*. At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be Converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B**) or **5.02(D**), upon such Conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof)

as of the Close of Business on such Conversion Date), except to the extent provided in **Section 5.02(D)**.

(C) *Holder of Record of Conversion Shares*. The Person in whose name any share of Common Stock is issuable upon Conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on the last VWAP Trading Day of the Observation Period for such Conversion.

(D) *Interest Payable Upon Conversion in Certain Circumstances*. If the Conversion Date of a Note is after a Regular Record Date and before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Conversion (and, for the avoidance of doubt, notwithstanding anything set forth in the proviso to this sentence), to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (ii) the Holder surrendering such Note for Conversion must deliver to the Conversion Agent, at the time of such surrender, an amount of cash equal to the amount of such interest referred to in **clause (i)** above; *provided*, *however*, that the Holder surrendering such Note for Conversion need not deliver such cash (v) if the Company has specified a Redemption Date that is after such Regular Record Date and on or before the second (2nd) Business Day immediately after such Interest Payment Date; (w) if such Conversion Date occurs after the Regular Record Date immediately before the Maturity Date; (x) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; or (y) to the extent of any Additional Interest, Special Interest, overdue interest or interest that has accrued on any overdue interest. For the avoidance of doubt, as a result of, and without limiting the generality of, the foregoing, if a Note is Converted with a Conversion Date that is after the Regular Record Date immediately before the Maturity Date, then the Company will pay, as provided above, the interest that would have accrued on such Note to, but excluding, the Maturity Date. For the avoidance of doubt, if the Conversion Date of a Note to be Converted is on an Interest Payment Date, then the Holder of such Note at the Close of Business on the Regular Record Date immediately before such Interest Payment Date will be entitled to receive, on such Interest Payment Date, the unpaid interest that has accrued on such Note to, but excluding, such Interest Payment Date, and such Note, when surrendered for Conversion, need not be accompanied by any cash amount pursuant to the first sentence of this **Section 5.02(D)**.

(E) *Taxes and Duties*. If a Holder Converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery of any shares of Common Stock upon such Conversion; *provided*, *however*, that if any tax or duty is due because such Holder requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Conversion Agent may refuse to deliver any such shares to be issued in a name other than that of such Holder.

(F) *Conversion Agent to Notify Company of Conversions*. If any Note is submitted for Conversion to the Conversion Agent or the Conversion Agent receives any notice of Conversion with respect to a Note, then the Conversion Agent will promptly (and, in any event, no later than

the date the Conversion Agent receives such Note or notice) notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note.

Section 5.03. Settlement Upon Conversion.

(A) *Settlement Method*. Upon the Conversion of any Note, the Company will settle such Conversion by paying or delivering, as applicable and as provided in this **Article** 5, either (x) solely cash as provided in **Section 5.03(B)(i)(1)** (a "**Cash Settlement**"); or (y) a combination of cash and shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(2)** (a "**Combination Settlement**").

(i) *The Company's Right to Elect Settlement Method*. The Company will have the right to elect the Settlement Method applicable to any Conversion of a Note; *provided*, *however*, that:

(1) subject to **clause (3)** below, all Conversions of Notes with a Conversion Date that occurs on or after June 1, 2029 will be settled using the same Settlement Method, and the Company will send notice of such Settlement Method to Holders no later than the Open of Business on June 1, 2029;

(2) subject to **clause (3)** below, if the Company elects a Settlement Method with respect to the Conversion of any Note whose Conversion Date occurs before June 1, 2029, then the Company will send notice of such Settlement Method to the Holder of such Note no later than the Close of Business on the Business Day immediately after such Conversion Date;

(3) if any Notes are called for Redemption, then (a) the Company will specify, in the related Redemption Notice (and, in the case of a Redemption of less than all outstanding Notes, in a notice simultaneously sent to all Holders of Notes not called for Redemption) sent pursuant to **Section 4.03(F)**, the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after the related Redemption Notice Date and on or before the second (2nd) Business Day before the related Redemption Date; and (b) if such Redemption Date occurs on or after June 1, 2029, then such Settlement Method must be the same Settlement Method that, pursuant to **clause (1)** above, applies to all Conversions of Notes with a Conversion Date that occurs on or after June 1, 2029;

(4) the Company will use the same Settlement Method for all Conversions of Notes with the same Conversion Date (and, for the avoidance of doubt, the Company will not be obligated to use the same Settlement Method with respect to Conversions of Notes with different Conversion Dates, except as provided in **clause (1)** or **(3)** above);

(5) if the Company does not timely elect a Settlement Method with respect to the Conversion of a Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a Default or Event of Default); and

(6) if the Company timely elects Combination Settlement with respect to the Conversion of a Note but does not timely notify the Holder of such Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such Conversion will be deemed to be $1,000 per $1,000 principal amount of Notes (and, for the avoidance of doubt, the failure to timely send such notification will not constitute a Default or Event of Default).

At or before the time the Company sends any notice referred to in the preceding sentence, the Company will send a copy of such notice to the Trustee and the Conversion Agent, but the failure to timely send such copy will not affect the validity of any Settlement Method election.

(ii) *The Company's Right to Irrevocably Fix or Eliminate Settlement Methods*. The Company will have the right, exercisable at its election by sending notice of such exercise to the Holders (with a copy to the Trustee and the Conversion Agent), to (1) irrevocably fix the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders; or (2) irrevocably eliminate any one or more (but not all) Settlement Methods (including eliminating Combination Settlement with a particular Specified Dollar Amount or range of Specified Dollar Amounts) with respect to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders, *provided*, in each case, that (v) in no event will the Company elect (whether directly or by eliminating all other Settlement Methods) Combination Settlement with a Specified Dollar Amount that is less than $1,000 per $1,000 principal amount of Notes; (w) the Settlement Method so elected pursuant to **clause (1)** above, or the Settlement Method(s) remaining after any elimination pursuant to **clause (2)** above, as applicable, must be a Settlement Method or Settlement Method(s), as applicable, that the Company is then permitted to elect (for the avoidance of doubt, including pursuant to, and subject to, the other provisions of this **Section 5.03(A)**); (x) no such irrevocable election will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to this Indenture (including pursuant to **Section 8.01(G)** or this **Section 5.03(A)**); (y) upon any such irrevocable election pursuant to **clause (1)** above, the Default Settlement Method will automatically be deemed to be set to the Settlement Method so fixed; and (z) upon any such irrevocable election pursuant to **clause (2)** above, the Company will, if needed, simultaneously change the Default Settlement Method to a Settlement Method that is consistent with such irrevocable election. Such notice, if sent, must set forth the applicable Settlement Method(s) so elected or eliminated, as applicable, and the Default Settlement Method applicable immediately after such election, and expressly state that the election is irrevocable and applicable to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders. For the avoidance of doubt, such an irrevocable election, if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to **Section 8.01(G)** (it being understood, however, that the Company may nonetheless choose to execute such an amendment at its option).

(iii) *Requirement to Publicly Disclose the Fixed or Default Settlement Method*. If the Company changes the Default Settlement Method pursuant to **clause (x)** of the proviso to the definition of such term or irrevocably fixes the Settlement Method(s)

pursuant to **Section 5.03(A)(ii)**, then the Company will, substantially concurrently therewith, either post the Default Settlement Method or fixed Settlement Method(s), as applicable, on its website or disclose the same in a Current Report on Form 8-K (or any successor form) that is filed with, or furnished to, the SEC.

(B) *Conversion Consideration*.

(i) *Generally*. Subject to **Sections 5.03(B)(ii)**, **5.03(B)(iii)** and **5.09(A)(2)**, the type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of a Note to be Converted will be as follows:

(1) if Cash Settlement applies to such Conversion, cash in an amount equal to the sum of the Daily Conversion Values for each VWAP Trading Day in the Observation Period for such Conversion; or

(2) if Combination Settlement applies to such Conversion, consideration consisting of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each VWAP Trading Day in the Observation Period for such Conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each VWAP Trading Day in such Observation Period.

(ii) *Cash in Lieu of Fractional Shares*. If Combination Settlement applies to the Conversion of any Note and the number of shares of Common Stock deliverable pursuant to **Section 5.03(B)(i)** upon such Conversion is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such Conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) the Daily VWAP on the last VWAP Trading Day of the Observation Period for such Conversion.

(iii) *Conversion of Multiple Notes by a Single Holder*. If a Holder Converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such Conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depositary Procedures) be computed based on the total principal amount of Notes Converted on such Conversion Date by such Holder.

(iv) *Notice of Calculation of Conversion Consideration*. If any Note is to be Converted, then the Company will determine the Conversion Consideration due thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent will have any duty to make any such determination.

(C) *Delivery of the Conversion Consideration*. Except as set forth in **Sections 5.05(D)** and 5.09, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the Conversion of any Note to the Holder on the second (2nd) Business Day immediately after the last VWAP Trading Day of the Observation Period for such Conversion.

(D) *Deemed Payment of Principal and Interest; Settlement of Accrued Interest*

Notwithstanding Conversion. If a Holder Converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note, and, except as provided in **Section 5.02(D)**, the Company's delivery of the Conversion Consideration due in respect of such Conversion will be deemed to fully satisfy and discharge the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, such Note to, but excluding the Conversion Date. As a result, except as provided in **Section 5.02(D)**, any accrued and unpaid interest on a Converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, subject to **Section 5.02(D)**, if the Conversion Consideration for a Note consists of both cash and shares of Common Stock, then accrued and unpaid interest that is deemed to be paid therewith will be deemed to be paid first out of such cash.

Section 5.04. Reserve and Status of Common Stock Issued Upon Conversion.

(A) *Stock Reserve*. At all times when any Notes are outstanding, the Company will reserve (out of its authorized and not outstanding shares of Common Stock that are not reserved for other purposes) a number of shares of Common Stock equal to the product of (i) the aggregate principal amount (expressed in thousands) of all then-outstanding Notes; and (ii) the Conversion Rate then in effect (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** 5.07). To the extent the Company delivers shares of Common Stock held in its treasury in settlement of the Conversion of any Notes, each reference in this Indenture or the Notes to the issuance of shares of Common Stock in connection therewith will be deemed to include such delivery, *mutatis mutandis*.

(B) *Status of Conversion Shares; Listing*. Each Conversion Share, if any, delivered upon Conversion of any Note will be a newly issued or treasury share (except that any Conversion Share delivered by a designated financial institution pursuant to **Section** 5.08 need not be a newly issued or treasury share) and will be duly authorized, validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will use commercially reasonable efforts to cause each Conversion Share, when delivered upon Conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

Section 5.05. Adjustments to the Conversion Rate.

(A) *Events Requiring an Adjustment to the Conversion Rate*. The Conversion Rate will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations*. If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock, then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the Effective Date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or Effective Date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or Effective Date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 5.05(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants*. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which **Sections 5.05(A)(iii)(1)** and **5.05(F)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the date such distribution is first publicly announced, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is first publicly announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, options or warrants.

For purposes of this **Section 5.05(A)(ii**) and **Section** 5.01**(C**)**(i)(3)(a)(I**), in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is first publicly announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Company in good faith.

(iii) *Spin-Offs and Other Distributed Property*.

(1) *Distributions Other than Spin-Offs*. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(u) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C**)) pursuant to **Section 5.05(A)(i**) or **5.05(A)(ii**);

(v) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iv)**;

(w) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.05(F)**;

(x) Spin-Offs for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iii)(2)**;

(y) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section** 5.09 will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;
CR_1	=	the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
SP	=	the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and
FMV	=	the fair market value (as determined by the Company in good faith), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, *however*, that if *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each $1,000 principal amount of Notes held by such Holder on the record date for such

distribution, at the same time and on the same terms as holders of Common Stock, and without having to Convert its Notes, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received in such distribution if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which **Section** 5.09 will apply; or (y) a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v**) will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common

Stock for each Trading Day in the Spin-Off Valuation Period.

Notwithstanding anything to the contrary in this **Section 5.05(A)(iii)(2**), if any VWAP Trading Day of the Observation Period for a Note to be Converted occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such Conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such VWAP Trading Day.

To the extent any dividend or distribution of the type set forth in this **Section 5.05(A)(iii)(2**) is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, *however*, that if D is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each $1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock and without having to Convert its Notes, the amount of cash that such Holder would have received in such dividend or distribution if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion

Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers*. If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act (or any successor rule)), and the value (determined as of the Expiration Time by the Company in good faith) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;
CR_1	=	the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;
AC	=	the aggregate value (determined as of the time (the "**Expiration Time**") such tender or exchange offer expires by the Company in good faith) of all cash and other consideration paid or payable for shares of Common Stock purchased or exchanged in such tender or exchange offer;
OS_0	=	the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
OS_1	=	the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
SP	=	the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, *however*, that the Conversion Rate will in no event be adjusted down pursuant to

this **Section 5.05(A)(v)**, except to the extent provided in the immediately following paragraph. Notwithstanding anything to the contrary in this **Section 5.05(A)(v)**, if any VWAP Trading Day of the Observation Period for a Note to be Converted occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such Conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, such VWAP Trading Day.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Company being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases*.

(i) *Where Holders Participate in the Transaction or Event Without Conversion*. Notwithstanding anything to the contrary in **Section 5.05(A)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 5.05(A)** (other than a stock split or combination of the type set forth in **Section 5.05(A)(i)** or a tender or exchange offer of the type set forth in **Section 5.05(A)(v)**) if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of Notes, in such transaction or event without having to Convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section** 5.05 or **Section** 5.07. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(1) except as otherwise provided in **Section** 5.05, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(2) 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 such plan;

(3) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee,

director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(4) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date;

(5) solely a change in the par value of the Common Stock; or

(6) accrued and unpaid interest on the Notes.

(C) *Adjustment Deferral*. If an adjustment to the Conversion Rate otherwise required by this **Article** 5 would result in a change of less than one percent (1%) to the Conversion Rate, then, notwithstanding anything to the contrary in this **Article** 5, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments would, had they not been so deferred and carried forward, result in a change of at least one percent (1%) to the Conversion Rate; (ii) the Conversion Date of, or any VWAP Trading Day of an Observation Period for, any Note; (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs; (iv) the date the Company calls any Notes for Redemption; and (v) June 1, 2029.

(D) *Adjustments Not Yet Effective*. Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Note is to be Converted pursuant to Combination Settlement;

(ii) the record date, Effective Date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.05(A)** has occurred on or before any VWAP Trading Day in the Observation Period for such Conversion, but an adjustment to the Conversion Rate for such event has not yet become effective as of such VWAP Trading Day;

(iii) the Conversion Consideration due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock; and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such Conversion, the Company will, without duplication, give effect to such adjustment on such VWAP Trading Day. In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such Conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such Conversion until the second (2nd) Business Day after such determination date.

(E) *Conversion Rate Adjustments Where Converting Holders Participate in the Relevant Transaction or Event*. Notwithstanding anything to the contrary in this Indenture or the

Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.05(A)**;

(ii) a Note is to be Converted pursuant to Combination Settlement;

(iii) any VWAP Trading Day in the Observation Period for such Conversion occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due in respect of such VWAP Trading Day would otherwise include any whole or fractional shares of Common Stock based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**),

then the Conversion Rate adjustment relating to such Ex-Dividend Date will not be made for such Conversion in respect of such VWAP Trading Day, and, instead, the shares of Common Stock issuable with respect to such VWAP Trading Day will be entitled to participate in such dividend or distribution.

(F) *Stockholder Rights Plans*. If any shares of Common Stock are to be issued upon Conversion of any Note and, at the time of such Conversion, the Company has in effect any stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Indenture upon such Conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.05(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to potential readjustment in accordance with the last paragraph of **Section 5.05(A)(iii)(1)**.

(G) *Limitation on Effecting Transactions Resulting in Certain Adjustments*. The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.05(A)** or **Section** 5.07 to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(H) *Equitable Adjustments to Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values, the Daily Cash Amounts or the Daily Share Amounts over a period of multiple days (including over an Observation Period and the period, if any, for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Company will, acting in good faith and in a commercially reasonable manner, make appropriate adjustments, if any, 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, Effective Date or Expiration Date of the event occurs, at any time during such period.

(I) *Calculation of Number of Outstanding Shares of Common Stock*. For purposes of **Section 5.05(A)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(J) *Calculations*. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(K) *Notice of Conversion Rate Adjustments*. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.05(A)**, the Company will promptly send notice to the Holders, the Trustee and the Conversion Agent containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

Section 5.06. Voluntary Adjustments.

(A) *Generally*. To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases*. If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 5.06(A)**, then, no later than the first Business Day of the related twenty (20) or more Business Day period referred to in **Section 5.06(A)**, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

Section 5.07. Adjustments to the Conversion Rate in Connection with a Make-Whole Fundamental Change.

(A) *Generally*. If a Make-Whole Fundamental Change occurs with respect to any Note and the Conversion Date for the Conversion of such Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this **Section** 5.07, the Conversion Rate applicable to such Conversion will be increased by a number of shares (the "**Additional Shares**") set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of

such Make-Whole Fundamental Change:

	Stock Price										
Make-Whole Fundamental Change Effective Date	**$57.01**	**$65.50**	**$74.11**	**$85.00**	**$96.34**	**$125.00**	**$150.00**	**$200.00**	**$250.00**	**$300.00**	**$400.00**
August 13, 2024	4.0478	2.9931	2.2666	1.6499	1.2263	0.6502	0.4099	0.1852	0.0870	0.0372	0.0000
September 1, 2025	4.0478	2.9631	2.1904	1.5489	1.1208	0.5659	0.3486	0.1551	0.0726	0.0309	0.0000
September 1, 2026	4.0478	2.8231	2.0111	1.3594	0.9433	0.4430	0.2653	0.1167	0.0544	0.0226	0.0000
September 1, 2027	4.0478	2.6069	1.7431	1.0878	0.7013	0.2947	0.1725	0.0773	0.0362	0.0143	0.0000
September 1, 2028	4.0478	2.2785	1.3214	0.6816	0.3722	0.1335	0.0810	0.0395	0.0187	0.0068	0.0000
September 1, 2029	4.0478	1.7742	0.0005	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the Make-Whole Fundamental Change Effective Date is between two dates in the table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table above or the earlier and later dates in the table above, based on a 365- or 366-day year, as applicable; and

(ii) if the Stock Price is greater than $400.00 (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to **Section 5.07(B)**), or less than $57.01 (subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds 17.5407 shares of Common Stock per $1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05(A)**.

For the avoidance of doubt, but subject to **Section 4.03(I)**, (x) the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called for Redemption pursuant to such Redemption Notice, and not with respect to any other Notes; and (y) the Conversion Rate applicable to the Notes not so called for Redemption will not be subject to increase pursuant to this **Section** 5.07 on account of such Redemption Notice.

(B) *Adjustment of Stock Prices and Number of Additional Shares*. The Stock Prices in the first row (*i.e.*, the column headers) of the table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of **Section 5.05(A)**. The numbers of Additional Shares in the table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to **Section 5.05(A)**.

(C) *Notice of the Occurrence of a Make-Whole Fundamental Change*. The Company will notify the Holders, the Trustee and the Conversion Agent of each Make-Whole Fundamental Change (i) occurring pursuant to **clause (A)** of the definition thereof in accordance with **Section 5.01(C)(i)(3)(b)**; and (ii) occurring pursuant to **clause (B)** of the definition thereof in accordance

with **Section 4.03(F)**.

Section 5.08. Exchange in Lieu of Conversion.

Notwithstanding anything to the contrary in this **Article** 5, and subject to the terms of this **Section** 5.08, if a Note is submitted for Conversion, the Company may elect to arrange to have such Note exchanged in lieu of Conversion by a financial institution designated by the Company. To make such election, the Company must send notice of such election to the Holder of such Note, the Trustee and the Conversion Agent before the Close of Business on the Business Day immediately following the Conversion Date for such Note. If the Company has made such election, then:

(A) no later than the Business Day immediately following such Conversion Date, the Company must deliver (or cause the Conversion Agent to deliver) such Note, together with delivery instructions for the Conversion Consideration due upon such Conversion (including wire instructions, if applicable), to a financial institution designated by the Company that has agreed to deliver such Conversion Consideration in the manner and at the time the Company would have had to deliver the same pursuant to this **Article** 5;

(B) if such Note is a Global Note, then (i) such designated institution will send written confirmation to the Conversion Agent promptly after wiring the cash Conversion Consideration, if any, and delivering any other Conversion Consideration, due upon such Conversion to the Holder of such Note; and (ii) the Conversion Agent will as soon as reasonably practicable thereafter contact such Holder's custodian with the Depositary to confirm receipt of the same; and

(C) such Note will not cease to be outstanding by reason of such exchange in lieu of Conversion;

provided, *however*, that if such financial institution does not accept such Note or fails to timely deliver such Conversion Consideration, then the Company will be responsible for delivering such Conversion Consideration in the manner and at the time provided in this **Article** 5 as if the Company had not elected to make an exchange in lieu of Conversion.

Section 5.09. Effect of Common Stock Change Event.

(A) *Generally*. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Indenture or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon Conversion of any Note, and the conditions to any such Conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Article** 5 (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section** 4.03, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definitions of "Fundamental Change" and "Make-Whole Fundamental Change," references to "Common Stock" and the Company's "Common Equity" will be deemed to refer to the Common Equity (including depositary receipts representing Common Equity), if any, forming part of such Reference Property;

(2) if such Reference Property Unit consists entirely of cash, then (I) each Conversion of any Note with a Conversion Date that occurs on or after the effective date of such Common Stock Change Event will be settled entirely in cash in an amount, per $1,000 principal amount of such Note being Converted, equal to the product of (x) the Conversion Rate in effect on such Conversion Date (including, for the avoidance of doubt, any increase to such Conversion Rate pursuant to **Section** 5.07, if applicable); and (y) the amount of cash constituting such Reference Property Unit; and (II) the Company will settle each such Conversion no later than the fifth (5th) Business Day after the relevant Conversion Date; and

(3) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of Common Equity securities will be determined by reference to the definition of "Daily VWAP," substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of Common Equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith and in a commercially reasonable manner by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the

Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify Holders, the Trustee and the Conversion Agent of such weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)**, which supplemental indenture will (x) provide for subsequent Conversions of Notes in the manner set forth in this **Section** 5.09; (y) provide for subsequent adjustments to the Conversion Rate pursuant to **Section 5.05(A)** in a manner consistent with this **Section** 5.09; and (z) contain such other provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to the provisions of this **Section 5.09(A)**. If the Reference Property includes shares of stock or other securities or assets (other than cash) of a Person other than the Successor Person, then such other Person will also execute such supplemental indenture and such supplemental indenture will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders.

(B) *Notice of Common Stock Change Events*. The Company will provide notice of each Common Stock Change Event to Holders, the Trustee and the Conversion Agent no later than the Business Day after the effective date of such Common Stock Change Event.

(C) *Compliance Covenant*. The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section** 5.09.

Article 6. SUCCESSORS

Section 6.01. When the Company May Merge, Etc.

(A) *Generally*. The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person (a "**Business Combination Event**"), unless:

(i) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a Qualified Successor Entity (such Qualified Successor Entity, the "**Successor Entity**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of the Company's obligations under this Indenture and the Notes; and

(ii) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

(B) *Delivery of Officer's Certificate and Opinion of Counsel to the Trustee*. At or before

the effective time of any Business Combination Event, the Company will deliver to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that (i) such Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 6.01(A)**; and (ii) all conditions precedent to such Business Combination Event provided in this Indenture have been satisfied.

Section 6.02. Successor Entity Substituted.

At the effective time of any Business Combination Event that complies with **Section** 6.01, the Successor Entity (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such Successor Entity had been named as the Company in this Indenture and the Notes, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Indenture and the Notes.

Section 6.03. Exclusion for Asset Transfers with Wholly Owned Subsidiaries.

Notwithstanding anything to the contrary in this **Article** 6, this **Article** 6 will not apply to any transfer of assets between or among the Company and any one or more of its Wholly Owned Subsidiaries not effected by merger or consolidation.

Article 7. DEFAULTS AND REMEDIES

Section 7.01. Events of Default.

(A) *Definition of Events of Default.* "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption or Repurchase Upon Fundamental Change or otherwise) of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, any Note;

(ii) a default for thirty (30) consecutive days in the payment when due of interest on any Note;

(iii) the Company's failure to deliver, when required by this Indenture, a Fundamental Change Notice, or a notice pursuant to **Section 5.01(C)(i)(3)**, if (in the case of any notice other than a notice pursuant to **Section 5.01(C)(i)(3)(a)**) such failure is not cured within five (5) days after its occurrence;

(iv) a default in the Company's obligation to Convert a Note in accordance with **Article** 5 upon the exercise of the Conversion right with respect thereto, if such default is not cured within three (3) Business Days after its occurrence;

(v) a default in the Company's obligations under **Article** 6;

(vi) a default in any of the Company's obligations or agreements under this Indenture or the Notes (other than a default set forth in **clause (i)**, **(ii)**, **(iii)**, **(iv)** or **(v)** of

this **Section 7.01(A)**) where such default is not cured or waived within sixty (60) days after notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a "Notice of Default";

(vii) a default by the Company or any of the Company's Significant Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least forty million dollars ($40,000,000) (or its foreign currency equivalent) in the aggregate of the Company or any of the Company's Significant Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:

(1) constitutes a failure to pay the principal of 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; or

(2) results in such indebtedness becoming or being declared due and payable before its stated maturity,

in each case where such default is not cured or waived within thirty (30) days after notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding; and

(viii) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

(2) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(3) consents to the appointment of a custodian of it or for any substantial part of its property;

(4) makes a general assignment for the benefit of its creditors;

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

(ix) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

(1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or

(4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(ix)**, such order or decree remains unstayed and in effect for at least sixty (60) days.

(B) *Cause Irrelevant*. Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

SECTION 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances*. If an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration*. Subject to **Section** 7.03, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** with respect to the Company and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration*. Notwithstanding anything to the contrary in this Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, on behalf of all Holders, rescind any 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 (except the non-payment of principal of, or interest on, the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

SECTION 7.03. SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally*. Notwithstanding anything to the contrary in this Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a "**Reporting Event of Default**") pursuant to **Section 7.01(A)(vi)** arising from the Company's failure to comply with **Section** 3.02 will, for each of the first three hundred sixty five (365) calendar days on which a

Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section** 7.02 on account of the relevant Reporting Event of Default from, and including, the three hundred sixty sixth (366th) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such three hundred sixty sixth (366th) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.05(B)**).

(B) *Amount and Payment of Special Interest*. Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first one hundred eighty (180) days on which Special Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided*, *however*, that in no event will Special Interest payable at the Company's election for a Reporting Event of Default, together with any Additional Interest (excluding any interest that accrues on any Deferred Additional Interest pursuant to **Section 3.04(C)**) that accrues as a result of the Company's failure to timely file any document or report that it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (other than reports on Form 8-K), accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Special Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note and, subject to the proviso of the immediately preceding sentence, in addition to any Additional Interest that accrues on such Note.

(C) *Notice of Election*. To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer*. If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default*. No election pursuant to this **Section** 7.03 with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default.

Section 7.04. Other Remedies.

(A) *Trustee May Pursue All Remedies*. If an Event of Default occurs and is continuing, then the Trustee may pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture or the Notes.

(B) *Procedural Matters*. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.05. Waiver of Past Defaults.

An Event of Default pursuant to **clause (i)**, **(ii)**, **(iv)** or **(vi)** of **Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.06. Control by Majority.

Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to **Section** 10.01, the Trustee determines may be unduly prejudicial to the rights of other Holders or may involve the Trustee in liability, unless the Trustee is offered (and, if requested, provided with) security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such direction.

Section 7.07. Limitation on Suits.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or any interest on, any Notes; or (y) the Company's obligations to Convert any Notes pursuant to **Article** 5), unless:

(A) such Holder has previously delivered to the Trustee notice that an Event of Default is continuing;

(B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a written request to the Trustee to pursue such remedy;

(C) such Holder or Holders offer and, if requested, provide to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such request;

(D) the Trustee does not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding do not deliver to the Trustee a direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee will have no duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

Section 7.08. Absolute Right of Holders to Institute Suit for the Enforcement of the Right to Receive Payment and Conversion Consideration.

Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting **Section** 8.01), the right of each Holder of a Note to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or the Conversion Consideration due pursuant to **Article** 5 upon Conversion of, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, will not be impaired or affected without the consent of such Holder.

Section 7.09. Collection Suit by Trustee.

The Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i)**, **(ii)** or **(iv)** of **Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or Conversion Consideration due pursuant to **Article** 5 upon Conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section** 10.06.

Section 7.10. Trustee May File Proofs of Claim.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel, and any other amounts payable to the Trustee pursuant to **Section** 10.06. To the extent that the

payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 7.11. Priorities.

The Trustee will pay or deliver in the following order any money or other property that it collects pursuant to this **Article** 7:

First: to the Trustee and its agents and attorneys for amounts due under **Section** 10.06, including payment of all fees and compensation of, and all expenses and liabilities incurred, and all advances made, by, the Trustee (in each of its capacities under this Indenture, including as Note Agent) and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or any Conversion Consideration due upon Conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section** 7.11, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.12. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit; and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided*, *however*, that this **Section** 7.12 does not apply to any suit by the Trustee, any suit by a Holder pursuant to **Section** 7.08 or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01. Without the Consent of Holders.

Notwithstanding anything to the contrary in **Section** 8.02, the Company and the Trustee may amend or supplement this Indenture or the Notes without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture or the Notes;

(B) add guarantees with respect to the Company's obligations under this Indenture or the Notes;

(C) secure the Notes;

(D) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;

(E) provide for the assumption of the Company's obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article** 6;

(F) enter into supplemental indentures pursuant to, and in accordance with, **Section** 5.09 in connection with a Common Stock Change Event;

(G) irrevocably elect or eliminate any Settlement Method or Specified Dollar Amount; *provided*, *however*, that (i) no such election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to **Section 5.03(A)**; and (ii) such irrevocable election or elimination can in no event result in a Specified Dollar Amount of less than $1,000 per $1,000 principal amount of Notes applying to the Conversion of any Note;

(H) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee;

(I) conform the provisions of this Indenture and the Notes to the "Description of Notes" section of the Company's preliminary offering memorandum, dated August 7, 2024, as supplemented by the related pricing term sheet, dated August 7, 2024;

(J) provide for or confirm the issuance of additional Notes pursuant to **Section 2.03(B)**;

(K) comply with any requirement of the SEC in connection with any qualification of this Indenture, or any related supplemental indenture, under the Trust Indenture Act, as then in effect; or

(L) make any other change to this Indenture or the Notes that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders, as such, in any material respect, as determined by the Company in good faith.

At the written request of any Holder of a Note or owner of a beneficial interest in a Global

Note, the Company will provide a copy of the "Description of Notes" section and pricing term sheet referred to in **Section 8.01(I)**.

SECTION 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally*. Subject to **Sections** 8.01, 7.05 and 7.08 and the immediately following sentence, the Company and the Trustee may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement this Indenture or the Notes or waive compliance with any provision of this Indenture or the Notes. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section** 8.01, without the consent of each affected Holder, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may:

(i) reduce the principal, or change the stated maturity, of any Note;

(ii) reduce the Redemption Price or Fundamental Change Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;

(iii) reduce the rate, or extend the time for the payment, of interest on any Note;

(iv) make any change that adversely affects the Conversion rights of any Note;

(v) impair the rights of any Holder set forth in **Section** 7.08 (as such section is in effect on the Issue Date);

(vi) change the ranking of the Notes;

(vii) make any Note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;

(viii) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or

(ix) make any direct or indirect change to any amendment, supplement, waiver or modification provision of this Indenture or the Notes that requires the consent of each affected Holder.

For the avoidance of doubt, pursuant to **clauses (i)**, **(ii)**, **(iii)** and **(iv)** of this **Section 8.02(A)**, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date or the Maturity Date or upon Conversion, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment*. A consent of any Holder pursuant to this **Section** 8.02 need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

Section 8.03. Notice of Amendments, Supplements and Waivers.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section** 8.01 or 8.02 becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof; *provided*, *however*, that the Company will not be required to provide such notice to the Holders if such amendment, supplement or waiver is included in a periodic report filed by the Company with the SEC within four (4) Business Days of its effectiveness. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04. Revocation, Effect and Solicitation of Consents; Special Record Dates; Etc.

(A) *Revocation and Effect of Consents*. The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates*. The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article** 8. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided*, *however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents*. For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect*. Each amendment, supplement or waiver pursuant to this **Article** 8 will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05. Notations and Exchanges.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in

exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section** 2.02, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section** 8.05 will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06. Trustee to Execute Supplemental Indentures.

The Trustee will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article** 8; *provided*, *however*, that the Trustee need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the Trustee's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee will be entitled to receive, and (subject to **Sections** 10.01 and 10.02) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

Article 9. SATISFACTION AND DISCHARGE

Section 9.01. Termination of Company's Obligations.

This Indenture will be discharged, and will cease to be of further effect as to all Notes issued under this Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section** 2.13) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, the Maturity Date, upon Conversion or otherwise) for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent), in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be Converted, Conversion Consideration) sufficient to satisfy all amounts or other property due on all Notes then outstanding (other than Notes replaced pursuant to **Section** 2.13);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied;

provided, *however*, that **Article** 10 and **Section** 11.01 will survive such discharge and, until no Notes remain outstanding, **Section** 2.15 and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of this Indenture.

Section 9.02. Repayment to Company.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

Section 9.03. Reinstatement.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section** 9.01 because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section** 9.01 will be rescinded; *provided*, *however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

Article 10. TRUSTEE

Section 10.01. Duties of the Trustee.

(A) If an Event of Default has occurred and is continuing, and a Responsible Officer of the Trustee has written notice or actual knowledge of the same, then, without limiting the generality of **Section 10.02(F**), the Trustee will 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.

(B) Except during the continuance of an Event of Default:

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or willful misconduct on its part, the Trustee may, without investigation, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of

Counsel that are provided to the Trustee and conform to the requirements of this Indenture; *provided*, *however*, that the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(C) The Trustee may not be relieved from liabilities for its negligence or willful misconduct, except that:

(i) this paragraph will not limit the effect of **Section 10.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section** 7.06.

(D) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability.

(E) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

(F) The Trustee will not be liable in its individual capacity for the obligations evidenced by the Notes.

(G) Each provision of this Indenture that in any way relates to the Trustee (including any provision that affects the liability of, or affords protection to, the Trustee) is subject to this **Section** 10.01, regardless of whether such provision so expressly provides.

SECTION 10.02. RIGHTS OF THE TRUSTEE.

(A) The Trustee may conclusively rely on any document that it believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel; and the written advice of such counsel, or any Opinion of Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any action in good faith in reliance thereon without liability.

(C) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any such agent appointed with due care.

(D) The Trustee will not be liable for any action it takes or omits to take in good faith

and that it believes to be authorized or within the rights or powers vested in it by this Indenture.

(E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(F) The Trustee need not exercise any rights or powers vested in it by this Indenture at the request or direction of any Holder unless such Holder has offered (and, if requested, provided) the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense that it may incur in complying with such request or direction.

(G) The Trustee will not be responsible or liable for any punitive, special, indirect or consequential loss or damage (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(H) The permissive rights of the Trustee set forth in this Indenture will not be construed as duties imposed on the Trustee.

(I) The Trustee will not be required to give any bond or surety in respect of the execution or performance of this Indenture or otherwise.

(J) Unless a Responsible Officer of the Trustee has received notice from the Company that Additional Interest or Special Interest is owing or accruing, on the Notes, the Trustee may assume that no Additional Interest or Special Interest, as applicable, is payable or accruing.

(K) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture, including as Note Agent.

(L) The Trustee will not be charged with knowledge of any document or agreement other than this Indenture and the Notes.

(M) Neither the Trustee nor any Note Agent will have any responsibility or liability to any person for any action taken or not taken by, or any records or any other aspect of the operations of, the Depositary (including the delivery of notices, or the making of payments, through the facilities of the Depositary) and may conclusively rely, without investigation, on any information provided by the Depositary.

Section 10.03. Individual Rights of the Trustee.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company or any of its Affiliates with the same rights that it would have if it were not Trustee; *provided*, *however*, that if the Trustee acquires a "conflicting interest" (within the meaning of Section 310(b) of the Trust Indenture Act), then it must eliminate such conflict within ninety (90) days or resign as Trustee. Each Note Agent will have the same rights and duties as the Trustee under this **Section** 10.03.

Section 10.04. Trustee's Disclaimer.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes; (B) accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes or any other document relating to the sale of the Notes or this Indenture, other than the Trustee's certificate of authentication.

Section 10.05. Notice of Defaults.

If a Default or Event of Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, then the Trustee will send Holders a notice of such Default or Event of Default within ninety (90) days after it occurs or, if it is not actually known to a Responsible Officer of the Trustee at such time, promptly (and in any event within ten (10) Business Days) after it becomes actually known to a Responsible Officer of the Trustee; *provided*, *however*, that, except in the case of a Default or Event of Default in the payment of the principal of, or interest on, any Note, or a default in the payment or delivery of the Conversion Consideration, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders. The Trustee will not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless written notice thereof has been received by a Responsible Officer, and such notice references the Notes and this Indenture and states on its face that a Default or Event of Default has occurred.

Section 10.06. Compensation and Indemnity.

(A) The Company will, from time to time, pay the Trustee reasonable compensation for its acceptance of this Indenture and services under this Indenture, as separately agreed by the Company and the Trustee. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation for the Trustee's services, the Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(B) The Company will indemnify the Trustee (in each of its capacities under this Indenture) and its directors, officers, employees and agents, in their capacity as such, against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this **Section** 10.06) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture, except to the extent any such loss, liability or expense is attributable to its negligence or willful misconduct, as determined by a final decision of a court of competent jurisdiction. The Trustee will promptly notify the Company of any claim for which it may seek indemnity, but the Trustee's failure to so notify the Company will not relieve the Company of its obligations under this **Section 10.06(B)**, except to the extent the Company is materially prejudiced by such failure. The Company

will defend such claim, and the Trustee will cooperate in such defense. If the Trustee is advised by counsel that it may have defenses available to it that are in conflict with the defenses available to the Company, or that there is an actual or potential conflict of interest, then the Trustee may retain separate counsel, and the Company will pay the reasonable fees and expenses of such counsel (including the reasonable fees and expenses of counsel to the Trustee incurred in evaluating whether such a conflict exists). The Company need not pay for any settlement of any such claim made without its consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company under this **Section** 10.06 will survive the resignation or removal of the Trustee and the discharge of this Indenture.

(D) To secure the Company's payment obligations in this **Section** 10.06, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, or interest on, particular Notes, which lien will survive the discharge of this Indenture.

(E) If the Trustee incurs expenses or renders services after an Event of Default pursuant to **clause (viii)** or **(ix)** of **Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 10.07. REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section** 10.07, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section** 10.07.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Holders of a majority in aggregate principal amount of the Notes then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(i) the Trustee fails to comply with **Section** 10.09;

(ii) the Trustee is adjudged to be bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a custodian or public officer takes charge of the Trustee or its property; or

(iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of the Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the Notes then outstanding may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within sixty (60) days after the retiring

Trustee resigns or is removed, then the retiring Trustee, the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section** 10.09, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, which property will, for the avoidance of doubt, be subject to the lien provided for in **Section 10.06(D)**.

Section 10.08. Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another entity, then such entity will become the successor Trustee without any further act.

Section 10.09. Eligibility; Disqualification.

There will at all times be a Trustee under this Indenture that is a corporation organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

Article 11. MISCELLANEOUS

Section 11.01. Notices.

Any notice or communication by the Company or the Trustee to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, Minnesota 56623
Attention: General Counsel

with a copy (which will not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Mark M. Mendez

If to the Trustee:

U.S. Bank Trust Company, National Association
West Side Flats St. Paul
60 Livingston Avenue
Saint Paul, Minnesota 55107
Attention: B. Bonfig (ANI Pharmaceuticals, Inc. Administrator)

Notwithstanding anything to the contrary in the preceding paragraph, notices to the Trustee or any Note Agent must be in writing and will be deemed to have been given upon actual receipt by the Trustee or such Note Agent, as applicable.

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

The Trustee will not have any duty to confirm that the person sending any notice, instruction or other communication by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by the Trustee to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee) will be deemed original signatures for all purposes. Any person that uses electronic signatures or electronic methods to send communications to the Trustee assumes all risks arising out of such use, including the risk of the Trustee acting on an unauthorized communication and the risk of interception or misuse by third parties. Notwithstanding anything to the contrary in this paragraph, the Trustee may, in any instance and in its sole discretion, require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic communication.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing

next day delivery, to its address shown on the Register; *provided*, *however*, that a notice or communication to a Holder of a Global Note will instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in this Indenture or the Notes, (A) whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities; and (B) whenever any provision of this Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

Section 11.02. Delivery of Officer's Certificate and Opinion of Counsel as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture (other than the initial authentication of Notes under this Indenture), the Company will furnish to the Trustee:

(A) an Officer's Certificate that complies with **Section** 11.03 and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture relating to such action have been satisfied; and

(B) an Opinion of Counsel that complies with **Section** 11.03 and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been satisfied.

Section 11.03. Statements Required in Officer's Certificate and Opinion of Counsel.

Each Officer's Certificate (other than an Officer's Certificate pursuant to **Section** 3.05) or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

(A) a statement that the signatory thereto has read such covenant or condition;

(B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained therein are based;

(C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(D) a statement as to whether, in the opinion of such signatory, such covenant or condition has been satisfied.

Section 11.04. Rules by the Trustee, the Registrar, the Paying Agent and the Conversion Agent.

The Trustee may make reasonable rules for action by or at a meeting of Holders. Each of the Registrar, the Paying Agent and the Conversion Agent may make reasonable rules and set reasonable requirements for its functions.

Section 11.05. No Personal Liability of Directors, Officers, Employees and Stockholders.

No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under this Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

Section 11.06. Governing Law; Waiver of Jury Trial.

THIS INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE 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 OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE OR THE NOTES.

Section 11.07. Submission to Jurisdiction.

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party's address set forth in **Section** 11.01 will be effective service of process for any such suit, action or proceeding brought in any such court.

Each of the Company, the Trustee and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 11.08. No Adverse Interpretation of Other Agreements.

Neither this Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret this Indenture or the Notes.

Section 11.09. Successors.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.10. Force Majeure.

The Trustee and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, local or national disturbance or disaster, act of terrorism or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 11.11. U.S.A. PATRIOT Act.

The Company acknowledges that, in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions, 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 Company agrees to provide the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. PATRIOT Act.

Section 11.12. Calculations.

Except as otherwise provided in this Indenture, the Company will be responsible for making all calculations called for under this Indenture or the Notes, including determinations of the Last Reported Sale Price, the Daily Conversion Value, the Daily Cash Amount, the Daily Share Amount, the Daily VWAP, the Trading Price, accrued interest on the Notes, the Redemption Price, the Fundamental Change Repurchase Price and the Conversion Rate.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee will promptly forward a copy of each such schedule to a Holder upon its

written request therefor. For the avoidance of doubt, the Trustee will not be obligated to make or confirm any calculations or other amounts called for under this Indenture or the Notes.

Section 11.13. Severability.

If any provision of this Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Indenture or the Notes will not in any way be affected or impaired thereby.

Section 11.14. Counterparts.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

Section 11.15. Table of Contents, Headings, Etc.

The table of contents and the headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions of this Indenture.

Section 11.16. Withholding Taxes.

Each Holder of a Note agrees, and each beneficial owner of an interest in a Global Note, by its acquisition of such interest, is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of such Holder or beneficial owner as a result of an adjustment or the non-occurrence of an adjustment to the Conversion Rate, then the Company or such withholding agent, as applicable, may, at its option, set off such payments against payments of cash or the delivery of other Conversion Consideration on such Note, any payments on the Common Stock or sales proceeds received by, or other funds or assets of, such Holder or the beneficial owner of such Note.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

IN WITNESS WHEREOF, the parties to this Indenture have caused this Indenture to be duly executed as of the date first written above.

ANI Pharmaceuticals, Inc.

By: /s/ Stephen P. Carey
Name: Stephen P. Carey
Title: Senior Vice President Finance and Chief Financial Officer

U.S. Bank Trust Company, National Association, as Trustee

By: /s/ Brandon Bonfig
Name: Brandon Bonfig
Title: Vice President

[Signature Page to Indenture]

EXHIBIT A

FORM OF NOTE

[*Insert Global Note Legend, if applicable*]

[*Insert Restricted Note Legend, if applicable*]

[*Insert Non-Affiliate Legend*]

ANI PHARMACEUTICALS, INC.

2.25% Convertible Senior Note due 2029

CUSIP No.: [___][*Insert for a "restricted" CUSIP number*: *] Certificate No. [___]
ISIN No.: [___][*Insert for a "restricted" ISIN number*: *]

ANI Pharmaceuticals, Inc., a Delaware corporation, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [___] dollars ($[___]) [(as revised by the attached Schedule of Exchanges of Interests in the Global Note)]† on September 1, 2029 and to pay interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: March 1 and September 1 of each year, commencing on [*date*].

Regular Record Dates: February 15 and August 15.

Additional provisions of this Note are set forth on the other side of this Note.

[***The Remainder of This Page Intentionally Left Blank; Signature Page Follows***]

* This Note will be deemed to be identified by CUSIP No. [___] and ISIN No. [___] from and after such time when the Company delivers, pursuant to Section 2.12 of the within-mentioned Indenture, written notice to the Trustee of the deemed removal of the Restricted Note Legend affixed to this Note.
† Insert bracketed language for Global Notes only.

IN WITNESS WHEREOF, ANI Pharmaceuticals, Inc. has caused this instrument to be duly executed as of the date set forth below.

ANI PHARMACEUTICALS, INC.

Date: _____

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank Trust Company, National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____
Authorized Signatory

ANI PHARMACEUTICALS, INC.

2.25% Convertible Senior Note due 2029

This Note is one of a duly authorized issue of notes of ANI Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), designated as its 2.25% Convertible Senior Notes due 2029 (the "**Notes**"), all issued or to be issued pursuant to an indenture, dated as of August 13, 2024 (as the same may be amended from time to time, the "**Indenture**"), between the Company and U.S. Bank Trust Company, National Association, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest**. This Note will accrue interest at a rate and in the manner set forth in Section 2.05 of the Indenture. Stated Interest on this Note will begin to accrue from, and including, [*date*].

2. **Maturity**. This Note will mature on September 1, 2029, unless earlier repurchased, redeemed or Converted.

3. **Method of Payment**. Cash amounts due on this Note will be paid in the manner set forth in Section 2.04 of the Indenture.

4. **Persons Deemed Owners**. The Holder of this Note will be treated as the owner of this Note for all purposes.

5. **Denominations; Transfers and Exchanges**. All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.

6. **Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change**. If a Fundamental Change (other than an Exempted Fundamental Change) occurs, then each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Indenture.

7. **Right of the Company to Redeem the Notes**. The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.03 of the Indenture.

8. **Conversion**. The Holder of this Note may Convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture.

9. **When the Company May Merge, Etc**. Article 6 of the Indenture places limited restrictions on the Company's ability to be a party to a Business Combination Event.

10. **Defaults and Remedies**. If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

11. **Amendments, Supplements and Waivers**. The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Section 7.05 and Article 8 of the Indenture.

12. **No Personal Liability of Directors, Officers, Employees and Stockholders**. No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. **Authentication**. No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

14. **Abbreviations**. Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

15. **Governing Law**. THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, Minnesota 56623
Attention: General Counsel

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: $[___]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

* Insert for Global Notes only.

CONVERSION NOTICE

ANI PHARMACEUTICALS, INC.

2.25% Convertible Senior Notes due 2029

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to Convert (check one):

☐ the entire principal amount of

☐ $_* aggregate principal amount of

the Note identified by CUSIP No. __and Certificate No. _.

The undersigned acknowledges that if the Conversion Date of a Note to be Converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for Conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

ANI PHARMACEUTICALS, INC.

2.25% Convertible Senior Notes due 2029

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ $_* aggregate principal amount of

the Note identified by CUSIP No. __and Certificate No. _.

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

ANI PHARMACEUTICALS, INC.

2.25% Convertible Senior Notes due 2029

Subject to the terms of the Indenture, the undersigned Holder of the Note identified below assigns (check one):

☐ the entire principal amount of

☐ $_* aggregate principal amount of

the Note identified by CUSIP No. _and Certificate No. _, and all rights thereunder, to:

Name: _____

Address: _____

Social security or tax id. #: _____

and irrevocably appoints: _____

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ _____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

TRANSFEROR ACKNOWLEDGMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

1. ☐ Such Transfer is being made to the Company or a Subsidiary of the Company.

2. ☐ Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.

3. ☐ Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a Person reasonably believed to be a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page**.

4. ☐ Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
(Participant in a Recognized Signature
Guarantee Medallion Program)

By: _____
Authorized Signatory

TRANSFEREE ACKNOWLEDGMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note, on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated: _____

_____
(Name of Transferee)

By: _____
Name:
Title:

FORM OF RESTRICTED NOTE LEGEND

THE OFFER AND SALE OF THIS NOTE AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT; AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;

(C) TO A PERSON REASONABLY BELIEVED TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;

(D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR

(E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(D) OR (E) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.[‡‡]

* This paragraph and the immediately preceding paragraph will be deemed to be removed from the face of this Note at such time when the Company delivers written notice to the Trustee of such deemed removal pursuant to Section 2.12 of the within-mentioned Indenture.

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("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 HEREON 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 SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE INDENTURE HEREINAFTER REFERRED TO.

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY MAY PURCHASE OR OTHERWISE ACQUIRE THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN.

Exhibit 10.1

[DEALER][1]

August [____], 2024

To: ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, Minnesota 56623
Attention: Legal Department – General Counsel

Re: [Base][Additional] Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between [DEALER] ("**Dealer**") and ANI Pharmaceuticals, Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated August [_____], 2024 (the "**Offering Memorandum**") relating to the [__]% Convertible Senior Notes due 2029 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD [_____] (as increased by [up to][2] an aggregate principal amount of USD [_____] [if and to the extent that][3][pursuant to the exercise by][4] the Initial Purchasers (as defined herein) [exercise][5][of][6] their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture [to be][7] dated August [_____], 2024 between Counterparty and U.S. Bank Trust Company, National Association, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture that are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers and cross-references used herein are based on the [draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers or cross-references are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties][8][Indenture as executed][9]. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect [on the date hereof and] on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section [ ][10] of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or

---

[1] Include Dealer name, address and, if applicable, logo.

[2] Include in the Base Call Option Confirmation.

[3] Include in the Base Call Option Confirmation.

[4] Include in the Additional Call Option Confirmation.

[5] Include in the Base Call Option Confirmation.

[6] Include in the Additional Call Option Confirmation.

[7] Insert if Indenture is not completed at the time of the Confirmation.

[8] Include in the Base Call Option Confirmation. Include in the Additional Call Option Confirmation if it is executed before closing of the base deal.

[9] Include in the Additional Call Option Confirmation, but only if the Additional Call Option Confirmation is executed after closing of the base deal.

[10] Include cross-reference to Indenture section permitting amendments without holder consent to conform the Indenture to the Description of Notes.

(y) pursuant to Section [ ][11] of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3 of this Confirmation), any such amendment or supplement will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form on the Trade Date (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine other than Sections 5-1401 and 5-1402 of the General Obligations Law)); (ii) the election of US Dollars as the Termination Currency; and (iii) the election that the "Cross Default" provisions of Section 5(a)(vi) of the Agreement shall apply to Dealer with a "Threshold Amount" of three percent of Dealer's shareholders' equity[12]; *provided* that (A) "Specified Indebtedness" shall not include obligations in respect of deposits received in the ordinary course of Dealer's banking business, (B) the phrase "or becoming capable at such time of being declared" shall be deleted from clause (1) of such Section 5(a)(vi), and (C) the following language shall be added to the end of such Section 5(a)(vi): "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (X) the default was caused solely by error or omission of an administrative or operational nature; (Y) funds were available to enable the party to make the payment when due; and (Z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay;").

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms.

Trade Date:	August [_____], 2024
Effective Date:	The third Exchange Business Day immediately prior to the Premium Payment Date, subject to Section 9(v) and Section 9(bb) of this Confirmation.
Option Style:	"Modified American", as described under "Procedures for Exercise" below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The common stock of Counterparty, par value USD 0.0001 per share (Exchange symbol "ANIP").

[11] Include cross-reference to Indenture section relating to Merger Events.

[12] To include a customary guarantee if Dealer is not the highest rated entity in group. To be updated to reflect references to Dealer's Credit Support Provider if a guarantee will be provided.

Number of Options:	[_____][13]. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Applicable Percentage:	[__]%
Option Entitlement:	A number equal to the product of the Applicable Percentage and [_____][14].
Strike Price:	USD [_____]
Cap Price:	USD [_____]
Premium:	USD [_____]
Premium Payment Date:	August [_____], 2024[15]
Exchange:	The Nasdaq Global Market
Related Exchange(s):	All Exchanges.
Excluded Provisions:	Section [ ][16] and Section [ ][17] of the Indenture.

Procedures for Exercise.

Conversion Date:	With respect to any conversion of a Convertible Note (other than (x) any conversion of Convertible Notes with a Conversion Date occurring prior to the Free Convertibility Date or (y) any conversion of a Convertible Note in respect of which the "Holder" (as such term is defined in the Indenture) of such Convertible Note would be entitled to an increase in the Conversion Rate pursuant Section [ ][18] of the Indenture (any such conversion described in clause (x) or clause (y), an "**Early Conversion**"), to which the provisions of Section 9(i)(i) of this Confirmation shall apply), the date on which the "Holder" (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section [ ][19] of the Indenture; *provided* that if Counterparty has not delivered to Dealer a related Notice of Exercise, then in no event shall a Conversion Date be deemed to occur hereunder (and no Option shall be exercised or deemed to be exercised hereunder) with respect to any surrender of a Convertible Note for conversion in respect of which Counterparty has elected to

[13] For the Base Call Option Confirmation, this is equal to the number of Convertible Notes in principal amount of $1,000 initially issued on the closing date for the Convertible Notes. For the Additional Call Option Confirmation, this is equal to the number of additional Convertible Notes in principal amount of $1,000.

[14] Insert the initial Conversion Rate for the Convertible Notes.

[15] To be the closing date for the Convertible Notes (for the base transaction) and then the closing date for the exercise of the overallotment option (for the additional transaction).

[16] Include cross-reference to section(s) of the Indenture containing discretionary adjustments to the Conversion Rate by Counterparty.

[17] Include cross-reference to Indenture section(s) dealing with make-whole adjustments to the Conversion Rate.

[18] Include cross-reference to Indenture section(s) dealing with make-whole adjustments to the Conversion Rate.

[19] Include cross-reference to section(s) of the Indenture setting forth the requirements for conversion of the Convertible Notes.

	designate a financial institution for exchange in lieu of conversion of such Convertible Note pursuant to Section [ ][20] of the Indenture.
Free Convertibility Date:	June 1, 2029
Expiration Time:	The Valuation Time
Expiration Date:	September 1, 2029, subject to earlier exercise.
Multiple Exercise:	Applicable, as described under "Automatic Exercise" and "Automatic Exercise of Remaining Repurchase Options After Free Convertibility Date" below.
Automatic Exercise:	Notwithstanding Section 3.4 of the Equity Definitions, on each Conversion Date, in respect of which a Notice of Conversion that is effective as to Counterparty has been delivered by the relevant converting "Holder" (as defined in the Indenture), a number of Options equal to [(i)] the number of Convertible Notes in denominations of USD 1,000 as to which such Conversion Date has occurred [*minus* (ii) the number of Options that are or are deemed to be automatically exercised on such Conversion Date under the Base Call Option Transaction Confirmation letter agreement dated August [__], 2024 between Dealer and Counterparty (the "**Base Call Option Confirmation**") (and for the purposes of determining whether any Options under this Confirmation or under the Base Call Option Confirmation will be automatically exercised hereunder or under the Base Call Option Confirmation, the Convertible Notes subject to conversion shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated),][21] shall be deemed to be automatically exercised; *provided* that such Options shall be exercised or deemed exercised only if Counterparty has provided a Notice of Exercise to Dealer in accordance with "Notice of Exercise" below. Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.
Automatic Exercise of Remaining Repurchase Options After Free Convertibility Date:	Notwithstanding anything herein or in Section 3.4 of the Equity Definitions to the contrary, unless Counterparty notifies Dealer in writing prior to 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date that it does not wish automatic exercise to occur with respect to any Remaining Repurchase Options (as defined below), a number of Options equal to the lesser of (a) the Number of Options (after giving effect to the provisions opposite the caption

[20] Include cross-reference to section of the Indenture containing provisions for exchange in lieu of conversion.
[21] Include for Additional Call Option Confirmation only.

	"Automatic Exercise" above) as of 9:00 a.m. (New York City time) on the Expiration Date and (b) the Remaining Repurchase Options [*minus* the number of Remaining Options (as defined in the Base Call Option Transaction Confirmation)][22] (such lesser number, the "**Remaining Options**") will be deemed to be automatically exercised as if (i) a number of Convertible Notes (in denominations of USD 1,000 principal amount) equal to such number of Remaining Options were outstanding under the Indenture and were converted with a Conversion Date occurring on or after the Free Convertibility Date and (ii) the Notice of Final Settlement Method, if any, applied to such Convertible Notes; *provided* that no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the Settlement Averaging Period is less than or equal to the Strike Price. "**Remaining Repurchase Options**" shall mean the excess of (I) the aggregate number of Convertible Notes (in denominations of USD 1,000 principal amount) that were subject to Repayment Events (as defined below) (other than Repayment Events pursuant to the terms of the Indenture) described in clause (ii) of Section 9(i)(iv) ("**Repurchase Events**") during the term of the Transaction *over* (II) the aggregate number of Repayment Options (as defined below) that were terminated hereunder relating to Repurchase Events during the term of the Transaction [*plus* the aggregate number of Repayment Options (as defined in the Base Call Option Transaction Confirmation) terminated under the Base Call Option Transaction Confirmation relating to Repurchase Events (as defined therein) during the term of the "Transaction" under the Base Call Option Transaction Confirmation][23]. Counterparty shall notify Dealer in writing of the number of Remaining Repurchase Options before 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under "Automatic Exercise" above, but subject to "Automatic Exercise of Remaining Repurchase Options After Free Convertibility Date" above, in order to exercise any Options upon a Conversion Date, Counterparty must notify Dealer in writing before 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date specifying the number of such Options; *provided* that if the Relevant Settlement Method for such Options is (x) Cash Settlement or (y) Combination Settlement, Dealer shall have received a separate notice (the "**Notice of Final Settlement Method**") in respect of all such Convertible Notes before 5:00 p.m. (New York City time) on the Free Convertibility Date specifying (1) the Relevant Settlement Method for such Options, and (2) if the settlement method for the

[22] Include for Additional Call Option Confirmation only.
[23] Include for Additional Call Option Confirmation only.

related Convertible Notes is not Settlement in Cash (as defined below), the fixed amount of cash per Convertible Note that Counterparty has elected to deliver to "Holders" (as such term is defined in the Indenture) of the related Convertible Notes (the "**Specified Cash Amount**," which, for the avoidance of doubt, must be greater than USD 1,000). Notwithstanding anything to the contrary herein, if Counterparty does not timely deliver the Notice of Final Settlement Method then the Notice of Final Settlement Method shall be deemed timely given and the Settlement Method specified therein shall be deemed to be Net Share Settlement. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act (as defined below) and the rules and regulations thereunder, in respect of any election (or any deemed election) of a settlement method with respect to the Convertible Notes.

Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its commercially reasonable discretion.

Market Disruption Event: A "VWAP Market Disruption Event" as defined in the Indenture.

Settlement Terms.

Settlement Method: For any Option, Net Share Settlement; *provided* that if the Relevant Settlement Method set forth below for such Option is not Net Share Settlement, then the Settlement Method for such Option shall be such Relevant Settlement Method, but only if Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Final Settlement Method for such Option.

Relevant Settlement Method: In respect of any Option:

(i) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note in a combination of cash and Shares pursuant to Section [ ][24] of the Indenture with a Specified Cash Amount equal to USD 1,000, then, in each case, the Relevant Settlement Method for such Option shall be Net Share Settlement;

(ii) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note in a combination of cash and Shares pursuant to Section [ ][25] of the Indenture with a Specified Cash Amount greater than USD 1,000, then the Relevant Settlement Method for such Option shall be Combination Settlement; and

(iii) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note

[24] Include cross-reference to section of the Indenture containing provisions for combination settlement of the Convertible Notes.
[25] Include cross-reference to section of the Indenture containing provisions for combination settlement of the Convertible Notes.

entirely in cash pursuant to Section [ ][26] of the Indenture (such settlement method, "**Settlement in Cash**"), then the Relevant Settlement Method for such Option shall be Cash Settlement.

Net Share Settlement:

If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, a number of Shares (the "**Net Share Settlement Amount**") equal to the sum, for each Valid Day during the Settlement Averaging Period for each such Option, of (i) (a) the Daily Option Value for such Valid Day, *divided by* (b) the Relevant Price on such Valid Day, *divided by* (ii) the number of Valid Days in the Settlement Averaging Period; *provided* that in no event shall the Net Share Settlement Amount for any Option exceed a number of Shares equal to the Applicable Limit for such Option *divided by* the Applicable Limit Price on the Settlement Date for such Option.

Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Share Settlement Amount valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.

Combination Settlement:

If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, Dealer will pay or deliver, as the case may be, to Counterparty, on the relevant Settlement Date for each such Option:

(i) cash (the "**Combination Settlement Cash Amount**") equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (A) an amount (the "**Daily Combination Settlement Cash Amount**") equal to the lesser of (1) the product of (x) the Applicable Percentage and (y) the Specified Cash Amount *minus* USD 1,000 and (2) the Daily Option Value, *divided by* (B) the number of Valid Days in the Settlement Averaging Period; *provided* that if the calculation in clause (A) above results in zero or a negative number for any Valid Day, the Daily Combination Settlement Cash Amount for such Valid Day shall be deemed to be zero; and

(ii) Shares (the "**Combination Settlement Share Amount**") equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of a number of Shares for such Valid Day (the "**Daily Combination Settlement Share Amount**") equal to (A) (1) the Daily Option Value on such Valid Day *minus* the Daily Combination Settlement Cash Amount for such Valid Day, *divided by* (2) the Relevant Price on such Valid Day,

[26] Include cross-reference to section of the Indenture containing provisions for cash settlement of the Convertible Notes.

divided by (B) the number of Valid Days in the Settlement Averaging Period; *provided* that if the calculation in sub-clause (A)(1) above results in zero or a negative number for any Valid Day, the Daily Combination Settlement Share Amount for such Valid Day shall be deemed to be zero;

provided that in no event shall the sum of (x) the Combination Settlement Cash Amount for any Option and (y) the Combination Settlement Share Amount for such Option *multiplied by* the Applicable Limit Price on the Settlement Date for such Option, exceed the Applicable Limit for such Option.

Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Combination Settlement Share Amount valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.

Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the "**Cash Settlement Amount**") equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, *divided by* (ii) the number of Valid Days in the Settlement Averaging Period; *provided* that in no event shall the Cash Settlement Amount exceed the Applicable Limit for such Option.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, *multiplied by* (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, *less* (B) the Strike Price on such Valid Day; *provided* that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Applicable Limit:	For any Option, an amount of cash equal to the Applicable Percentage *multiplied by* the excess of (i) the aggregate of (A) the amount of cash, if any, paid to the "Holder" (as defined in the Indenture) of the related Convertible Note upon conversion of such Convertible Note and (B) the number of Shares, if any, delivered to the "Holder" (as defined in the Indenture) of the related Convertible Note upon conversion of such Convertible Note *multiplied by* the Applicable Limit Price on the Settlement Date for such Option, over (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading "Op" on Bloomberg page ANIP <equity> (or any successor thereto).
Valid Day:	A "VWAP Trading Day" as defined in the Indenture.

Scheduled Valid Day:	A "Scheduled Trading Day" as defined in the Indenture.
Business Day:	A "Business Day" as defined in the Indenture.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page ANIP <equity> AQR (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent in a commercially reasonable manner using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option, the 60 consecutive Valid Days commencing on, and including, the 61st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Settled". "Share Settled" in relation to any Option means that Net Share Settlement or Combination Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty's status as issuer of the Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form in lieu of delivery through the Clearance System, (iii) any Shares delivered to Counterparty may be "restricted securities" (as defined in Rule 144 under the Securities Act of 1933, as amended (the "**Securities Act**")) and (iv) the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be deemed modified accordingly.

3. Additional Terms applicable to the Transaction.

Adjustments applicable to the Transaction:

Potential Adjustment Events:	Notwithstanding Section 11.2(e) of the Equity Definitions, a "Potential Adjustment Event" means an occurrence of

any event or condition, as set forth in any Dilution Adjustment Provision, that would result in an adjustment under the Indenture to the "Conversion Rate" or the composition of a "Reference Property Unit" or to any "Last Reported Sale Price", "Daily VWAP," "Daily Conversion Value," "Daily Cash Amount" or "Daily Share Amount" (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes are entitled to participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the [ ] sentence of Section [ ][27] of the Indenture or the [ ] sentence of Section [ ][28] of the Indenture).

Method of Adjustment: Calculation Agent Adjustment, which shall not have the meaning set forth in Section 11.2(c) of the Equity Definitions and instead shall mean that, upon any Potential Adjustment Event, the Calculation Agent shall make adjustments in a commercially reasonable manner to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction that correspond to the adjustments to the Convertible Notes under the Indenture; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to the "Conversion Rate" (as defined in the Indenture) pursuant to the Indenture because all "Holders" (as such term is defined in the Indenture) were deemed to be record owners of the underlying Shares on one or more Valid Days during the Settlement Averaging Period, then the Calculation Agent shall determine the adjustment that would have been made to the "Conversion Rate" (as defined in the Indenture) in accordance with the terms of the Indenture and shall then determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner.

Notwithstanding the foregoing and "Consequences of Merger Events / Tender Offers" below, if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes determined pursuant to the Indenture that is the basis of any adjustment hereunder and that

[27] Include cross reference to provision in the Indenture providing for pass-through of distributed property, at the same time as it is received by holders of the Shares, in lieu of a Conversion Rate adjustment.

[28] Include cross reference to provision in the Indenture providing for pass-through of cash, at the same time as it is received by holders of the Shares, in lieu of a Conversion Rate adjustment.

involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section [ ][29] of the Indenture, Section [ ][30] of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction, using, if applicable, the methodology set forth in the Indenture for any such adjustment, in good faith and in a commercially reasonable manner.

Notwithstanding anything contained herein to the contrary, (i) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section [ ][31] of the Indenture or Section [ ][32] of the Indenture where, in either case, the period for determining "Y" (as such term is used in Section [ ][33] of the Indenture) or "SP" (as such term is used in Section [ ][34] of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall, acting in good faith and in a commercially reasonable manner, have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the commercially reasonable costs (including, but not limited to, hedging mismatches and market losses) and commercially reasonable out-of-pocket expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period and (ii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the "Conversion Rate" (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution AdjustmentProvision based on such declaration or (c) the "Conversion Rate" (as defined in the Indenture) is adjusted as a result of

[29] Include cross-reference to specific paragraph of the section of the Indenture providing for adjustments where a Conversion Rate adjustment occurs during a period over which VWAP, conversion value, settlement amount or closing price is calculated.

[30] Include cross-reference to Indenture section relating to merger events.

[31] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with a below-market rights, options or warrants offering.

[32] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with distributions of distributed property.

[33] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with a below-market rights, options or warrants offering.

[34] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with distributions of distributed property.

such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a "**Potential Adjustment Event Change**") then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (including, but not limited to, hedging mismatches and market losses) and reasonable out-of-pocket expenses incurred by Dealer in connection with its commercially reasonable hedging activities as a result of such Potential Adjustment Event Change, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions.

Dilution Adjustment Provisions: Sections [[ ]([ ]), ([ ]), ([ ]), ([ ]) and ([ ])][35] and Section [ ][36] of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events: Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a "Merger Event" means the occurrence of any event or condition set forth in the definition of "Common Stock Change Event" in Section [ ][37] of the Indenture.

Tender Offers: Applicable; *provided* that "Tender Offer" shall not have the meaning set forth in Section 12.1(d) of the Equity Definitions and instead shall mean the occurrence of any event or condition set forth in Section [ ][38] of the Indenture.

Consequences of Merger Events/
Tender Offers: Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction, subject to the second paragraph under "Method of Adjustment"; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation or is not organized under the laws of the United States, any State thereof or the District of Columbia or (ii) the Counterparty to the Transaction

[35] Include cross-reference to specific paragraphs of the section of the Indenture containing anti-dilution adjustments to the Conversion Rate.

[36] Include cross-reference to specific paragraph of the section of the Indenture providing for adjustments where a Conversion Rate adjustment occurs during a period over which VWAP, conversion value, settlement amount or closing price is calculated.

[37] Include cross-reference to the section of the Indenture describing consequences of merger events.

[38] Include cross-reference to the section of the Indenture describing consequences of tender offers.

	following such Merger Event or Tender Offer will not be a corporation organized under the laws of the United States, any State thereof or the District of Columbia, then, in either case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer's commercially reasonable election if (A) Dealer determines at any time following the occurrence of such Merger Event or Tender Offer that (x) such Merger Event or Tender Offer has had or will have an adverse effect on Dealer's rights and obligations under the Transaction or (y) Dealer will incur or has incurred an increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee to (1) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) constituting a commercially reasonable hedge position in respect of the economic risk of entering into and performing its obligations with respect to the Transaction or (2) realize, recover or remit the proceeds of any transaction(s) or asset(s) constituting a commercially reasonable hedge position in respect of the economic risk of entering into and performing its obligations with respect to the Transaction or (B) Dealer determines, in its good faith and reasonable judgment, that it will not be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures, applicable to Dealer; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion.
Consequences of Announcement Events:	Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; *provided* that, in respect of an Announcement Event, (x) references to "Tender Offer" shall be replaced by references to "Announcement Event" and references to "Tender Offer Date" shall be replaced by references to "date of such Announcement Event", (y) the phrase "exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)" shall be replaced with the phrase "Cap Price (*provided* that in no event shall the Cap Price be less than the Strike Price)" and the words "whether within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after the Announcement Event," shall be inserted prior to the word "which" in the seventh line, and (z) for the avoidance of doubt, the Calculation Agent shall determine whether the relevant Announcement Event has had a material economic effect on the Transaction (and, if so, shall, acting in good faith and in a commercially reasonable manner, adjust the Cap Price accordingly) on one or more occasions on or after the date of the Announcement Event up to, and including, the Expiration Date, any Early Termination Date and/or any other date of cancellation, it being understood that any adjustment in

	respect of an Announcement Event shall take into account any earlier adjustment relating to the same Announcement Event. An Announcement Event shall be an "Extraordinary Event" for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions, as modified in this paragraph, is applicable.
Announcement Event:	(i) The public announcement by the Issuer, any subsidiary or agent of the Issuer or any Valid Third Party Entity of (x) any transaction or event that, if completed, would constitute a Merger Event or Tender Offer, (y) any potential acquisition or disposition by the Issuer and/or its subsidiaries where the aggregate consideration exceeds 35% (such percentage, the "**Transformative Transaction Percentage**") of the market capitalization of the Issuer as of the date of such announcement (a "**Transformative Transaction**") or (z) the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction, (ii) the public announcement by the Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertakings that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by the Issuer, any subsidiary or agent of the Issuer or any Valid Third Party Entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of "Announcement Event," (A) "Merger Event" shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of "Merger Event" in Section 12.1(b) of the Equity Definitions following the definition of "Reverse Merger" therein shall be disregarded) and (B) "Tender Offer" shall mean such term as defined under Section 12.1(d) of the Equity Definitions, except that all references to "voting shares" in Sections 12.1(d), 12.1(e) and 12.1(l) of the Equity Definitions shall be deemed to be references to "Shares"; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing "10%" with "25%" (such percentage, the "**Tender Offer Percentage**") in the third line thereof.
Valid Third Party Entity:	In respect of any transaction, any third party (or any agent or subsidiary of such third party) that has a bona fide intent to enter into or consummate such transaction (it being understood and agreed that in determining whether such third party has such a bona fide intent, the Calculation

Agent may take into consideration the effect of the relevant announcement by such third party on the Shares and/or options relating to the Shares).

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law: Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase ", or public announcement of, the formal or informal interpretation", (ii) replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position" and (iii) replacing the parenthetical beginning after the word "regulation" in the second line thereof with the words "(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)". Notwithstanding anything to the contrary in the Equity Definitions, a Change in Law described in clause (Y) of Section 12.9(a)(ii) of the Equity Definitions shall not constitute a Change in Law and instead shall constitute an Increased Cost of Hedging as described in Section 12.9(a)(vi) of the Equity Definitions, and any such determination of a Change in Law shall be consistently applied by the affected party across transactions similar to the Transaction and for counterparties similar to Counterparty.

Failure to Deliver: Applicable

Hedging Disruption: Applicable; *provided* that:

(i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by inserting the following two phrases at the end of such Section:

"For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or

(B) above must be available on commercially reasonable pricing terms."; and

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words "to terminate the Transaction", the words "or the portion of the Transaction affected by such Hedging Disruption".

Notwithstanding anything to the contrary herein or in the Equity Definitions, in no event will a Hedging Disruption occur solely due to the deterioration of the creditworthiness of the Hedging Party relative to other comparable financial institutions.

Increased Cost of Hedging: Applicable solely with respect to a "Change in Law" described in clause (Y) of Section 12.9(a)(ii) of the Equity Definitions as set forth in the last sentence opposite the caption "Change in Law" above.

Hedging Party: For all applicable Additional Disruption Events, Dealer; *provided* that when making any determination, adjustment or calculation as "Hedging Party" (but not, for the avoidance of doubt, the making of any election it is entitled to make as "Hedging Party"), Dealer shall be bound by the same obligations relating to required acts of the Calculation Agent as set forth in Section 1.40 of the Equity Definitions and this Confirmation as if the Hedging Party were the Calculation Agent. Following any determination, adjustment or calculation by the Hedging Party hereunder, within five Business Days following a written request by Counterparty therefor, the Hedging Party shall provide to Counterparty by e-mail to the e-mail address provided by Counterparty a written explanation and report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (including, as applicable, any quotations, market data, information from internal sources used in making such determination, adjustment or calculation, descriptions of the methodology and any assumptions and basis used in making such determination, adjustment or calculation), it being understood that the Hedging Party shall not be obligated to disclose any proprietary or confidential models or proprietary or confidential information used by it for such determination, adjustment or calculation. All determinations, adjustments and calculations by Dealer acting in its capacity as the Hedging Party shall be made assuming that Dealer maintains a commercially reasonable hedge position.

Determining Party: For all applicable Extraordinary Events, Dealer; *provided* that when making any determination, adjustment or calculation as "Determining Party" (but not, for the avoidance of doubt, the making of any election it is entitled to make as "Determining Party"), Dealer shall be bound by

the same obligations relating to required acts of the Calculation Agent as set forth in Section 1.40 of the Equity Definitions and this Confirmation as if the Determining Party were the Calculation Agent. Following any determination, adjustment or calculation by the Determining Party hereunder, within five Business Days following a written request by Counterparty therefor, the Determining Party shall provide to Counterparty by e-mail to the e-mail address provided by Counterparty a written explanation and report (in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail such determination, adjustment or calculation (including, as applicable, any quotations, market data, information from internal sources used in making such determination, adjustment or calculation, descriptions of the methodology and any assumptions and basis used in making such determination, adjustment or calculation), it being understood that the Determining Party shall not be obligated to disclose any proprietary or confidential models or proprietary or confidential information used by it for such determination, adjustment or calculation. All determinations, adjustments and calculations by Dealer acting in its capacity as the Determining Party shall be made assuming that Dealer maintains a commercially reasonable hedge position.

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

4. **Calculation Agent.** Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default of the type described in Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, if the Calculation Agent fails to timely make any calculation, adjustment or determination required to be made by the Calculation Agent hereunder and such failure continues for five Exchange Business Days following notice to the Calculation Agent by Counterparty of such failure, Counterparty shall have the right to designate a nationally recognized third-party dealer in over-the-counter corporate equity derivatives to act, during the period commencing on the date such Event of Default occurred and ending on the Early Termination Date with respect to such Event of Default (or, if earlier, the date on which such Event of Default is no longer ongoing), as the Calculation Agent. Regardless of whether or not a standard for the actions of the Calculation Agent is explicitly stated in any provision hereof, the standards of Section 1.40 of the Equity Definitions, as modified by adding the words, "acts or" immediately before the words, "is required to act" in line 2 thereof, shall apply to the Calculation Agent at all times and in respect of all circumstances hereunder. Following

any determination, adjustment or calculation by the Calculation Agent hereunder, within five Business Days following a written request by Counterparty therefor, the Calculation Agent shall provide to Counterparty, by e-mail to the e-mail address provided by Counterparty, a written explanation and report (in a commonly used file format for the storage and manipulation of financial data) displaying in commercially reasonable detail the basis for such determination, adjustment or calculation (including any quotations, market data or information from internal or external sources, and any assumptions, used in making such determination, adjustment or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary or confidential models or proprietary or confidential information used by it for such determination, adjustment or calculation.

5. **Account Details.**

(a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

(b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

[_____]

6. **Offices.**

(a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

(b) The Office of Dealer for the Transaction is: [_____][Inapplicable; Dealer is not a Multibranch Party]

7. **Notices.**

(a) Address for notices or communications to Counterparty:

ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, Minnesota 56623
Attention: Legal Department – General Counsel
Telephone: 218-634-3500
Email: legaldept@anipharmaceuticals.com

(b) Address for notices or communications to Dealer:

To: [_____][39]

Attention: [_____]
Telephone: [_____]
Email: [_____]

[With a copy to:

To: [_____]

Attention: [_____]
Telephone: [_____]
Email: [_____]]

8. Representations and Warranties of Counterparty.

Each of the representations and warranties of Counterparty set forth in Section [ ] of the Purchase Agreement (the "**Purchase Agreement**"), dated as of August [ ], 2024, between Counterparty and J.P. Morgan Securities LLC, as representative of the Initial Purchasers party thereto (the "**Initial Purchasers**"), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date that:

(a) Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of the Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.

(b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument other than the Credit Agreement (as defined below) filed as an exhibit to Counterparty's most recently filed Annual Report on Form 10-K, as updated by subsequent filings, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

(c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act, or state securities laws; *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being financial institutions and/or broker-dealers.

[39] Insert Dealer's notice contact information.

(d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(e) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).

(f) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty or the Shares.

(g) To its knowledge, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares (not including (x) the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), (y) any rules or regulations under the Exchange Act or (z) laws, rules, regulations or regulatory orders of any jurisdiction that are applicable solely as a result of Dealer's and/or its affiliates' activities, assets or businesses, other than Dealer's activities in respect of the Transaction) would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares in connection with the Transaction.

(h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least USD 50 million.

(i) On and immediately after the Trade Date and the Premium Payment Date, (A) the value of the total assets of Counterparty is greater than the sum of the total liabilities (including contingent liabilities) and the capital (as such terms are defined in Section 154 and Section 244 of the General Corporation Law of the State of Delaware) of Counterparty, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and Counterparty's entry into the Transaction will not impair its capital, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty will be able to continue as a going concern; (E) Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")) and (F) Counterparty would be able to purchase the Number of Shares with respect to the Transaction in compliance with the laws of the jurisdiction of Counterparty's incorporation (including the adequate surplus and capital requirements of Sections 154 and 160 of the General Corporation Law of the State of Delaware).

(j) [Counterparty represents and warrants that it has received, read and understands the **OTC Options Risk Disclosure Statement** and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled "**Characteristics and Risks of Standardized Options**".][40]

9. Other Provisions.

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Premium Payment Date, with respect to the matters set forth in Sections 8(a) through (c) of this Confirmation, subject to customary assumptions, qualifications and exemptions, in each case, reasonably acceptable to Dealer. Delivery of such opinion to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement.

[40] Include for applicable Dealers.

(b) *Repurchase Notices*. Counterparty shall, no later than the day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") if following such repurchase, the number of outstanding Shares as determined on such day is (i) less than [__][41] million (in the case of the first such notice) or (ii) thereafter more than [__][42] million less than the number of Shares included in the immediately preceding Repurchase Notice; *provided* that, with respect to any repurchase of Shares pursuant to a plan under Rule 10b5-1 under the Exchange Act, Counterparty may elect to satisfy such requirement by promptly giving Dealer written notice of the entry into such plan, the maximum number of Shares that may be repurchased thereunder and the approximate dates or periods during which such repurchases may occur (with such maximum deemed repurchased on the date of such notice for purposes of this Section 9(b)). Counterparty agrees to indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an "**Indemnified Person**") from and against any and all commercially reasonable losses (including losses relating to Dealer's commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from commercially reasonable hedging activities or cessation of commercially reasonable hedging activities and any commercially reasonable losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and commercially reasonable expenses (including reasonable attorney's fees), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice when and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty's failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall, within a commercially reasonable period of time, notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable and documented fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that any Indemnified Person fails to notify Counterparty within a commercially reasonable period of time of any action commenced against it in respect of which indemnity may be sought hereunder to the extent Counterparty is materially prejudiced as a result thereof. Counterparty shall not be liable for any settlement of any proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph that is in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification

[41] Insert the number of Shares outstanding that would cause Dealer's current position in the Shares underlying the Transaction (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares under pre-existing call option transactions with Counterparty) to increase by 0.5%. To be based on Dealer with greatest number of underlying Shares (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares underlying pre-existing call option transactions with Counterparty).

[42] Insert the number of Shares that, if repurchased, would cause Dealer's current position in the Shares underlying the Transaction (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares under pre-existing call option transactions with Counterparty) to increase by a further 0.5% from the threshold for the first Repurchase Notice. To be based on Dealer with greatest number of underlying Shares (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares underlying pre-existing call option transactions with Counterparty).

provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

(c) *Regulation M*. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Exchange Act, of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.

(d) *No Manipulation*. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.

(e) *Transfer or Assignment*.

(i) Counterparty shall have the right to transfer or assign its rights and obligations hereunder with respect to all, but not less than all, of the Options hereunder (such Options, the "**Transfer Options**"); *provided* that such transfer or assignment shall be subject to reasonable conditions that Dealer may impose, including but not limited, to the following conditions:

(A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) or any obligations under Section 9(n) or 9(s) of this Confirmation;

(B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested by and reasonably satisfactory to Dealer;

(C) Dealer will not, as a result of such transfer or assignment (including, for the avoidance of doubt, after giving effect to any indemnity from the transferee or assignee to Dealer provided in connection with such transfer or assignment), (x) be required to pay the transferee or assignee on any payment date or settlement date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (y) receive from the transferee or assignee on any payment date an amount (taking into account any additional amounts paid under Section 2(d)(i)(4) of the Agreement) that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;

(D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer or assignment;

(E) Counterparty shall cause the transferee or assignee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably

requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer or assignment; and

(F) Counterparty shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

(ii) Dealer may transfer or assign all or any part of its rights or obligations under the Transaction (A) without Counterparty's consent, to any affiliate of Dealer (1) that has a rating for its long-term, unsecured and unsubordinated indebtedness that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer [or Dealer's ultimate parent][43] or (B) with Counterparty's consent (such consent not to be unreasonably withheld), to any other recognized dealer in transactions of the same type as the Transaction with a rating for its long-term, unsecured and unsubordinated indebtedness equal to or better than the lesser of (1) the credit rating of Dealer at the time of the transfer or assignment and (2) A- by Standard & Poor's Financial Services LLC or its successor ("**S&P**"), or A3 by Moody's Investor Service, Inc. ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided*, *however*, that Dealer may transfer or assign pursuant to this paragraph only if (A) the transferee or assignee is a "dealer in securities" within the meaning of Section 475(c)(1) of the Internal Revenue Code of 1986, as amended (the "**Code**"), (B) the transfer or assignment will not constitute a "deemed exchange" by Counterparty within the meaning of Section 1001 of the Code, (C) Counterparty will not, as a result of such transfer or assignment, (x) be required to pay the transferee or assignee on any payment date or settlement date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; and (y) receive from the transferee or assignee on any payment date or settlement date an amount (taking into account any additional amounts paid under Section 2(d)(i)(4) of the Agreement) that is less than the amount that Counterparty would have received from Dealer in the absence of such transfer or assignment, (D) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer or assignment, and (E) Dealer shall cause the transferee or assignee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that results described in clauses (C) and (D) will not occur upon or after such transfer or assignment. If at any time at which (A) the Section 16 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), such that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(l) of this Confirmation shall apply to any amount that is payable

[43] Include if credit support is being provided.

by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 16 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of the Number of Options and the Option Entitlement and (2) the aggregate number of Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Shares outstanding. The "**Share Amount**" as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Shares equal to (A) the minimum number of Shares that, in Dealer's reasonable judgment based on advice of counsel, could give rise to reporting or registration obligations (except for filings on Form 13F, Schedule 13D or Schedule 13G, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could reasonably be expected to result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in its reasonable discretion, *minus* (B) 1% of the number of Shares outstanding. Dealer shall provide Counterparty with written notice of any transfer or assignment on the date of or as promptly as practicable after the date of such transfer or assignment.

(iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

(f) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's commercially reasonable hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and

(iii) if the Net Share Settlement terms or the Combination Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms or the Combination Settlement terms, as the case may be, will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(g) [*Reserved.*]

(h) [*Conduct Rules*. Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.][44]

(i) *Additional Termination Events*.

(i) Notwithstanding anything to the contrary in this Confirmation, upon any Early Conversion in respect of which a Notice of Conversion that is effective as to Counterparty has been delivered by the relevant converting "Holder" (as defined in the Indenture):

(A) Counterparty shall, within ten Scheduled Trading Days of the "Conversion Date" (as defined in the Indenture) for such Early Conversion, provide written notice (an "**Early Conversion Notice**") to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the "**Affected Convertible Notes**")[; *provided* that, any "Early Conversion Notice" delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be an Early Conversion Notice pursuant to this Confirmation and the terms of such Early Conversion Notice shall apply, *mutatis mutandis*, to this Confirmation][45];

(B) the giving of an Early Conversion Notice pursuant to subclause (A) above shall constitute an Additional Termination Event as provided in this Section 9(i)(i);

(C) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be on or as promptly as reasonably practicable after the related settlement date for the conversion of such Affected Convertible Notes) with respect to the portion of the Transaction corresponding to a number of Options (the "**Affected Number of Options**") equal to the lesser of (x) the number of Affected Convertible Notes [*minus* the "Affected Number of Options" (as defined in the Base Call Option Confirmation), if any, that relate to such Affected Convertible Notes (and for the purposes of determining whether any Options under this Confirmation or under the Base Call Option Confirmation will be among the Affected Number of Options hereunder or under, and as defined in, the Base Call Option Confirmation, the Affected Convertible Notes specified in such Early Conversion Notice shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated)][46] and (y) the Number of Options as of the "Conversion Date" (as defined in the Indenture) for such Early Conversion;

(D) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options,

[44] Include for applicable Dealers.

[45] Insert for Additional Call Option Confirmation.

[46] Include in Additional Call Option Confirmation only.

(y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction; *provided* that the amount payable with respect to such termination shall not be greater than (1) the Applicable Percentage, *multiplied by* (2) the Affected Number of Options, *multiplied by* (3) (x) the sum of (i) the amount of cash paid (if any) to the "Holder" (as such term is defined in the Indenture) of an Affected Convertible Note upon conversion of such Affected Convertible Note and (ii) the number of Shares delivered (if any) to the "Holder" (as such term is defined in the Indenture) of an Affected Convertible Note upon conversion of such Affected Convertible Note, *multiplied by* the Applicable Limit Price on the relevant date of payment, *minus* (y) the Synthetic Instrument Adjusted Issue Price per Convertible Note, as determined by the Calculation Agent in good faith and in a commercially reasonable manner. "**Synthetic Instrument Adjusted Issue Price per Convertible Note**" shall mean the amount determined by the Calculation Agent by reference to the table set forth below (the "**Synthetic Instrument AIP Table**") based on the date of payment of the amount due with respect to the relevant Affected Number of Options (the "**Affected Unwind Date**"). If the Affected Unwind Date is not listed in the Synthetic Instrument AIP Table, the amount in the preceding sentence shall be determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table using a linear interpolation between the lower and higher Synthetic Instrument Adjusted Issue Prices per Convertible Note for the dates immediately preceding and immediately following the Affected Unwind Date. For the avoidance of doubt, any payment pursuant to this paragraph shall be subject to Section 9(l) of the Confirmation;

Affected Unwind Date	**Synthetic Instrument Adjusted Issue Price per Convertible Note**
August [_____], 2024	USD [_____]
March 1, 2025	USD [_____]
September 1, 2025	USD [_____]
March 1, 2026	USD [_____]
September 1, 2026	USD [_____]
March 1, 2027	USD [_____]
September 1, 2027	USD [_____]
March 1, 2028	USD [_____]
September 1, 2028	USD [_____]
March 1, 2029	USD [_____]
September 1, 2029	USD 1,000

(E) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and

(F) the Transaction shall remain in full force and effect, except that, as of the "Conversion Date" (as defined in the Indenture) for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options**.**

(ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section [ ][47] of the Indenture and the Convertible Notes are declared due and payable as a result thereof, then such acceleration shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

(iii) [*Reserved*].

(iv) Within ten Scheduled Trading Days following any Repayment Event (as defined below), Counterparty (i) shall (solely to the extent that such Repayment Event results directly from a "Fundamental Change" (as defined in the Indenture) or pursuant to a "Redemption" (as defined in the Indenture)), and (ii) otherwise may, but shall not be obligated to, notify Dealer of such Repayment Event and the aggregate principal amount of Convertible Notes subject to such Repayment Event (any such notice, a "**Repayment Notice**"); *provided* that in the case of (ii) only, such Repayment Notice shall contain the representation and warranty that Counterparty is not, on the date thereof, aware of any material non-public information with respect to Counterparty or the Shares[; *provided, further*, that, any "Repayment Notice" delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Repayment Notice pursuant to this Confirmation and the terms of such Repayment Notice shall apply, *mutatis mutandis*, to this Confirmation][48]. The receipt by Dealer from Counterparty of any Repayment Notice, within the applicable time period set forth in the preceding sentence, shall constitute an Additional Termination Event as provided in this paragraph, it being understood that no Repayment Event shall constitute an Additional Termination Event hereunder unless Dealer has so received such Repayment Notice. Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which in no event shall be earlier than the date on which the relevant Repayment Event occurs or is consummated) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the "**Repayment Options**") equal to the lesser of (A) [(x)] the aggregate principal amount of such Convertible Notes specified in such Repayment Notice, *divided by* USD 1,000, [*minus* (y) the number of "Repayment Options" (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes (and for the purposes of determining whether any Options under this Confirmation or under the Base Call Option Confirmation will be among the Repayment Options hereunder or under, and as defined in, the Base Call Option Confirmation, the Convertible Notes specified in such Repayment Notice shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated)][49], and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repayment Options. Any payment hereunder with respect to such termination (the "**Repayment Unwind Payment**") shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repayment Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction; *provided* that in the event of a Repayment Event resulting directly from a "Fundamental Change" (as defined in the Indenture) or pursuant to a "Redemption" (as defined in the Indenture), the Repayment Unwind Payment shall not be greater than (x) the number of Repayment Options, multiplied by (y) the product of (A) the Applicable Percentage and (B)(I) the

[47] Include cross-reference to the Indenture section containing events of default.

[48] Insert for Additional Call Option Confirmation.

[49] Insert for Additional Call Option Confirmation.

amount paid by Counterparty per Convertible Note in connection with the relevant Repayment Event pursuant to the relevant section of the Indenture, *minus* (II) the Synthetic Instrument Adjusted Issue Price per Convertible Note determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table based on the date of payment of the relevant amount (the "**Repayment Date**") as if such Repayment Date were the Affected Unwind Date. If the relevant Repayment Date is not listed in the Synthetic Instrument AIP Table, the amount in the preceding sentence shall be determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table using a linear interpolation between the lower and higher Synthetic Instrument Adjusted Issue Prices per Convertible Note for the dates immediately preceding and immediately following the relevant Repayment Date. For the avoidance of doubt, solely for purposes of calculating the Repayment Unwind Payment, Dealer shall assume that (x) the relevant Repayment Event (and, if applicable, the related "Fundamental Change" (as defined in the Indenture) and the announcement of such "Fundamental Change" (as defined in the Indenture)) had not occurred, **(y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding**. "**Repayment Event**" means that (i) any Convertible Notes are repurchased and cancelled in accordance with the Indenture (whether in connection with or as a result of a "Fundamental Change" (as defined in the Indenture), upon redemption or for any other reason) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty or any of its subsidiaries in exchange for delivery of any property or assets of such party (howsoever described), (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (for any reason other than as a result of an acceleration of the Convertible Notes that results in an Additional Termination Event pursuant to the preceding Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its subsidiaries (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction. For the avoidance of doubt, any conversion of Convertible Notes (whether into cash, Shares, reference property or any combination thereof) pursuant to the terms of the Indenture shall not constitute a Repayment Event. Counterparty acknowledges its responsibilities under applicable securities laws, including, in particular, Sections 9 and 10(b) of the Exchange Act and the rules and regulations thereunder in respect of the Repayment Event, including, without limitation, the delivery of a Repayment Notice pursuant to clause (i) of the first sentence of this Section 9(i)(iv).

(v) The following shall be an Additional Termination Event with respect to which Counterparty shall be the sole Affected Party and the Transaction shall be the sole Affected Transaction: The Credit Agreement dated as of November 19, 2021, by and among, among others, Counterparty, as Borrower, Truist Bank, as Administrative Agent, and certain lenders from time to time party thereto (as amended by that certain Amendment No. 1 to Credit Agreement, dated as of July 3, 2023, by and among Counterparty, as Borrower and Truist Bank as Administrative Agent and as may be further amended or otherwise modified from time to time, the "**Credit Agreement**") is not repaid in full and terminated on or prior to the Premium Payment Date. The parties hereto agree and acknowledge that Dealer shall disregard clause (x) of Section 9(bb) of this Confirmation when determining the Early Termination Amount payable in connection with an Additional Termination Event pursuant to this clause (v).

(j) *Amendments to Equity Definitions*.

(i) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative effect on the theoretical value of the relevant Shares" and replacing them with the words "that is the result of a corporate event involving the Issuer or its securities that has, in the commercially reasonable judgment of the Calculation Agent, a material economic effect on the Shares or the Options; *provided* that such event is not based on (a) an observable market, other than the market for the Shares

or (b) an observable index, other than an index calculated or measured solely by reference to the Issuer's own operations."

(ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting "(1)" immediately following the word "means" in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: "or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer; *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from within 15 days to within 30 days."

(iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing "either party may elect" with "Dealer may elect" and (2) replacing "notice to the other party" with "notice to Counterparty" in the first sentence of such section.

(iv) The parties hereto agree and acknowledge than any transaction or event that would have been (x) a Transformative Transaction if the Transformative Transaction Percentage were less than 35% or (y) a Tender Offer if the Tender Offer Percentage were less than 25%, as the case may be, shall not constitute a Potential Adjustment Event (as such term is defined in the Equity Definitions) as set forth in Section 11.2(e)(vii) of the Equity Definitions.

(v) The parties hereto agree and acknowledge than any Exempted Repurchase shall not constitute a Potential Adjustment Event or Tender Offer (as each such term is defined in the Equity Definitions). "**Exempted Repurchase**" means any (1) open market Share repurchase at prevailing market prices (including, without limitation, any discount to average VWAP prices), (2) Share repurchase through a dealer pursuant to accelerated share repurchases, forward contracts or similar transactions that is entered into at prevailing market prices (including, without limitation, any discount to average VWAP prices) and in accordance with customary market terms for transactions of such type to repurchase the Shares, (3) any reacquisition of Shares pursuant to Counterparty's employee incentive plans in connection with the related equity transactions, or Counterparty's withholding of Shares to cover tax liabilities associated with such equity transactions, so long as, in the case of each of clause (1) and clause (2), such repurchase or transaction would not reduce the number of total Shares outstanding to be less than [___][50] Shares, as determined by Calculation Agent and as adjusted by the Calculation Agent to account for any event described in Section 11.2(e)(i), Section 11.2(e)(ii)(A) or Section 11.2(E)(ii)(B) of the Equity Definitions.

(k) *Setoff.* Notwithstanding any provision of the Agreement and this Confirmation (including without limitation this Section 9(k)) or any other agreement between the parties to the contrary, each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(l) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to all holders of Shares consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty's control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the sole Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an

[50] Insert number of Shares equal to 90% of total Shares outstanding as of the Trade Date for the Base Capped Call Confirmations.

event or events outside Counterparty's control), and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a "**Payment Obligation**"), then Dealer shall satisfy the Payment Obligation by the Share Termination Alternative (as defined below), unless (a) Counterparty gives irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable, of its election that the Share Termination Alternative shall not apply and (b) Counterparty remakes the representation set forth in Section 8(f) of this Confirmation as of the date of such election, in which case the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:	If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Delivery Unit:	One Share or, if the Shares have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the "**Exchange Property**"), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation. For the avoidance of doubt, the parties agree that in determining the Share Termination Unit Price the Calculation Agent may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property that

	was purchased in connection with the delivery of the Share Termination Delivery Units.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption "Representation and Agreement" in Section 2 of this Confirmation will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Termination Settled" and all references to "Shares" shall be read as references to "Share Termination Delivery Units". "Share Termination Settled" in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

(m) *Waiver of Jury Trial*. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(n) *Registration.* Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares acquired and held by Dealer for the purpose of effecting a commercially reasonable hedge of its obligations pursuant to the Transaction ("**Hedge Shares**") cannot be sold in the public market by Dealer without registration under the Securities Act (other than any such Hedge Shares that were, at the time of acquisition by Dealer, "restricted securities" (as defined in Rule 144 under the Securities Act)), Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered secondary offering of substantially similar size and in a similar industry (*provided*, *however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty), (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size and industry, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement of similar size), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), requested by Dealer.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(p) *Right to Extend*. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, to the extent Dealer reasonably determines (and in the case of clause (ii) below, based on the advice of counsel), that such action is reasonably necessary or appropriate (i) to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions (but only if there is a decrease in liquidity relative to Dealer's expectations on the Trade Date) or (ii) to enable Dealer to effect purchases of Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer (so long as such policies or procedures are consistently applied to transactions similar to the Transaction); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 120 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common stockholders of Counterparty in any United States bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer's right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.

(r) *Securities Contract; Swap Agreement*. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.

(s) *Notice of Certain Other Events*. Counterparty covenants and agrees that:

(i) promptly following the public announcement of the results of any election by the holders of Shares with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of the types and amounts of consideration actually received by holders of Shares pursuant to such Merger Event (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated; and

(ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in any event at least one Exchange Business Day prior to the relevant Adjustment Notice Deadline) written notice of the section or sections of the Indenture pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event (other than a Potential Adjustment in respect of the Dilution Adjustment Provisions set forth in Section [ ]51) or Merger Event and (B) promptly following any such adjustment (or any adjustment that would have required a notice under clause (A) above but for the parenthetical exception included therein), Counterparty shall give Dealer written notice of the details of such adjustment. The "**Adjustment Notice Deadline**" means (i) for any

[51] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with below market rights, options or warrants offering.

Potential Adjustment in respect of the Dilution Adjustment Provision set forth in Section [ ][52] or Section [ ][53] of the Indenture, the relevant "Ex-Dividend Date" (as such term is defined in the Indenture) or "Effective Date" (as such term is defined in the Indenture), as the case may be, (ii) for any Potential Adjustment in respect of the Dilution Adjustment Provision set forth in Section [ ][54] of the Indenture, the first "Trading Day" (as such term is defined in the Indenture) of the period referred to in the definition of "SP" in such Section [ ][55] of the Indenture, (iii) for any Potential Adjustment in respect of the Dilution Adjustment Provision set forth in Section [ ][56] of the Indenture, the first "Trading Day" (as such term is defined in the Indenture) of the "Spin-Off Valuation Period" (as such term is defined in the Indenture), (iv) for any Potential Adjustment in respect of the Dilution Adjustment Provision set forth in Section [ ][57] of the Indenture, the first "Trading Day" (as such term is defined in the Indenture) of the "Tender/Exchange Offer Valuation Period" (as such term is defined in the Indenture), and (v) for any Merger Event, the effective date of such Merger Event (or, if earlier, the first day of any valuation or similar period in respect of such Merger Event).

(t) *Wall Street Transparency and Accountability Act*. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party's otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

(u) *Agreements and Acknowledgements Regarding Hedging*. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of the Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.

(v) *Early Unwind*. In the event the sale of the ["Firm Securities"][58]["Option Securities"][59] (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a) of

[52] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with cash dividends.

[53] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with share dividends or share split/combination.

[54] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with distributions of distributed property.

[55] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with distributions of distributed property.

[56] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with a spin-off.

[57] Include cross-reference to section of the Indenture providing for an adjustment to the Conversion Rate in connection with a tender offer.

[58] Insert for Base Call Option Confirmation.

[59] Insert for Additional Call Option Confirmation.

this Confirmation, in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date, the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; *provided* that, with respect to any Early Unwind, Dealer shall return on the Early Unwind Date any Premium actually paid by Counterparty. Each of Dealer and Counterparty represents and acknowledges to the other that, subject to the proviso included in this Section 9(v), upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(w) *Tax Matters*.

(i) *Withholding Tax imposed on payments to non-U.S. counterparties under the United States Foreign Account Tax Compliance provisions of the HIRE Act*. The parties hereto agree that for the Transaction the terms "Tax" as used in Section 9(x) of this Confirmation and "Indemnifiable Tax" as defined in Section 14 of the Agreement, shall not include any Tax imposed pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d)(i) of the Agreement.

(ii) *Tax Documentation*. For purposes of Section 4(a)(i) and (ii) of the Agreement, (i) Counterparty agrees to deliver to Dealer one duly executed and completed United States Internal Revenue Service Form W-9 (or successor thereto) (A) on or before the date of execution of this Confirmation, (B) promptly upon reasonable demand by Dealer and (C) promptly upon learning that any such tax form previously provided by it has become expired, obsolete or incorrect and (ii) Dealer agrees to deliver to Counterparty one duly executed and completed [_____][60] (or successor thereto), in each case, (A) on or before the date of execution of this Confirmation, (B) promptly upon reasonable demand by Counterparty and (C) promptly upon learning that any such tax form previously provided by it has become expired, obsolete or incorrect. Additionally, each party shall, promptly upon request by the other party, provide such other tax forms and documents reasonably requested by the other party that it can provide without material burden.

(iii) *Payee Tax Representations*. Counterparty is a corporation for U.S. federal income tax purposes and is organized under the laws of the State of Delaware. Counterparty is a "U.S. person" (as that term is used in Treasury Regulation Section 1.1441-4(a)(3)(ii)) for U.S. federal income tax purposes and an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii). [_____][61] Each party agrees to give notice of any failure of a representation made by it under this Section 9(w)(iii) to be accurate and true promptly upon learning of such failure.

(iv) *Incorporation of ISDA 2015 Section 871(m) Protocol Provisions*. To the extent that either party to the Agreement with respect to the Transaction is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the "**871(m) Protocol**"), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to the Agreement with respect to the Transaction as if set forth in full herein. The parties further agree that, solely for purposes of applying such provisions and amendments to the Agreement with respect

[60] To be populated with appropriate form for Dealer.

[61] To be populated with the appropriate rep for Dealer.

to the Transaction, references to "each Covered Master Agreement" in the 871(m) Protocol will be deemed to be references to the Agreement with respect to the Transaction, and references to the "Implementation Date" in the 871(m) Protocol will be deemed to be references to the Trade Date of the Transaction. Notwithstanding anything to the contrary in this Section 9(w), the last sentence of Section 2(d)(iii) as proposed to be added by the 871(m) Protocol is not incorporated by reference herein.

(x) *Payor Tax Representations*. For the purpose of Section 3(e) of the Agreement, each party makes the following representation: It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of the Agreement or amounts payable hereunder that are considered to be interest for U.S. federal income tax purposes) to be made by it to the other party under the Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 9(w)(iii) of this Confirmation, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement, (iii) the satisfaction of the agreement of the other party contained in the last sentence of Section 9(w)(iii) of this Confirmation and (iv) the documentation provided by the other party pursuant to Section 9(w)(ii) of this Confirmation, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) of the Agreement by reason of material prejudice to its legal or commercial position.

(y) *Payment by Counterparty*. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.

(z) *Other Adjustments Pursuant to the Equity Definitions*. Notwithstanding anything to the contrary in the Agreement, the Equity Definitions or this Confirmation, upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, the Calculation Agent shall determine in good faith and in a commercially reasonable manner whether such occurrence or declaration, as applicable, has had a material economic effect on the Transaction, and if so, shall, in its good faith and commercially reasonable discretion, adjust the Cap Price to account for the economic effect on the Transaction of such occurrence or declaration; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this section shall be made without duplication of any other adjustment hereunder. Solely for purposes of this Section 9(z): (x) the terms "Potential Adjustment Event," "Merger Event," and "Tender Offer" shall each have the meanings assigned to each such term in the Equity Definitions (in the case of the definition of "Potential Adjustment Event", as amended by Section 9(j) of this Confirmation, and in the case of the definition of "Tender Offer", as amended by the provisions opposite the caption "Announcement Event" in Section 3 of this Confirmation) and (y) "Extraordinary Dividend" means any cash dividend on the Shares.

(aa) *CARES Act*. Counterparty acknowledges that the Transaction may constitute a purchase of its equity securities or a capital distribution. Counterparty further acknowledges that, pursuant to the provisions of the Coronavirus Aid, Relief and Economic Security Act (the "**CARES Act**"), Counterparty will be required to agree to certain time-bound restrictions on its ability to purchase its equity securities or make capital distributions if it receives loans, loan guarantees or direct loans (as that term is defined in the CARES Act) under section 4003(b) of the CARES Act. Counterparty further acknowledges that it may be required to agree to certain time-bound restrictions on its ability to purchase its equity securities or make capital distributions if it receives loans, loan guarantees or

direct loans (as that term is defined in the CARES Act) under programs or facilities established by the Board of Governors of the Federal Reserve System, the U.S. Department of Treasury or similar governmental entity for the purpose of providing liquidity to the financial system. Accordingly, Counterparty represents and warrants that neither it, nor any of its subsidiaries have applied, and have no present intention to apply, for a loan, loan guarantee, direct loan (as that term is defined in the CARES Act) or other investment, or to receive any financial assistance or relief (howsoever defined) under any program or facility that (a) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) requires under applicable law (or any regulation, guidance, interpretation or other pronouncement thereunder), as a condition of such loan, loan guarantee, direct loan (as that term is defined in the CARES Act), investment, financial assistance or relief, that Counterparty comply with any requirement to, or otherwise agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Counterparty; *provided* that Counterparty may apply for any such governmental assistance if Counterparty either (x) determines based on the advice of nationally recognized outside counsel that the terms of the Transaction would not cause Counterparty to fail to satisfy any condition for application for or receipt or retention of such governmental assistance based on the terms of the relevant program or facility as of the date of such advice or (y) delivers to Dealer evidence or other guidance from a governmental authority with jurisdiction for such program or facility that the Transaction is permitted under such program or facility (either by specific reference to the Transaction or by general reference to transactions with the attributes of the Transaction in all relevant respects). Counterparty further represents and warrants that the Premium is not being paid, in whole or in part, directly or indirectly, with funds received under or pursuant to any program or facility, including the U.S. Small Business Administration's "Paycheck Protection Program", that (a) is established under applicable law, including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) requires under such applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) that such funds be used for specified or enumerated purposes that do not include the purchase of this Transaction (either by specific reference to this Transaction or by general reference to transactions with the attributes of this Transaction in all relevant respects).

(bb) *Condition to Effectiveness*. Notwithstanding anything to the contrary in the Agreement or the Equity Definitions, it shall be a condition to effectiveness of (x) the Transaction and this Confirmation (other than, in each case, Section 9(i)(v) of this Confirmation) on the Premium Payment Date and (y) Counterparty's obligation to pay Dealer the Premium, that the Credit Agreement is repaid in full and terminated on or prior to the Premium Payment Date.

(cc) [*Dealer Boilerplate*.] [Insert Dealer boilerplate, if applicable]

[*Signature Pages to Follow*]

Please confirm that the foregoing correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and returning an executed copy to Dealer.

Very truly yours,

[Dealer][62]

By: _____
Authorized Signatory
Name:

Accepted and confirmed
as of the Trade Date:

ANI Pharmaceuticals, Inc.

By: _____
Authorized Signatory
Name:

[62] Include Dealer preferred signature page information, as applicable

Exhibit 10.2

CREDIT AGREEMENT

among

ANI PHARMACEUTICALS, INC.,
as Lead Borrower,

ANIP ACQUISITION COMPANY,

as Initial Subsidiary Borrower

CERTAIN DOMESTIC SUBSIDIARIES OF THE LEAD BORROWER
FROM TIME TO TIME PARTY HERETO,
as Guarantors,

THE LENDERS PARTY HERETO,

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

Dated as of August 13, 2024

JPMORGAN CHASE BANK, N.A.,
REGIONS CAPITAL MARKETS, A DIVISION OF REGIONS BANK,
THE HUNTINGTON NATIONAL BANK, and
BANK OF AMERICA, N.A.,
as Joint Lead Arrangers and Joint Bookrunners

REGIONS CAPITAL MARKETS, A DIVISION OF REGIONS BANK,
THE HUNTINGTON NATIONAL BANK, and
BANK OF AMERICA, N.A.,
as Syndication Agents

WELLS FARGO SECURITIES, LLC,
U.S. BANK, NATIONAL ASSOCIATION,
CAPITAL ONE, NATIONAL ASSOCIATION,
PNC BANK, NATIONAL ASSOCIATION,
and
FIFTH THIRD BANK, NATIONAL ASSOCIATION,
as Documentation Agents

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CREDIT AGREEMENT, dated as of August 13, 2024, by and among **ANI PHARMACEUTICALS, INC.**, a Delaware corporation (the "Lead Borrower"), **ANIP ACQUISITION COMPANY**, a Delaware corporation (the "Initial Subsidiary Borrower"), the Additional Subsidiary Borrowers (as hereinafter defined), the Guarantors (as hereinafter defined), the Lenders (as hereinafter defined), and **JPMORGAN CHASE BANK, N.A.**, as administrative agent for the Lenders hereunder (in such capacity, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Lead Borrower is party to that certain Credit Agreement, dated as of November 19, 2021 (as amended, supplemented or otherwise modified prior to the Closing Date, the "Existing Credit Agreement"), by and among the Lead Borrower, the guarantors party thereto, the lenders party thereto and Truist Bank, as administrative agent;

WHEREAS, on the Closing Date, the Lead Borrower will repay all amounts outstanding under the Existing Credit Agreement, terminate in full the commitments thereunder and obtain a release of all security interests granted in connection therewith (the "Closing Date Refinancing");

WHEREAS, pursuant to the Acquisition Agreement, on the Acquisition Closing Date, the Lead Borrower will acquire (the "Acquisition") Alimera Sciences, Inc., a Delaware corporation (the "Company"), and its subsidiaries pursuant to a merger by a wholly-owned Subsidiary of the Initial Subsidiary Borrower with and into the Company, with the Company surviving the merger as a Subsidiary of the Initial Subsidiary Borrower;

WHEREAS, on the Acquisition Closing Date, the Company will repay in full all amounts outstanding under that certain Loan and Security Agreement, dated as of December 31, 2019, by and among the Company, SLR Investment Corp. (f/k/a Solar Capital Ltd.), as collateral agent, and the lenders party thereto and obtain a release of all security interests granted in connection therewith (the "Company Refinancing");

WHEREAS, to consummate the Transactions, the Borrowers have requested that, subject to the satisfaction (or waiver) of the conditions precedent set forth in Section 4.1 below, (a) the Revolving Lenders provide the Revolving Facility on the Closing Date with commitments in an aggregate principal amount equal to $75.0 million and (b) the Term Loan Lenders commit to extend Term Loans on the Acquisition Closing Date in an aggregate principal amount equal to $325.0 million, with the funding of such Term Loans to be subject solely to the satisfaction (or waiver) of the conditions precedent set forth in Section 4.3 below; and

WHEREAS, the Lenders have agreed to make such loans and other financial accommodations to the Borrowers on the terms and conditions contained herein.

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

Article I

DEFINITIONS

Section 1.1 **Defined Terms.**

As used in this Agreement, terms defined in the preamble to this Agreement have the meanings therein indicated, and the following terms have the following meanings:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

"Acquisition" has the meaning set forth in the recitals.

"Acquisition Agreement" shall mean that certain Agreement and Plan of Merger, dated as of June 21, 2024, by and among, the Lead Borrower, ANIP Merger Sub INC. and the Company, together with all exhibits and disclosure schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time.

"Acquisition Closing Date" shall mean the date of consummation of the Acquisition.

"Acquisition Outside Date" shall mean the earlier of (i) 11:59 p.m., New York City time, on the fifth Business Day after December 21, 2024 if the Acquisition Closing Date has not occurred by such time and (ii) the date of the valid termination of the Acquisition Agreement in accordance with its terms prior to the consummation of the Acquisition.

"Additional Credit Party" shall mean (i) each Person that becomes an Additional Subsidiary Borrower by execution of an Additional Subsidiary Borrower Joinder Agreement and (ii) each Person that becomes a Guarantor by execution of a Joinder Agreement in accordance with Section 5.10.

"Additional Lender" shall mean any Additional Revolving Lender or any Additional Term Lender, as applicable.

"Additional Revolving Lender" shall mean, at any time, any bank or other financial institution (other than any such bank or financial institution that is a Lender at such time) selected by the Lead Borrower that agrees to provide any portion of any (a) Revolving Facility Increase pursuant to an Incremental Facility Amendment in accordance with Section 2.22 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.23; provided that each Additional Revolving Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent, each Issuing Lender and Swingline Lender (in each case, such approval not to be unreasonably withheld or delayed).

"Additional Subsidiary Borrower" shall mean any Restricted Subsidiary that is a Wholly Owned Subsidiary and Domestic Subsidiary of the Lead Borrower that is designated by the Lead Borrower in a notice to the Administrative Agent for distribution to the Lenders as an "Additional Subsidiary Borrower" for purposes of this Agreement and the other Credit Documents; provided that (i) the Lead Borrower provides such notice at least twenty (20) Business Days (or such shorter period as may be reasonably agreed by the Administrative Agent) prior to the date such Restricted Subsidiary becomes an Additional Subsidiary Borrower and has provided to the Administrative Agent and the Lenders at least three (3) Business Days

prior to the date such Restricted Subsidiary becomes an Additional Subsidiary Borrower all information as may be requested by the Administrative Agent and the Lenders to comply with any applicable Anti-Terrorism Law or other "know-your-customer" requirements and (ii) the Lead Borrower, the Administrative Agent and such Restricted Subsidiary shall have entered into a joinder to this Agreement (an "Additional Subsidiary Borrower Joinder Agreement"), in form reasonably satisfactory to the Administrative Agent and the Lead Borrower, providing that such Restricted Subsidiary shall have all rights and obligations of an Additional Subsidiary Borrower under this Agreement and the other Credit Documents.

"Additional Subsidiary Borrower Joinder Agreement" has the meaning set forth in the definition of "Additional Subsidiary Borrower."

"Additional Term Lender" shall mean, at any time, any bank, other financial institution or institutional lender (other than any such bank, financial institution or institutional lender that is a Lender at such time) selected by the Lead Borrower that agrees to provide any portion of any (a) Incremental Term Facility pursuant to an Incremental Facility Amendment in accordance with Section 2.22 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.23.

"Adjusted Daily Simple SOFR" shall mean an interest rate per annum equal to (a) the Daily Simple SOFR, *plus* (b) 0.10%; provided that Adjusted Daily Simple SOFR for the applicable Loans as so determined shall not be less than the Floor.

"Adjusted Term SOFR Rate" shall mean, for purposes of any calculation, the rate per annum equal to (a) the Term SOFR Rate for such calculation plus (b) 0.10%; provided that the Adjusted Term SOFR Rate for the applicable Loans as so determined shall not be less than the Floor.

"Administrative Agent" or "Agent" shall have the meaning set forth in the first paragraph of this Agreement and shall include any permitted successors in such capacity.

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

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

"Affiliate" shall mean, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

"Agreement" shall mean this Agreement, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1%, and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two (2) U.S. Government Securities Business Days prior to such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day) plus 1%; provided that, for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. (Chicago time) on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference

Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.13 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.13(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00% per annum, such rate shall be deemed to be 1.00% per annum for purposes of this Agreement.

"Ancillary Document" shall have the meaning set forth in Section 9.9(b).

"Anti-Terrorism Law" shall mean any Requirement of Law related to money laundering or financing terrorism, including, without limitation, (a) the Patriot Act, (b) The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act", 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), (c) the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) and (d) Executive Order 13224 (effective September 24, 2001).

"Applicable Margin" shall mean, for any day, (i) initially, 1.75% in the case of ABR Loans, 2.75% in the case of Term Benchmark Loans and RFR Loans and 0.35% with respect to Commitment Fees and (ii) from and after the first adjustment date determined in accordance with the paragraph immediately following the table below, the applicable margin determined in accordance with the provisions set forth below:

Level	First Lien Net Leverage Ratio	Commitment Fees	Applicable Margin for ABR Loans	Applicable Margin for Term Benchmark Loans and RFR Loans
I	> 2.00 to 1.00	0.40%	2.00%	3.00%
II	≤ 2.00 to 1.00 but > 1.25 to 1.00	0.35%	1.75%	2.75%
III	≤ 1.25 to 1.00 but > 0.50 to 1.00	0.30%	1.50%	2.50%
IV	≤ 0.50 to 1.00	0.25%	1.25%	2.25%

Any increase or decrease in the Applicable Margin resulting from a change in the First Lien Net Leverage Ratio shall become effective as of the third Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 5.2(a); provided, however, that "Pricing Level I" in the table set forth above shall apply without regard to the First Lien Net Leverage Ratio at any time after the date on which any annual or quarterly financial statements were required to have been delivered pursuant to Section 5.1(a) or Section 5.1(b) but were not delivered (or the Compliance Certificate related to such financial statements was required to have been delivered pursuant to Section 5.2(a) but was not delivered), commencing with the fifth Business Day immediately following such date and continuing until

the fifth Business Day immediately following the date on which such financial statements (or, if later, the Compliance Certificate related to such financial statements) are delivered.

"Applicable Percentage" shall mean, with respect to any Lender of any Class, the percentage of the total Commitments of such Class represented by such Lender's Commitment of such Class; provided that, in the case of Section 2.21 when a Defaulting Lender shall exist, "Applicable Percentage" shall mean the percentage of the total Commitments of such Class (disregarding any Defaulting Lender's Commitment of such Class) represented by such Lender's Commitment of such Class. If the Commitments of any Class have terminated or expired, the Applicable Percentages for such Class shall be determined based upon the Commitments of such Class most recently in effect, giving effect to any assignments and to any Lender's status as a Defaulting Lender at the time of determination.

"Approved Bank" shall have the meaning set forth in the definition of "Cash Equivalents."

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

"Arrangers" shall mean each of (i) JPMorgan Chase Bank, N.A., (ii) Regions Capital Markets, a division of Regions Bank, (iii) The Huntington National Bank and (iv) Bank of America, N.A.

"Asset Disposition" shall mean the disposition of any or all of the assets (including, without limitation, the Equity Interests of a Subsidiary or any ownership interest in a joint venture) of the Lead Borrower or any Restricted Subsidiary whether by sale, lease, transfer or otherwise, in a single transaction or in a series of transactions. The term "Asset Disposition" shall not include (a) any Disposition permitted by Subsections 6.4(a)(i) through (x), or (b) any Equity Issuance.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.6), and accepted by the Administrative Agent, in substantially the form of Exhibit 1.1(a) or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

"Authorized Officers" shall mean any Responsible Officer or any chief accounting officer, head of finance, vice president of finance or corporate controller of the Lead Borrower.

"Available Amount" shall mean, as of any date of determination, an amount not less than zero in the aggregate, determined on a cumulative basis, equal to the sum of (without duplication):

(a) 50.0% of the Consolidated Net Income of the Lead Borrower and the Restricted Subsidiaries for the period (treated as one accounting period) from the first day of the fiscal quarter in which the Closing Date occurs to the end of the most recent fiscal quarter for which consolidated financial statements have been delivered pursuant to Section 5.1(a) or 5.1(b) (provided that this clause (a) shall in no event be less than $0); plus

(b) new qualified cash equity contributions to the Lead Borrower (including, without limitation, any cash proceeds received by the Lead Borrower or any of its Subsidiaries from sales of Equity Interests to directors, consultants or employees in connection with equity incentive arrangements, but excluding Specified Equity Contributions or contributions used to incur Contribution Indebtedness); plus

(c) Returns received or realized after the Closing Date and on or prior to such date of determination in respect of Investments made using the Available Amount (excluding Returns from Unrestricted Subsidiaries in respect of an Unrestricted Subsidiary's share of tax based on its income); plus

(d) an amount equal to the sum of (i) the amount of any Investments made by the Lead Borrower or any Restricted Subsidiary with the Available Amount in any Unrestricted Subsidiary that has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or is liquidated, wound up or dissolved into, the Lead Borrower or any Restricted Subsidiary (up to the lesser of (A) the Fair Market Value of the Investments of the Lead Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time of such re-designation, merger, consolidation, amalgamation, liquidation, winding up or dissolution (as the case may be) and (B) the Fair Market Value of the original Investment by the Lead Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary) and (ii) the amount of Permitted Investments and the Fair Market Value of any property or assets of any Unrestricted Subsidiary that has been transferred, conveyed or otherwise distributed to the Lead Borrower or any Restricted Subsidiary but solely to the extent the initial Investment of assets in such Unrestricted Subsidiary were made in reliance on the Available Amount, in each case, after the Closing Date and on or prior to such date of determination; minus

(e) an amount equal to the sum of (i) Restricted Payments made pursuant to Section 6.9(a)(v), plus (ii) Restricted Debt Payments made pursuant to Section 6.9(b)(iv), plus (iii) Investments made pursuant to Section 6.5(l), in each case, made after the Closing Date and on or prior to such date of determination.

"Available Tenor" shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (e) of Section 2.13.

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

"Bail-In Legislation" shall mean (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Product" shall mean any of the following products, services or facilities extended to the Lead Borrower or any Restricted Subsidiary by any Bank Product Provider: (a) Cash Management Services; (b) products under any Hedging Agreement; and (c) commercial credit card, purchase card and merchant card services.

"Bank Product Debt" shall mean the Indebtedness and other obligations of the Lead Borrower or any Restricted Subsidiary relating to Bank Products.

"Bank Product Provider" shall mean any Person that provides Bank Products to the Lead Borrower or any Restricted Subsidiary to the extent that (a) such Person is the Administrative Agent, a Lender, an

Affiliate of a Lender or any other Person that was a Lender (or an Affiliate of a Lender) at the time it entered into the Bank Product but has ceased to be a Lender (or whose Affiliate has ceased to be a Lender) under this Agreement or (b) such Person is the Administrative Agent, a Lender or an Affiliate of a Lender on the Closing Date and the Bank Product was entered into on or prior to the Closing Date (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender).

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

"Bankruptcy Event" shall mean any of the events described in Section 7.1(f).

"Benchmark" shall mean, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then "Benchmark" shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.13.

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

(1) the Adjusted Daily Simple SOFR; or

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

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Credit Documents.

"Benchmark Replacement Adjustment" shall mean, with respect to any replacement of the then- current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Lead Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

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

"Benchmark Replacement Date" shall mean the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of

(a) the date of the public statement or publication of information referenced therein and

(b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof)

or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

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

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

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

"Benchmark Unavailability Period" shall mean, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.13 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.13.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

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

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

"Borrower" shall refer to each of the Lead Borrower, the Initial Subsidiary Borrower and any Additional Subsidiary Borrower.

"Borrower Agent" shall mean any agent of any Borrower acting in capacity with, or benefitting from, this Agreement or the proceeds of any Borrowing.

"Borrower Historical Financial Statements" shall have the meaning set forth in the definition of "Historical Financial Statements."

"Borrowing" shall mean Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

"Borrowing Date" shall mean, in respect of any Loan, the date such Loan is made.

"Business" shall have the meaning set forth in Section 3.10(c).

"Business Day" shall mean, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City; provided that, in addition to the foregoing, a Business Day shall be any such day that is only a U.S. Government Securities Business Day (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan and (b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate.

"Capital Lease" shall mean any lease of property, real or personal, the obligations with respect to which are required to be capitalized on a balance sheet of the lessee in accordance with GAAP.

"Capital Lease Obligations" shall mean the capitalized lease obligations relating to a Capital Lease determined in accordance with GAAP.

"Cash Collateralize" shall mean to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the Issuing Lenders or Lenders, as collateral for LOC Obligations or obligations of Lenders to fund participations in respect of LOC Obligations, cash or deposit account balances or, if the Administrative Agent and each applicable Issuing Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and each applicable Issuing Lender. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" shall mean (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition ("Government Obligations"), (b) Dollar denominated time deposits, certificates of deposit, Eurodollar time deposits and Eurodollar certificates of deposit of (i) any domestic commercial bank of recognized standing having capital and surplus in excess of $500,000,000 or (ii) any bank whose short-term commercial paper rating at the time of the acquisition thereof is at least A-1 or the equivalent thereof from S&P or from Moody's is at least P-1 or the equivalent thereof from Moody's (any such bank being an "Approved Bank"), in each case with maturities of not more than 364 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements

with a term of not more than thirty (30) days with a bank or trust company (including a Lender) or a recognized securities dealer having capital and surplus in excess of $500,000,000 for direct obligations issued by or fully guaranteed by the United States of America, (e) obligations of any state of the United States or any political subdivision thereof for the payment of the principal and redemption price of and interest on which there shall have been irrevocably deposited Government Obligations maturing as to principal and interest at times and in amounts sufficient to provide such payment, (f) money market accounts subject to Rule 2a-7 of the Investment Company Act of 1940 ("Rule 2a-7") which consist primarily of cash and cash equivalents set forth in clauses (a) through (e) above and of which 95% shall at all times be comprised of First Tier Securities (as defined in Rule 2a-7) and any remaining amount shall at all times be comprised of Second Tier Securities (as defined in Rule 2a-7) and (g) shares of any so-called "money market fund"; provided that such fund is registered under the Investment Company Act of 1940, has net assets of at least $500,000,000 and has an investment portfolio with an average maturity of 365 days or less.

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

"CFC" shall mean a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

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

"Change of Control" shall mean at any time the occurrence of any of the following events:

(a) the Lead Borrower shall fail to own 100% of the Equity Interests of the Initial Subsidiary Borrower and each Additional Subsidiary Borrower (in each case, for so long as the Initial Subsidiary Borrower or such Additional Subsidiary Borrower is a Borrower hereunder);

(b) (i) any "person" or "group" (as such terms are used in Section 13(d) and 14(d) of the Exchange Act), is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person shall be deemed to have "beneficial ownership" of all securities that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of thirty-five percent (35%) or more of the then outstanding Voting Stock of the Lead Borrower or (ii) any Person or two or more Persons acting in concert, shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Lead Borrower or control over the Voting Stock of the Lead Borrower on a fully-diluted basis (and taking into account all such Voting Stock that such Person or group

has the right to acquire pursuant to any option right) representing thirty-five percent (35%) or more of the then outstanding Voting Stock of the Lead Borrower; or

(c) there shall have occurred a "Change of Control" (as defined in the Preferred Equity Agreement) under the Preferred Equity Agreement or a similar event, however denominated under any Junior Financing.

"Class", when used in reference to (a) any Loan or Extension of Credit, refers to whether such Loan, or the Loans comprising such borrowing, are Revolving Loans, Swingline Loans, Revolving Facility Increase, Other Revolving Loans, Term Loans, Incremental Term Facilities or Other Term Loans, (b) any Commitment, refers to whether such Commitment is a Revolving Commitment, Other Revolving Commitment, Initial Term Loan Commitment or Other Term Commitment or (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments. Other Term Commitments, Other Term Loans, Other Revolving Commitments (and the Other Revolving Loans made pursuant thereto), Revolving Facility Increases and Incremental Term Facilities that have different terms and conditions shall be deemed to comprise different Classes.

"Closing Date" shall mean the date of this Agreement.

"Closing Date Refinancing" shall have the meaning set forth in the recitals to this Agreement.

"CME Term SOFR Administrator" shall mean CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

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

"Collateral" shall mean a collective reference to the collateral which is identified in, and at any time will be covered by, the Security Documents and any other property or assets of a Credit Party, whether tangible or intangible, that may from time to time secure the Credit Party Obligations; provided that there shall be excluded from the Collateral (a) any account, instrument, chattel paper or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person, (b) any lease in which the lessee is a Sanctioned Person and (c) Excluded Assets (as defined in the Security Agreement).

"Commitment" shall mean the Revolving Commitments, the Letter of Credit Commitment, the Initial Term Loan Commitments and the Swingline Commitment, individually or collectively, as appropriate.

"Commitment Fees" shall have the meaning set forth in Section 2.5(a).

"Commitment Percentage" shall mean the Revolving Commitment Percentage and/or the Term Loan Commitment Percentage, as appropriate.

"Commitment Period" shall mean (a) with respect to Revolving Loans and Swingline Loans, the period from and including the Closing Date to but excluding the Revolving Maturity Date and (b) with respect to Letters of Credit, the period from and including the Closing Date to but excluding the date that is thirty (30) days prior to the Revolving Maturity Date.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Commonly Controlled Entity" shall mean an entity, whether or not incorporated, which is under common control with the Lead Borrower within the meaning of Section 4001(b)(1) of ERISA or is part of a group which includes the Lead Borrower and which is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 412 of the Code to the extent required by such Section, Section 414(m) or 414(o) of the Code.

"Communications" shall have the meaning set forth in Section 9.2(d).

"Company" shall have the meaning set forth in the recitals hereto.

"Company Material Adverse Effect" shall have the meaning set forth in the Acquisition Agreement.

"Company Refinancing" has the meaning set forth in the recitals.

"Competitor" shall mean any operating company competitor of the Lead Borrower, the Company or any of their respective Subsidiaries that is in the same or a substantially similar line of business as the Lead Borrower, the Company or any of their respective Subsidiaries.

"Compliance Certificate" has the meaning assigned to such term in Section 5.2(a).

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

"Consolidated" shall mean, when used with reference to financial statements or financial statement items of the Lead Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

"Consolidated Cash Interest Expense" shall mean, with respect to any Test Period, all cash interest expense, net of cash interest income, with respect to all outstanding Indebtedness of the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis, including all cash fees accruing on the face amount of letters of credit and bankers' acceptance financing and net cash costs (less net cash payments) under Hedging Agreements (other than in connection with early termination thereof), but excluding, for the avoidance of doubt, any non-cash interest expense and any capitalized interest, whether paid or accrued.

"Consolidated EBITDA" shall mean, with respect to any Person for any Test Period, without duplication, (a) Consolidated Net Income for such Test Period plus (b) the sum of the following to the extent, except in the case of clause (b)(v)(B) below, deducted in calculating Consolidated Net Income for such Test Period: (i) Consolidated Interest Expense for such Test Period, (ii) tax expense (including, without limitation, any federal, state, local and foreign income and similar taxes) of the Lead Borrower and its Restricted Subsidiaries for such Test Period, (iii) depreciation and amortization expense of the Lead Borrower and its Restricted Subsidiaries for such Test Period and, to the extent they do not result in a cash charge or expense in any future period, any other non-cash charges and expenses, including amortization of goodwill and debt issue costs for such Test Period, (iv) upfront cash payments in respect of any Hedging Agreement made in such Test Period, and (v) in each case to the extent calculated in good faith by the Lead Borrower, (A) any charges, costs or expenses incurred pursuant to launches of new products (but excluding any research and development expenses), and (B) "run-rate" cost-savings, operating expense reductions and cost synergies related to (x) the Transactions and (y) after the Closing Date, any Permitted Acquisition, other acquisition or asset disposition, operating improvement, restructuring, cost savings initiative, any similar initiative and/or specified transaction that are projected in good faith by the Lead Borrower to result from actions that have been taken, or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Lead Borrower) within 24 months of the Closing Date

(with respect to the Transactions) or such Permitted Acquisition, other acquisition or asset disposition, operating improvement, restructuring, cost savings initiative, similar initiative and/or specified transaction, as applicable, net of the amount of actual benefits realized during such Test Period from such transactions or actions, provided that (1) the aggregate amount added back to Consolidated Net Income in calculating Consolidated EBITDA during any Test Period pursuant to this clause (v) shall not cumulatively exceed 35% of the Consolidated EBITDA in such Test Period and (2) the aggregate amount added back to Consolidated Net Income in calculating to Consolidated EBITDA during any Test Period pursuant to clause (B) above shall not exceed 20% of Consolidated EBITDA in such Test Period (in the case of each such cap, calculated after giving Pro Forma Effect to such amounts), minus (c) non-cash charges previously excluded in calculating Consolidated Net Income or previously added back to Consolidated Net Income in calculating Consolidated EBITDA, in each case, to the extent such non-cash charges have become cash charges during such Test Period minus (d) to the extent included in the calculation of Consolidated Net Income, any other non-recurring, non-cash gains during such Test Period.

Notwithstanding the foregoing, prior to the Acquisition Closing Date, Consolidated EBITDA for the Lead Borrower and its Restricted Subsidiaries for the fiscal quarters ended September 30, 2023 through June 30, 2024 shall be deemed to be the Consolidated EBITDA amount set forth below opposite the applicable fiscal quarter, in each case (without duplication) as may be adjusted on a Pro Forma Basis:

Fiscal Quarter Ended	Consolidated EBITDA
September 30, 2023	$41,177,229.00
December 31, 2023	$35,103,061.00
March 31, 2024	$42,913,992.00
June 30, 2024	$38,661,099.00

and upon the occurrence of the Acquisition Closing Date, Consolidated EBITDA for the Lead Borrower and its Restricted Subsidiaries for the fiscal quarters ended September 30, 2023 through June 30, 2024 shall be deemed to be the Consolidated EBITDA amount set forth below opposite the applicable fiscal quarter, in each case (without duplication) as may be adjusted on a Pro Forma Basis:

Fiscal Quarter Ended	Consolidated EBITDA
September 30, 2023	$52,248,729.00
December 31, 2023	$46,241,561.00
March 31, 2024	$51,056,492.00
June 30, 2024	$50,648,599.00

"Consolidated Funded Debt" shall mean, as of any date of determination, Funded Debt of the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis.

"Consolidated Interest Expense" shall mean, with respect to any Test Period, all interest expense (excluding amortization of debt discount and premium, but including the interest component under Capital Leases and synthetic leases, tax retention operating leases, off-balance sheet loans and similar off-balance sheet financing products) for such Test Period of the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis, excluding any interest paid or payable with respect to discontinued operations and any

upfront fees in connection with the issuance or amendment of Indebtedness and any agent fees and expenses in connection with the issuance or amendment of any Indebtedness.

"Consolidated Net Income" shall mean, with respect to any Test Period, the net income (excluding extraordinary losses and gains) of the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis for such Test Period, all as determined in accordance with GAAP; provided that, in calculating Consolidated Net Income:

(a) the net income of any Person that is not the Lead Borrower or a Restricted Subsidiary (including, without limitation, the net income of any joint venture investments), will be included only to the extent of the amount of cash dividends or cash distributions received by the Lead Borrower or a Restricted Subsidiary in respect thereof during such Test Period;

(b) fees and reasonable and documented out-of-pocket expenses incurred in connection with the negotiation, execution and delivery on the Closing Date of the Credit Documents and consummation on the Closing Date and the Acquisition Closing Date of the Transactions shall be excluded;

(c) non-recurring transaction costs, fees, expenses and charges incurred in connection with Permitted Acquisitions, any other acquisitions, any Dispositions, any Equity Issuance or any issuance of Indebtedness (whether or not such transaction was completed), in each case, permitted hereunder shall be excluded;

(d) non-cash deductions or charges attributable to purchase accounting adjustments made in accordance with GAAP shall be excluded;

(e) non-cash charges incurred during such Test Period with respect to stock based compensation to employees and directors of the Lead Borrower and its Restricted Subsidiaries shall be excluded;

(f) the amount of (i) any non-recurring restructuring charge, reserve, integration cost or other business optimization expense or cost that is deducted in such Test Period, including charges directly related to implementation of cost-savings initiatives (including, without limitation, severance, retention, signing bonuses, relocation, recruiting and other employee related costs) and (ii) extraordinary, unusual or non-recurring losses shall, in each case, be excluded;

(g) any provision for the reduction in carrying value of assets (excluding depreciation and amortization expense but including deferred Tax assets) recorded in accordance with GAAP shall be excluded;

(h) any non-cash losses resulting from mark to market activity shall be excluded;

(i) the amount of any expenses, charges or losses for such Test Period that are covered by indemnification or other reimbursement provisions in connection with any Permitted Acquisition, any other acquisition, Investment, Restricted Payment, Equity Issuance, issuance of Indebtedness or Disposition, in each case, permitted hereunder, so long as the Lead Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and such amount is actually reimbursed within 365 days of such date of determination (it being understood that to the extent not actually received within such 365-

day period, such proceeds shall be deducted in the applicable future periods when calculating Consolidated Net Income) shall be excluded;

(j) gains and losses from the sale or exchange of assets outside the ordinary course of business and gains and losses from early extinguishment of Indebtedness or Hedging Agreements of the Lead Borrower and its Restricted Subsidiaries shall be excluded; and

(k) non-cash gains, charges and losses in respect of foreign currency exchange shall be excluded.

"Consolidated Total Assets" shall mean, as of any date of determination, the amount that would be set forth opposite the caption "total assets" (or any like caption) in the most recent Consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries in accordance with GAAP.

"Contingent Payments" shall mean additional consideration to be paid by the Lead Borrower or any Restricted Subsidiary for any Registration that has been previously acquired or that may be acquired by any such Person, in each case, in accordance with the terms of this Agreement, that is payable out of a portion of net sales, net profits or other sales-based milestone with respect to the acquired Registration; provided that the foregoing shall not include any royalty payments or obligations.

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

"Contribution Indebtedness" shall mean unsecured Indebtedness of the Lead Borrower or any other Credit Party in an amount equal to 100% of cash proceeds received after the Closing Date by the Lead Borrower in exchange for Qualified Equity Interests of the Lead Borrower (other than Specified Equity Contributions) to the extent such amounts shall not be counted for purposes of the Available Amount basket; provided that the maturity date of any Contribution Indebtedness shall be no earlier than the Latest Maturity Date of any Class of Loans or Commitments.

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

"Convertible Notes" shall mean senior unsecured debt of the Lead Borrower in an aggregate principal amount of up to $316,250,000, in the form of 2.25% convertible senior notes due 2029, to be issued by the Lead Borrower on or about the date hereof.

"Convertible Notes Indenture" shall mean the indenture governing the Convertible Notes.

"Corresponding Tenor" with respect to any Available Tenor shall mean, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Copyright Licenses" shall mean any agreement, whether written or oral, providing for the grant by or to a Person of any right under any Copyright.

"Copyrights" shall mean all copyrights in all Works, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States,

any state thereof or any other country or any political subdivision thereof, or otherwise and all renewals thereof.

"Covered Entity" shall mean any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" shall have the meaning set forth in Section 9.27.

"Credit Agreement Refinancing Indebtedness" shall mean Indebtedness in the form of (A) one or more new term loan facilities (each, a "Refinancing Term Facility") and/or one or more revolving credit facilities (each, a "Refinancing Revolving Facility") and/or (B) one or more additional series of senior unsecured notes or loans or senior secured notes or loans that will be (x) solely in the case of notes, secured by Liens that are *pari passu* with the Liens securing the Loans (but without regard to the control of remedies), (y) secured on a junior lien or "silent" subordinated basis to the Liens securing the Loans and to the obligations under any senior secured notes described in the immediately preceding clause (x) or (z) unsecured (such notes or loans described in this clause (B), "Refinancing Notes"), incurred, issued or otherwise obtained in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Term Loans, outstanding Revolving Loans or Revolving Commitments hereunder (including any successive Credit Agreement Refinancing Indebtedness) ("Refinanced Debt"); provided that (i) such Credit Agreement Refinancing Indebtedness (including, if such Credit Agreement Refinancing Indebtedness includes any Revolving Commitments, the unused portion of such Revolving Commitments) is in an original aggregate principal amount not greater than the aggregate principal amount of the Refinanced Debt (and, in the case of Refinanced Debt consisting, in whole or in part, of unused Revolving Commitments, the amount thereof), plus any fees, premiums, original issue discount, accrued interest and penalties associated therewith and fees, costs and expenses related thereto, (ii) such Credit Agreement Refinancing Indebtedness (x) does not mature earlier than the Latest Maturity Date of such Refinanced Debt and does not have a Weighted Average Life to Maturity shorter than the Weighted Average Life to Maturity applicable to such Refinanced Debt, (iii) such Credit Agreement Refinancing Indebtedness shall not be guaranteed by any Person that is not a Credit Party (unless such Person shall substantially concurrently become a Credit Party hereunder pursuant to Section 5.10), (iv) if secured, such Indebtedness (x) is not secured by any assets not securing the Obligations (unless such assets shall substantially concurrently become a part of the Collateral) and (y) is subject to a customary intercreditor agreement reasonably satisfactory to the Administrative Agent and the Lead Borrower, (v) the other terms and conditions (excluding pricing, interest rate margins, interest rate floors, discounts, fees, rate floors, premiums, maturity and prepayment or redemption terms), if not substantially consistent with the terms of such Refinanced Debt or are (taken as a whole) more favorable to the lenders or holders providing such Credit Agreement Refinancing Indebtedness, are as otherwise reasonably satisfactory to the Administrative Agent (it being understood that (A) terms not substantially consistent with such Refinanced Debt that are applicable only after the Latest Maturity Date at such time will be deemed to be satisfactory to the Administrative Agent, (B) terms contained in such Credit Agreement Refinancing Indebtedness that are, taken as a whole, more favorable to the lenders or the agent of such Credit Agreement Refinancing Indebtedness and are substantially concurrently conformed (or added) to the Credit Documents for the benefit of the lenders under such Refinanced Debt or the Administrative Agent, as applicable, will be deemed to be satisfactory

to the Administrative Agent and (C) terms contained in such Credit Agreement Refinancing Indebtedness that reflect then current market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by the Lead Borrower in good faith) will be deemed to be satisfactory to the Administrative Agent) (provided that, to the extent that any financial maintenance covenant is added for the benefit of such Credit Agreement Refinancing Indebtedness, no consent shall be required from the Administrative Agent or any of the Lenders if such financial maintenance covenant is either (a) also added for the benefit of the Lenders under the Credit Documents or (b) only applicable after the Latest Maturity Date at such time), (vi) such Refinanced Debt shall be repaid, defeased or satisfied and discharged, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid with the proceeds of, and substantially concurrently with the incurrence of, such Credit Agreement Refinancing Indebtedness; provided that, to the extent that such Refinanced Debt consists, in whole or in part, of Revolving Commitments or Other Revolving Commitments, (i) such Revolving Commitments shall be permanently reduced or terminated, as applicable, and all accrued fees in connection therewith shall be paid with the proceeds of, and substantially concurrently with the incurrence of, such Credit Agreement Refinancing Indebtedness and (ii) the Revolving Lenders under (x) the remaining outstanding Revolving Commitments and Revolving Loans and (y) such Credit Agreement Refinancing Indebtedness shall share on a pro rata basis in the payment, repayment, borrowing, participation and commitment reductions under such remaining outstanding Revolving Commitments and Revolving Loans and such Credit Agreement Refinancing Indebtedness, (vii) any Refinancing Revolving Facility shall not mature (or require permanent commitment reductions) prior to the Latest Maturity Date of any Refinanced Debt consisting, in whole or in part, of Revolving Commitments or Other Revolving Commitments, (viii) any Credit Agreement Refinancing Indebtedness that is (x) *pari passu* with the Initial Term Loans in right of payment and with respect to security may provide for the ability to participate (1) on a pro rata basis, less than pro rata basis or greater than pro rata basis in any voluntary prepayments and (2) on a pro rata basis or less than pro rata basis (or greater than pro rata basis with respect to prepayments constituting permitted refinancings) in any mandatory prepayments, in each case, of the Term Loans and (y) junior to the Initial Term Loans in right of payment or with respect to security may provide for the ability to participate on a less than pro rata basis in any voluntary and/or mandatory prepayments of the Term Loans, but shall not be on a pro rata or greater than pro rata basis; provided that any unsecured Credit Agreement Refinancing Indebtedness shall not share in any voluntary or mandatory prepayments of the Term Loans and (ix) (x) if such Refinanced Debt was contractually subordinated to the Term Loans in right of payment or security, such Credit Agreement Refinancing Indebtedness shall be contractually subordinated to the Term Loans on terms that are substantially the same (in all material respects) (or, if junior secured, also may be unsecured) and (y) if such Refinanced Debt was unsecured, such Credit Agreement Refinancing Indebtedness shall be unsecured. In connection with the incurrence of any Credit Agreement Refinancing Indebtedness, the applicable Lenders shall assign their Loans and Commitments to lenders under the applicable Credit Agreement Refinancing Indebtedness as required by the Lead Borrower.

"Credit Documents" shall mean this Agreement, each of the Notes, any Joinder Agreement, the Letters of Credit, LOC Documents and the Security Documents and all other agreements, documents, certificates and instruments delivered to the Administrative Agent or any Lender by any Credit Party in connection therewith (other than any Hedging Agreement or agreement, document, certificate or instrument related to a Bank Product).

"Credit Party" shall mean any of the Borrowers or any of the Guarantors.

"Credit Party Obligations" shall mean, without duplication, (a) the Obligations and (b) for purposes of the Guaranty, the Security Documents and all provisions under the other Credit Documents relating to the Collateral, the sharing thereof and/or payments from proceeds of the Collateral, all Bank Product Debt, but in all cases excluding Excluded Swap Obligations.

"Cure Expiration Date" has the meaning set forth in Section 5.9(c).

"Daily Simple SOFR" shall mean, for any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, a "SOFR Determination Date") that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Lead Borrower. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Date, SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Date will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website.

"Debt Issuance" shall mean the issuance of any Indebtedness by the Lead Borrower or any of its Restricted Subsidiaries (excluding any Equity Issuance or any Indebtedness of the Lead Borrower or any Restricted Subsidiary permitted to be incurred hereunder).

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

"Default" shall mean any of the events specified in Section 7.1, whether or not any requirement for the giving of notice or the lapse of time, or both or any other condition, has been satisfied.

"Default Rate" shall mean (a) when used with respect to the Obligations, other than Letter of Credit Fees, an interest rate equal to (i) for ABR Loans (A) the Alternate Base Rate plus (B) the Applicable Margin applicable to ABR Loans plus (C) 2.00% per annum and (ii) for Term Benchmark Loans, (A) Adjusted Term SOFR Rate plus (B) the Applicable Margin applicable to Term Benchmark Loans plus (C) 2.00% per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin applicable to Letter of Credit Fees plus 2.00% per annum and (c) when used with respect to any other fee or amount due hereunder, a rate equal to (A) the Alternate Base Rate plus (B) the Applicable Margin applicable to ABR Loans plus (C) 2.00% per annum.

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

"Defaulting Lender" shall mean, subject to Section 2.21(b), any Lender that, (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Lead Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Lead Borrower, the Administrative Agent or any Issuing Lender or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has

made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Lead Borrower, to confirm in writing to the Administrative Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(b)) upon delivery of written notice of such determination to the Lead Borrower, each Issuing Lender, each Swingline Lender and each Lender.

"Designated Non-Cash Consideration" shall mean the Fair Market Value of non-cash consideration received by the Lead Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to Section 6.4(a)(xi) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Lead Borrower, setting forth the basis of such valuation (which amount will be reduced by the Fair Market Value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition).

"Disposition" shall mean, with respect to any Person, a dissolution, liquidation or winding up of its affairs, or sale, transfer, lease or disposition of its property or assets. For purposes of clarification, the issuance, sale, assignment, transfer or other disposition by any Person of Equity Interests in itself (or rights with respect thereto) will not be deemed a Disposition by such Person. For the avoidance of doubt, none of (w) the issuance or sale of any Convertible Notes by the Lead Borrower, (x) the sale of any Permitted Warrant Transaction by the Lead Borrower, (y) the purchase or early termination or unwind (whether pursuant to its terms or otherwise) of any Permitted Bond Hedge Transaction or (z) the performance by the Lead Borrower and/or any of its Subsidiaries of the Lead Borrower's or such Subsidiary's obligations under any Convertible Notes, any Permitted Warrant Transaction or any Permitted Bond Hedge Transaction, shall constitute a "Disposition".

"Disqualified Equity Interest" shall mean, with respect to any Person, any Equity Interest issued by such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) either mandatorily or at the option of the holder thereof or upon the happening of any event or condition:

(a) matures or is mandatorily redeemable (other than (i) solely for Equity Interests issued by such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests and (ii) to the extent such Equity Interests become mandatorily redeemable following such

Person providing notice of an optional redemption), whether pursuant to a sinking fund obligation or otherwise;

(b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for Indebtedness or Equity Interests (other than solely for Equity Interests issued by such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests); or

(c) is redeemable or is required to be repurchased by such Person, in whole or in part, at the option of the holder thereof (in each case other than solely for Equity Interests issued by such Person that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests);

in each case, on or prior to the date 91 days after the Latest Maturity Date (determined at the time of the issuance of such Equity Interests); provided that (i) an Equity Interest issued by any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of an "asset sale" or a "change of control" shall not constitute a Disqualified Equity Interest if the payment upon such redemption or repurchase is contractually subordinated in right of payment to the Obligations or such Equity Interest provides that the issuer thereof will not redeem any such Equity Interest pursuant to such provisions prior to the Latest Maturity Date or any such requirement is subject to the prior occurrence of the Latest Maturity Date, (ii) if an Equity Interest issued by any Person is issued pursuant to any plan for the benefit of employees, officers, directors, managers, members of management or consultants of the Lead Borrower or any of its Subsidiaries or by any such plan to such Persons, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by the Lead Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations of such Person and (iii) no Equity Interest held by any future, present or former employee, officer, director, manager, member of management or consultant (or their respective Affiliates or immediate family members) of the Lead Borrower or any of its Subsidiaries shall be considered a Disqualified Equity Interest because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

"Disqualified Lenders" shall mean (i) any Person designated by the Lead Borrower as a "Disqualified Lender" by written notice delivered to the Administrative Agent on or prior to the date hereof, (ii) those Persons who are Competitors identified in writing by the Lead Borrower to the Administrative Agent from time to time and (iii) any subsidiaries or Affiliates of any Person so designated or identified pursuant to clause (i) or (ii) above (other than Affiliates that are bona fide debt funds or fixed income investors that are engaged in making or purchasing commercial loans in the ordinary course of business that would not be a Competitor or other Disqualified Lender but for this clause (iii)) that are either (x) separately identified in writing by the Lead Borrower from time to time or (y) clearly identifiable on the basis of similarity of such subsidiary's or Affiliate's name; provided that any additional designation, modification or deletion permitted by the foregoing shall not apply (x) retroactively to any prior assignment to any Lender or Participant and (y) until three Business Days following receipt of such list by the Administrative Agent from the Lead Borrower. For the purposes of clauses (ii) and (iii) above and the final sentence of this definition, such list and updates shall be made available to the Administrative Agent via email to JPMDQ_Contact@jpmorgan.com. The Disqualified Lenders shall be identified to the Lenders by the Administrative Agent (which may be in the form of notice posted to the Platform). Disqualified Lenders shall exclude any Person that the Lead Borrower has designated as no longer being a "Disqualified Lender" by written notice delivered to the Administrative Agent from time to time.

"Dollars" and "$" shall mean dollars in lawful currency of the United States of America.

"Domestic Subsidiary" shall mean any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

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

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

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

"Electronic Signature" shall mean an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Eligible Assignee" shall mean any Person that meets the requirements to be an assignee under Sections 9.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 9.6(b)(iii)).

"Eligible Equity Proceeds" shall mean the Net Cash Proceeds from the sale or issuance of any Qualified Equity Interests of the Lead Borrower or from any capital contributions in respect of Qualified Equity Interests of the Lead Borrower to the extent such Net Cash Proceeds or capital contributions are directly or indirectly contributed to, and actually received by, the Lead Borrower (excluding, for the avoidance of doubt, any Specified Equity Contributions or any equity proceeds used to incur Contribution Indebtedness).

"Environmental Laws" shall mean any and all applicable foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirement of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health as it relates to Materials of Environmental Concern or the environment, as now or may at any time be in effect during the term of this Agreement.

"Equity Interests" shall mean (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general, preferred or limited), (d) in the case of a limited liability company, membership interests and (e) any other interest or participation that confers or could confer on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, without limitation, options, warrants and any other "equity security" as defined in Rule 3a11-1 of the Exchange Act. The term "Equity Interests" shall not include (i) any Indebtedness that is convertible into any such Equity Interests described above, (ii) the Convertible Notes, (iii) any Permitted Bond Hedge Transaction or (iv) any Permitted Warrant Transaction.

"Equity Issuance" shall mean any issuance by the Lead Borrower to any Person which is not the Lead Borrower or a Restricted Subsidiary of (a) shares or interests of its Equity Interests, (b) its Equity

Interests pursuant to the exercise of options or warrants or similar rights, (c) any shares or interests of its Equity Interests pursuant to the conversion of any debt securities to equity or (d) warrants or options or similar rights that are exercisable or convertible into shares or interests of its Equity Interests. The term "Equity Issuance" shall not include (i) any Equity Interests issued as consideration for a Permitted Acquisition for which there are no net cash proceeds, (ii) any Disposition, (iii) any Debt Issuance or (iv) any Permitted Bond Hedge Transaction or Permitted Warrant Transaction.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Plan" shall mean, as of any date of determination, any employee benefit plan which is covered by Title IV of ERISA and in respect of which the Lead Borrower or any Restricted Subsidiary or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Erroneous Payment" has the meaning set forth in Section 8.20(a).

"Erroneous Payment Deficiency Assignment" has the meaning set forth in Section 8.20(d)(i). "Erroneous Payment Impacted Class" has the meaning set forth in Section 8.20(d)(i).

"Erroneous Payment Return Deficiency" has the meaning set forth in Section 8.20(d).

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

"Event of Default" shall mean any of the events specified in Section 7.1; provided, however, that any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Subsidiary" shall mean (a) subject to Section 8.11(b), any Subsidiary that is not a Wholly Owned Subsidiary of the Lead Borrower on the Closing Date or, if later, the date such non-Wholly Owned Subsidiary first becomes a Restricted Subsidiary, in each case, for so long as such Subsidiary is not a Wholly Owned Subsidiary, (b) any Subsidiary to the extent the provision of the Guaranty could reasonably be expected to result in material adverse tax consequences to the Lead Borrower or to any of its direct or indirect owners, as determined in good faith by the Lead Borrower with the Administrative Agent, (c) any Subsidiary that is prohibited by applicable law, rule, regulation or by any Contractual Obligations existing on the Closing Date (or, if acquired after the Closing Date and so long as such prohibition is not incurred in contemplation of such acquisition, the date such Subsidiary is acquired) from guaranteeing the Credit Party Obligations or which would require Governmental Authority (including regulatory) consent, approval, license, authorization or prior notice to provide the Guaranty unless such consent, approval, license or authorization has been received or such notice has been provided and any waiting period applicable to such notice has expired without adverse action by the applicable regulatory authority (it being understood that there shall be no obligation to obtain such consent, approval, license or authorization or provide such notice), (d) any not-for-profit subsidiaries, (e) any captive insurance companies, (f) any Subsidiary that is a CFC, (g) any Subsidiary of a CFC, (h) any FSHCO, (i) any Immaterial Subsidiary, (j) any Unrestricted Subsidiary, and (k) any other Subsidiary if the Lead Borrower and the Administrative Agent reasonably determine the cost and/or burden of obtaining the Guaranty from such Subsidiary outweigh the benefit to the Lenders.

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

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Lead Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.16(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" has the meaning set forth in the recitals to this Agreement.

"Existing Revolver Borrowing" shall have the meaning set forth in Section 2.23(b)(ii).

"Existing Term Loan Borrowing" shall have the meaning set forth in Section 2.23(b)(i).

"Extended Loans" shall have the meaning set forth in Section 2.23(b)(ii).

"Extended Revolving Commitments" shall have the meaning set forth in Section 2.23(b)(ii).

"Extended Revolving Loans" shall have the meaning set forth in Section 2.23(b)(ii).

"Extended Term Loans" shall have the meaning set forth in Section 2.23(b)(i).

"Extending Revolving Lender" shall have the meaning set forth in Section 2.23(b)(iii).

"Extending Term Lender" shall have the meaning set forth in Section 2.23(b)(iii).

"Extension" shall mean the establishment of Extended Loans by amending Loans and/or Commitments pursuant to Section 2.23.

"Extension Amendment" shall have the meaning set forth in Section 2.23(b)(iv).

"Extension Election" shall have the meaning set forth in Section 2.23(b)(iii).

"Extension of Credit" shall mean, as to any Lender, the making of a Loan by such Lender, any conversion of a Loan from one Type to another Type, any extension of any Loan or the issuance, extension or renewal of a Letter of Credit or Swingline Loan by such Lender.

"Extension Minimum Condition" shall mean a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Revolver Extension Request or Term Loan Extension Request (as applicable), in the Lead Borrower's sole discretion) of any or all applicable Classes be submitted for Extension.

"Extension Request" shall mean a Revolver Extension Request or Term Loan Extension Request, as applicable.

"Extraordinary Receipt" shall mean (a) the sum of any cash received by or paid to or for the account of any Person not in the ordinary course of business for casualty, condemnation or similar event, insurance proceeds, condemnation awards and similar payments, minus (b) the sum of all fees, costs, expenses and other indemnity payments paid or payable by the Lead Borrower and its Restricted Subsidiaries in connection with such event (including attorney's fees, investment banking fees, survey costs, title insurance premiums and related search and recording charges, transfer Taxes, deed or mortgage recording Taxes, underwriting discounts and commissions, other customary expenses and brokerage, consultant, accountant and other customary professional and transactional fees).

"Fair Market Value" shall mean, with respect to any property, assets or obligations, the fair market value thereof as reasonably determined by the Lead Borrower in good faith.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"FDA" shall mean the United States Food and Drug Administration and any successor thereto.

"Federal Funds Effective Rate" shall mean, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Board" shall mean the Board of Governors of the Federal Reserve System or any successor thereto.

"Fee Letter" shall mean the fee letter, dated August 13, 2024, between the Lead Borrower and JPMorgan Chase Bank, N.A., as amended, restated, amended and restated, extended, replaced, supplemented or otherwise modified from time to time.

"Financial Covenants" shall have the meaning set forth in Section 5.9(b).

"First Lien Net Leverage Ratio" shall mean, as of any date of determination, for the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis, the ratio of (a) Consolidated Funded Debt on such date that is secured by Liens on any assets of the Lead Borrower or any of its Restricted Subsidiaries other

than Liens that are expressly subordinated to the Liens securing the Credit Party Obligations (net of Unrestricted Cash in an aggregate amount of up to $100,000,000) to (b) Consolidated EBITDA for the most recently ended Test Period.

"Fixed Basket" shall mean any category of exceptions, thresholds, baskets, or other provisions in this Agreement based on a fixed dollar amount and/or percentage of Consolidated EBITDA.

"Floor" shall mean, with respect to any Benchmark, 0.00% per annum.

"Foreign Lender" shall mean a Lender that is not a U.S. Person.

"Foreign Subsidiary" shall mean any Subsidiary that is not a Domestic Subsidiary.

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

"ESHCO" shall mean any Domestic Subsidiary substantially all of the assets of which are capital stock of one or more CFCs but only so long as such Domestic Subsidiary does not guarantee any indebtedness of any "United States person".

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

"Funded Debt" shall mean, with respect to any Person, without duplication, all Indebtedness of such Person set forth in clauses (a) (excluding any such Indebtedness owed to the Lead Borrower or any of its Restricted Subsidiaries), (b) (excluding any such Indebtedness owed to the Lead Borrower or any of its Restricted Subsidiaries), (h) and, to the extent drawn and not cash collateralized or reimbursed, (j) of the definition of "Indebtedness" and all purchase money Indebtedness (including all unconditional Guaranty Obligations of such Person with respect to such Indebtedness).

"GAAP" shall mean generally accepted accounting principles in effect in the United States of America (or, in the case of Foreign Subsidiaries with significant operations outside the United States of America, generally accepted accounting principles in effect from time to time in their respective jurisdictions of organization or formation) applied on a consistent basis, subject, however, to the provisions of Section 1.3.

"Government Acts" shall have the meaning set forth in Section 2.17(a).

"Government Obligations" shall have the meaning set forth in the definition of "Cash Equivalents."

"Governmental Authority" shall mean the government of the United States of America 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).

"Guarantors" shall mean (i) the Domestic Subsidiaries of the Lead Borrower that are, or may from time to time become, parties to this Agreement (including each Subsidiary Borrower) and (ii) with respect to the Credit Party Obligations of the Subsidiary Borrowers, the Lead Borrower.

"Guaranty" shall mean the guaranty of the Guarantors set forth in Article X.

"Guaranty Obligations" shall mean, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (c) to lease or purchase property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"Health Care Laws" shall mean the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the federal Food, Drug & Cosmetic Act (21 U.S.C. §§ 301 et seq.), the federal Controlled Substances Act (21 U.S.C. § 801 et seq.), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d et seq.) ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"), the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8), Medicare average sales price reporting (42 U.S.C. § 1395w-3a), the Public Health Service Act (42 U.S.C. § 256b), the federal TRICARE program (10 U.S.C. §1071 et seq.), the VA Federal Supply Schedule (38 U.S.C. § 8126), and the regulations promulgated pursuant to such laws, each as amended from time to time.

"Hedging Agreements" shall mean, with respect to any Person, any agreement entered into to protect such Person against fluctuations in interest rates, or currency or raw materials values, including, without limitation, any interest rate swap, cap or collar agreement or similar arrangement between such Person and one or more counterparties, any foreign currency exchange agreement, currency protection agreements, commodity purchase or option agreements or other interest or exchange rate hedging agreements; provided, that neither any Permitted Bond Hedge Transaction nor any Permitted Warrant Transaction shall constitute a Hedging Agreement.

"HIPAA" shall have the meaning set forth in the definition of "Health Care Laws."

"Historical Financial Statements" shall mean (a) the audited Consolidated balance sheet and related audited Consolidated statements of income, stockholders' equity and cash flows of the Lead Borrower for the fiscal years ended December 31, 2022 and December 31, 2023, (b) the unaudited Consolidated balance sheets and related unaudited Consolidated statements of income, stockholders' equity and cash flows of the Lead Borrower for each fiscal quarter ended after the date of the most recent audited financial statements delivered pursuant to clause (a) above, and ended at least 45 days prior to the Closing Date (the financial

statements in clause (a) above and this clause (b), collectively, the "Borrower Historical Financial Statements"), (c) the audited Consolidated balance sheet and related audited Consolidated statements of income, stockholders' equity and cash flows of the Company for the fiscal years ended December 31, 2022 and December 31, 2023 and (d) the unaudited Consolidated balance sheets and related unaudited consolidated statements of income, stockholders' equity and cash flows of the Company for each fiscal quarter ended after the date of the most recent audited financial statements delivered pursuant to clause (c) above, and ended at least 45 days prior to the Closing Date.

"HITECH" shall have the meaning set forth in the definition of "Health Care Laws."

"Immaterial Subsidiary" shall mean any Subsidiary that is not a Material Subsidiary.

"Included Products" shall mean any and all drug products that, as of the Closing Date, the Lead Borrower or any of the Restricted Subsidiaries sells, offers for sale, imports, promotes, markets, distributes or otherwise commercializes (or possesses the rights to sell, offer for sale, import, promote, market, distribute or otherwise commercialize) anywhere.

"Incremental Equivalent Debt" shall have the meaning set forth in Section 2.22(g)(B).

"Incremental Facilities" shall have the meaning set forth in Section 2.22(b)(i).

"Incremental Facility Increase Amount" shall have the meaning set forth in Section 2.22(f)(2).

"Incremental Facility Amendment" shall have the meaning set forth in Section 2.22(e).

"Incremental Revolving Commitment Percentage" shall mean, for any Incremental Revolving Lender, the percentage identified as its Incremental Revolving Commitment Percentage in the Incremental Facility Amendment pursuant to which such Lender became an Incremental Revolving Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

"Incremental Revolving Lender" shall have the meaning set forth in Section 2.22(a)(ii)(B)(i).

"Incremental Starter Basket" shall have the meaning set forth in Section 2.22(f)(1)(ii).

"Incremental Term Facility" shall have the meaning set forth in Section 2.22(b)(i).

"Incremental Term Lender" shall have the meaning set forth in Section 2.22(a)(ii)(C).

"Incremental Term Facility Commitment Percentage" shall mean, for any Incremental Term Lender, the percentage identified as its Incremental Term Facility Commitment Percentage in the Incremental Facility Amendment pursuant to which such Lender became an Incremental Term Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

"Incremental Unlimited Prong" shall have the meaning set forth in Section 2.22(f)(2).

"Incurrence-Based Basket" shall mean any category of exceptions, thresholds, baskets, or other provisions in this Agreement based on complying (including on a Pro Forma Basis) with any financial ratio (including the First Lien Net Leverage Ratio and/or the Total Net Leverage Ratio).

"Indebtedness" shall mean, with respect to any Person, 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, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations (including, without limitation, earnout obligations) of such Person incurred, issued or assumed as the deferred purchase price of property or services purchased by such Person (other than (i) trade debt or accounts payable incurred in the ordinary course of business, (ii) purchase price adjustments, earnouts, holdbacks and other similar deferred consideration payable in connection with acquisitions and (iii) deferred or equity compensation arrangements payable to directors, officers, employees, advisors, consultants or other providers of services) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Guaranty Obligations of such Person with respect to Indebtedness of another Person, (h) the principal portion of all Capital Lease Obligations plus any accrued interest thereon, (i) all net obligations of such Person under Hedging Agreements, (j) the maximum amount of all letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (k) [Reserved], (l) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product plus any accrued interest thereon, (m) all obligations of any partnership or unincorporated joint venture to the extent such Person is liable therefor as a result of such Person being a general partner or a joint venturer thereof, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor and (n) obligations of such Person under non-compete agreements to the extent such obligations are quantifiable contingent obligations of such Person under GAAP principles. For all purposes hereof, the Indebtedness of the Lead Borrower and its Restricted Subsidiaries shall exclude intercompany liabilities arising from their cash management, tax and accounting operations and intercompany loans, advances or Indebtedness. "Indebtedness" shall not include the obligations or liabilities of any Person to pay rent or other amounts with respect to any lease of office space (or other arrangement conveying the right to use office space), which obligations (i) would be required to be classified and accounted for as an operating lease under GAAP as existing prior to December 31, 2018 or (ii) would be required to be classified and accounted for as a Capital Lease Obligation at any time due to build-to-suit accounting rules, "failed" sale and leaseback accounting rules, other lease classification rules or other similar rules so long as such obligations are not entered into for a financing purpose, are unsecured (other than the provision of any letters of credit required to support such obligations), and do not otherwise constitute "Indebtedness" pursuant to clauses (a), (b), (c) or (d) above. Notwithstanding the foregoing, the obligations of the Lead Borrower or any Subsidiary under any Permitted Warrant Transaction shall not constitute Indebtedness of the Lead Borrower or any Subsidiary so long as the terms of such Permitted Warrant Transaction provide for "net share settlement" (or substantially equivalent term) as the default "settlement method" (or substantially equivalent term) thereunder. For purposes of this Agreement, the amount of any Convertible Notes shall be the aggregate stated principal amount thereof without giving effect to any obligation to pay cash or deliver shares with value in excess of such principal amount, and without giving effect to any integration thereof with any Permitted Bond Hedge Transaction pursuant to U.S. Treasury Regulation § 1.1275-6.

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

"Indemnitee" shall have the meaning set forth in Section 9.5(b).

"Information" shall have the meaning set forth in Section 9.14.

"Initial Revolving Commitment Percentage" shall mean, for any Revolving Lender, the percentage identified as its Revolving Commitment Percentage on Schedule 2.1(a), or in the Assignment and Assumption pursuant to which such Lender became a Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

"Initial Term Loan" shall have the meaning set forth in Section 2.2(a)(i).

"Initial Term Loan Commitment" shall mean, with respect to each Initial Term Loan Lender, the commitment of such Initial Term Loan Lender to make an Initial Term Loan in a principal amount of up to the amount set forth opposite its name on Schedule 2.1(a). The aggregate amount of the Initial Term Loan Commitments on the Closing Date is $325,000,000.

"Initial Term Loan Commitment Percentage" shall mean, for any Initial Term Loan Lender, the percentage identified as its Initial Term Loan Commitment Percentage on Schedule 2.1(a), or in the Assignment and Assumption pursuant to which such Lender became a Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

"Initial Term Loan Facility" shall have the meaning set forth in Section 2.2(a)(i).

"Initial Term Loan Lender" shall mean a Lender holding an Initial Term Loan Commitment or an Initial Term Loan.

"Insolvency" shall mean, with respect to any Multiemployer Plan, the condition that such ERISA Plan is insolvent within the meaning of such term as used in Section 4245 of ERISA.

"Intellectual Property" shall mean, collectively, all Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses of the Lead Borrower and its Restricted Subsidiaries, all goodwill associated therewith and all rights to sue for infringement thereof.

"Intercompany Debt" shall have the meaning set forth in Section 9.19.

"Interest Coverage Ratio" shall mean, for any Test Period, the ratio of (i) Consolidated EBITDA for such Test Period to (ii) Consolidated Cash Interest Expense for such Test Period.

"Interest Payment Date" shall mean (a) as to any ABR Loan (other than a Swingline Loan), the last Business Day of each March, June, September and December and on the applicable Maturity Date, (b) as to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the applicable Maturity Date, (c) as to any Term Benchmark Loan having an Interest Period of three months or less, (1) the last day of such Interest Period and (2) the applicable Maturity Date, (d) as to any Term Benchmark Loan having an Interest Period longer than three months, (1) each three month anniversary following the first day of such Interest Period, (2) the last day of such Interest Period and (3) the applicable Maturity Date, (e) as to any Loan which is the subject of a mandatory prepayment required pursuant to Section 2.7(b), the date on which such mandatory prepayment is due and (f) as to any Swingline Loan, the date that such Loan is repaid (or required to be repaid) and the applicable Maturity Date.

"Interest Period" shall mean, with respect to any Term Benchmark Borrowing,

(a) initially, the period commencing on the Borrowing Date or conversion date, as the case may be, with respect to such Term Benchmark Borrowing and ending one, three or six months thereafter, as selected by the Lead Borrower in the Notice of Borrowing or Notice of Conversion/Extension given with respect thereto; and

(b) thereafter, each period commencing on the last day of the immediately preceding Interest Period applicable to such Term Benchmark Borrowing and ending one, three or six months thereafter, as selected by the Lead Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that the foregoing provisions are subject to the following:

(i) if any Interest Period pertaining to a Term Benchmark Borrowing would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period pertaining to a Term Benchmark Borrowing that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month;

(iii) if the Lead Borrower shall fail to give notice as provided above, the Lead Borrower shall be deemed to have selected a Term Benchmark Borrowing with an Interest Period of one month;

(iv) no Interest Period in respect of any Term Benchmark Borrowing shall extend beyond the applicable Maturity Date; and

(v) no more than ten (10) Term Benchmark Borrowings may be in effect at any time.

"Investment" shall mean (a) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of Equity Interests, other ownership interests or other securities of any Person or bonds, notes, debentures or all or substantially all of the assets of any Person, (b) any deposit with, or advance, loan or other extension of credit to, any Person (other than deposits made in the ordinary course of business) or (c) any other capital contribution to or investment in any Person, including, without limitation, any Guaranty Obligation (including any support for a letter of credit issued on behalf of such Person) incurred for the benefit of such Person.

"IRS" shall mean the United States Internal Revenue Service.

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

"Issuing Lender" shall mean each of JPMorgan Chase Bank, N.A., Regions Bank, The Huntington National Bank and Bank of America, N.A., each in its capacity as an issuer of Letters of Credit hereunder, or such other or additional Lenders as may be designated by the Lead Borrower and approved by the

Administrative Agent; provided that each such Lender has agreed to be an Issuing Lender, together with any permitted successor thereto.

"Issuing Lender Fees" shall have the meaning set forth in Section 2.5(c).

"Joinder Agreement" shall mean a Joinder Agreement in substantially the form of Exhibit 1.1(c), executed and delivered by an Additional Credit Party in accordance with the provisions of Section 5.10.

"Junior Financing" shall mean (a) any Indebtedness that constitutes Subordinated Debt or (b) Indebtedness secured by a Lien on the Collateral that is junior to the Lien securing the Initial Term Loans.

"Latest Maturity Date" shall mean, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Other Term Loan, any Other Term Commitment, any Other Revolving Loan or any Other Revolving Commitment, in each case, established in accordance with this Agreement from time to time.

"LCT Election" shall have the meaning set forth in Section 1.5(d).

"LCT Test Date" shall have the meaning set forth in Section 1.5(d).

"Lenders" shall mean the Persons listed on Schedule 2.1(a) and any other Person that shall have become party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context requires otherwise, the term "Lenders" includes the Swingline Lender.

"Letter of Credit" shall mean any letter of credit issued by an Issuing Lender pursuant to the terms hereof, as such letter of credit may be amended, modified, restated, extended, renewed, increased, replaced or supplemented from time to time in accordance with the terms of this Agreement.

"Letter of Credit Commitment" shall mean, as to any Issuing Lender, such Issuing Lender's commitment to issue Letters of Credit with an aggregate face amount at any one time outstanding of up to the amount set forth opposite such Issuing Lender's name on Schedule 2.1(a) or, with respect to any Person that becomes an Issuing Lender after the Closing Date, in the agreement pursuant to which such Person became an Issuing Lender. The aggregate amount of the Letter of Credit Commitments on the Closing Date is $10,000,000.

"Letter of Credit Facing Fee" shall have the meaning set forth in Section 2.5(c).

"Letter of Credit Fee" shall have the meaning set forth in Section 2.5(b).

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, (a) any conditional sale or other title retention agreement and any Capital Lease having substantially the same economic effect as any of the foregoing and (b) the filing of, or the agreement to give, any UCC financing statement).

"Limited Condition Transaction" shall mean (i) the Acquisition and (ii) an acquisition or an Investment (including the repayment, redemption or other discharge of Indebtedness of the target or any of its subsidiaries or other affiliates being acquired as a part of such acquisition or Investment), unconditional

and irrevocable permitted repayment or redemption of, or offer to purchase, any Indebtedness or Restricted Payment (including the incurrence of Indebtedness in connection with any of the foregoing) whose consummation is not conditioned on the availability of, or on obtaining, third party financing (it being understood that such commitment may be subject to conditions precedent (including diligence and regulatory conditions), which conditions precedent may be amended, satisfied or waived in accordance with the terms of the applicable agreement).

"Loan" shall mean a Revolving Loan, an Initial Term Loan, a Swingline Loan, an Incremental Term Facility, an Other Term Loan, and/or an Other Revolving Loan, as appropriate.

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

"LOC Obligations" shall mean, at any time, the sum of (a) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (b) the aggregate amount of all drawings under Letters of Credit honored by any Issuing Lender but not theretofore reimbursed.

"Mandatory LOC Borrowing" shall have the meaning set forth in Section 2.3(e).

"Mandatory Swingline Borrowing" shall have the meaning set forth in Section 2.4(b)(ii)(D).

"Material Acquisition" shall mean any Permitted Acquisition (or other acquisition permitted by this Agreement that would be a Permitted Acquisition except for the requirements of clause (iv) of such definition) the aggregate consideration for which (including earn-out obligations, seller debt, Indebtedness assumed in connection therewith and any other consideration therefor) is in excess of $100,000,000.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, results of operations, property, assets or financial condition of the Lead Borrower and its Restricted Subsidiaries taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Credit Documents when such payment obligations are due under this Agreement or any other Credit Document or (c) the validity or enforceability of this Agreement or any of the other Credit Documents, the Administrative Agent's Liens (for the benefit of the Secured Parties) on the Collateral or the priority of such Liens as contemplated by the Credit Documents or the rights or remedies of the Administrative Agent or the Lenders under the Credit Documents.

"Material Intellectual Property" shall mean any Intellectual Property owned (or licensed on an exclusive basis) by the Lead Borrower or any Restricted Subsidiary that, in the good faith determination of the Lead Borrower, is material to the business of the Lead Borrower and its Restricted Subsidiaries, taken as a whole (whether owned as of the Closing Date or thereafter acquired).

"Material Subsidiary" shall mean each Restricted Subsidiary that, as of the last day of the most recent fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date of determination and/or for the Test Period ending on such date, had Consolidated revenues or Consolidated Total Assets in excess of 5% of the aggregate Consolidated revenues or Consolidated Total Assets, as applicable, of the Lead Borrower and its Restricted Subsidiaries, on a Consolidated basis, as of such date and/or for such Test Period; provided that, in the event that the

aggregate Consolidated revenues or Consolidated Total Assets, as applicable, of all Immaterial Subsidiaries, taken together, as of the last day of any fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date of determination and/or for the Test Period ending on such date, exceeds 10% of the aggregate Consolidated revenues or Consolidated Total Assets, as applicable, of the Lead Borrower and its Restricted Subsidiaries, on a Consolidated basis, as of such date and/or for such Test Period, the Lead Borrower shall designate one or more Immaterial Subsidiaries to be a Material Subsidiary as may be necessary such that the foregoing 10% aggregate limit shall not be exceeded, and any such Subsidiary shall thereafter be deemed to be a Material Subsidiary hereunder; provided further that the Lead Borrower may re-designate Material Subsidiaries as Immaterial Subsidiaries so long as the Lead Borrower is in compliance with this definition.

"Materials of Environmental Concern" shall mean any gasoline or petroleum (including crude oil or any extraction thereof) or petroleum products or any pollutants, contaminants, hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, perchlorate, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date" shall mean the Term Maturity Date and/or the Revolving Maturity Date, as the context requires.

"Minimum Collateral Amount" shall mean, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of all Issuing Lenders with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the Issuing Lenders in their sole discretion

"Modified Amortization Percentage" shall mean, as of any date of determination, with respect to any Incremental Term Facilities that constitute part of the same Class as the Initial Term Loans, a percentage equal to a fraction, the numerator of which is the principal amount of the next scheduled amortization payment required to be made pursuant to Section 2.2(a)(ii) after such date (excluding any such amortization payment that has been reduced in whole or in part by the application of a prepayment hereunder), and the denominator of which is the aggregate principal amount of Initial Term Loans that is outstanding as of such date (without giving effect to the incurrence of Incremental Term Facilities constituting part of the same Class as the Initial Term Loans to be made on such date, but, for the avoidance of doubt, to include any Incremental Term Facilities constituting part of the same Class as the Initial Term Loans incurred prior to such date if such Incremental Term Facilities are to be fungible with the Initial Term Loans).

"Moody's" shall mean Moody's Investors Service, Inc.

"Multiemployer Plan" shall mean an ERISA Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Proceeds" shall mean the aggregate cash proceeds received by the Lead Borrower or any Restricted Subsidiary in respect of any Asset Disposition, Equity Issuance, Debt Issuance or Extraordinary Receipt, net of (a) reasonable and customary direct costs (including, without limitation, legal, accounting and investment banking fees, underwriting discounts, principal, interest and prepayment or penalty amounts of any Indebtedness that is secured by applicable assets (unless secured by Liens ranking pari passu or junior to the Liens securing the Obligations) and that is required to be repaid and sales commissions) associated therewith and paid to Persons who are not Restricted Subsidiaries or their Affiliates, (b) amounts held in escrow to be applied as part of the purchase price of any Asset Disposition, (c) taxes paid or reasonably estimated to be payable as a result thereof and (d) amounts retained by or paid to parties having superior rights to such proceeds; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash received upon the sale or other disposition of any non-cash

consideration received by the Lead Borrower or any Restricted Subsidiary in any Asset Disposition, Debt Issuance or Extraordinary Receipt and any cash released from escrow as part of the purchase price in connection with any Asset Disposition, to the extent not used to replace any asset, as permitted herein.

"Non-Consenting Lender" shall have the meaning set forth in Section 9.1(f).

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

"Note" or "Notes" shall mean the Revolving Loan Notes, the Term Loan Notes and/or the Swingline Loan Note, collectively, separately or individually, as appropriate.

"Notice of Borrowing" shall mean a request for a Revolving Loan borrowing pursuant to Section 2.1(b)(i), an Initial Term Loan borrowing pursuant to Section 2.2(a), a Swingline Loan borrowing pursuant to Section 2.4(b)(i), an Incremental Term Facility borrowing or Revolving Facility Increase, as applicable, pursuant to Section 2.22, or any other request for a Loan borrowing pursuant hereto, as appropriate, in each case, in the form provided to the Lead Borrower by the Administrative Agent.

"Notice of Conversion/Extension" shall mean the written notice of conversion of a Term Benchmark Borrowing to an ABR Borrowing or an ABR Borrowing to a Term Benchmark Borrowing, or a continuation of a Term Benchmark Borrowing for a new Interest Period, in each case, in the form provided to the Lead Borrower by the Administrative Agent.

"NYFRB" shall mean the Federal Reserve Bank of New York.

"NYFRB Rate" shall mean, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" shall mean the rate for a federal funds transaction quoted at 11:00 a.m. (New York City time) on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"NYFRB's Website" shall mean the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Obligations" shall mean, collectively, all of the obligations, Indebtedness and liabilities of the Credit Parties, whenever arising, under this Agreement or any of the other Credit Documents, including principal, interest, fees, costs, charges, expenses, professional fees, reimbursements, all sums chargeable to the Credit Parties or for which any Credit Party is liable as an indemnitor and whether or not evidenced by a note or other instrument and indemnification obligations and other amounts (including, but not limited to, any interest accruing after the occurrence of a filing of a petition of bankruptcy under the Bankruptcy Code with respect to any Credit Party, regardless of whether such interest is an allowed claim under the Bankruptcy Code). In no event shall the Obligations include any Excluded Swap Obligations. In addition, for the avoidance of doubt, any obligation under any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction shall not constitute Obligations.

"OFAC" shall mean the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Operating Lease" shall mean, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time) of any property (whether real, personal or mixed) which is not a Capital Lease other than any such lease in which that Person is the lessor.

"Organizational Documents" shall mean, with respect to any Person, the charter, articles or certificate of organization or incorporation (or equivalent thereof) and bylaws or other organizational or governing documents of such Person. In the event that any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Original Fee Letter" shall mean the fee letter, dated June 21, 2024, between the Lead Borrower, JPMorgan Chase Bank, N.A. and Blackstone Alternative Credit Advisors LP, as amended, restated, amended and restated, extended, replaced, supplemented or otherwise modified from time to time.

"Original Indebtedness" shall have the meaning set forth in the definition of "Permitted Refinancing."

"Other Applicable Indebtedness" shall have the meaning set forth in Section 2.7(b)(vii)(B).

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

"Other Parties" shall have the meaning set forth in Section 10.7(c).

"Other Revolving Commitment Percentage" shall mean, for any Lender, the percentage identified as its Other Revolving Commitment Percentage in the Refinancing Amendment pursuant to which such Lender provided Credit Agreement Refinancing Indebtedness, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

"Other Revolving Commitments" shall mean, with respect to each Lender, the commitment, if any, of such Lender to provide Credit Agreement Refinancing Indebtedness in the form of a revolving credit facility pursuant to a Refinancing Amendment, as the same may be reduced or increased from time to time in accordance with this Agreement.

"Other Revolving Loans" shall mean any revolving loans made under an Other Revolving Commitment established pursuant to a Refinancing Amendment.

"Other Taxes" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

"Other Term Commitment Percentage" shall mean, for any Lender, the percentage identified as its Other Term Commitment Percentage in the Refinancing Amendment pursuant to which such Lender provided Credit Agreement Refinancing Indebtedness, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

"Other Term Commitments" shall mean, with respect to each Lender, the commitment, if any, of such Lender to provide Credit Agreement Refinancing Indebtedness in the form of a term loan facility

pursuant to a Refinancing Amendment, as the same may be reduced or increased from time to time in accordance with this Agreement.

"Other Term Loans" shall mean any term loans made under an Other Term Commitment established pursuant to a Refinancing Amendment.

"Overnight Bank Funding Rate" shall mean, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Participant" shall have the meaning specified in Section 9.6(d).

"Participant Register" shall have the meaning specified in Section 9.6(d).

"Participation Interest" shall mean a participation interest purchased by a Revolving Lender in LOC Obligations as provided in Section 2.3(c) and in Swingline Loans as provided in Section 2.4.

"Patent Licenses" shall mean any agreement, whether written or oral, providing for the grant by or to a Person of any right to manufacture, use or sell any invention covered by a Patent.

"Patents" shall mean (a) all letters patent of the United States or any other country, now existing or hereafter arising, and all improvement patents, reissues, reexaminations, patents of additions, renewals and extensions thereof and (b) all applications for letters patent of the United States or any other country and all provisionals, divisions, continuations and continuations-in-part and substitutes thereof.

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

"Payment Event of Default" shall mean an Event of Default specified in Section 7.1(a).

"Payment Notice" shall have the meaning set forth in Section 8.20(b)(x).

"Payment Recipient" has the meaning set forth in Section 8.20(a).

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

"Permitted Target Indebtedness" shall mean (a) Indebtedness of the Company and its Subsidiaries set forth on Schedule 1.1(c) hereto, (b) Indebtedness of the Company and its Subsidiaries that is permitted to remain in effect on and after the Acquisition Closing Date pursuant to the terms of the Acquisition Agreement as in effect on the Closing Date and (c) ordinary course capital leases, purchase money Indebtedness and deferred purchase price obligations of the Company and its Subsidiaries that are outstanding on the Acquisition Closing Date.

"Perfection Certificate" shall mean a certificate substantially in the form of Exhibit 1.1(b).

"Perfection Requirements" shall mean the filing of a Uniform Commercial Code financing statement or, with respect to the Lead Borrower and its Subsidiaries that are Credit Parties, the delivery of

stock certificates (and related stock powers); provided that such stock certificates or equivalent certificates of the Company and its Subsidiaries will only be required to be delivered on the Acquisition Closing Date to the extent that such stock certificates or equivalent certificates are in the Lead Borrower's actual possession on the Acquisition Closing Date after its use of commercially reasonable efforts to obtain them and will otherwise be delivered pursuant to Section 5.15(e).

"Permit" shall mean, with respect to any Person, any permit, approval, consent, clearance, authorization, license, registration, accreditation, certificate, certification, certificate of need, concession, grant, franchise, variance or permission from, and any other contractual obligation with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all Registrations and all Health Care Laws.

"Permitted Acquisition" shall mean an acquisition or any series of related acquisitions by the Lead Borrower or any Restricted Subsidiary of (a) all or substantially all of the assets or a majority of the outstanding Voting Stock or economic interests of a Person, (b) a Person by a merger, amalgamation or consolidation or any other combination with such Person or (c) any division, line of business or other business unit (including new drug applications or abbreviated new drug applications, together with associated inventory in the ordinary course of business) of a Person (such Person or such division, line of business or other business unit of such Person shall be referred to herein as the "Target"), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Lead Borrower and its Restricted Subsidiaries pursuant to Section 6.3, in each case so long as:

(i) subject to the provisions of Section 1.5 with respect to Limited Condition Transactions, no Event of Default shall then exist or would exist after giving effect thereto;

(ii) after giving effect to such acquisition on a Pro Forma Basis, the Lead Borrower is in compliance with the Financial Covenants as of the last day of the most recently ended Test Period (subject to the provisions of Section 1.5 with respect to Limited Condition Transactions);

(iii) subject to the provisions of Section 1.5 with respect to Limited Condition Transactions, the Administrative Agent, on behalf of the Secured Parties, shall have received (or shall receive in connection with the closing of such acquisition) a first priority perfected security interest in all property, subject to any Permitted Liens (including, without limitation, Equity Interests) acquired with respect to the Target in accordance with the terms of Sections 5.10 and 5.12, in each case, within the time periods required thereby; and

(iv) the aggregate amount of consideration paid by the Lead Borrower and its Restricted Subsidiaries since the Closing Date for (i) the Equity Interests of any Person that does not become a Guarantor and (ii) in the case of an asset acquisition, assets that are not acquired by a Borrower or any Guarantor, when taken together with the total consideration for all such Persons and assets so acquired after the Closing Date, shall not exceed the greater of $54,000,000 and 30.0% of Consolidated EBITDA for the most recently ended Test Period.

"Permitted Bond Hedge Transaction" shall mean any bond hedge, call or capped call option (or substantively equivalent derivative transaction) relating to the Lead Borrower's common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Lead Borrower) purchased by the Lead Borrower or any Subsidiary in connection with the issuance of

any Convertible Notes and settled in common stock of the Lead Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Lead Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Lead Borrower, including as may be amended or replaced from time to time, including through a novation of the counterparty thereto; provided, that the purchase of any such Permitted Bond Hedge Transaction is made with, and the purchase price thereof less the proceeds received by the Lead Borrower from the sale of any substantially concurrently executed Permitted Warrant Transaction, does not exceed the net proceeds received by the Lead Borrower or any Subsidiary in connection with the issuance of any Convertible Notes; provided further, that the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by the Lead Borrower in good faith).

"Permitted Investments" shall have the meaning set forth in Section 6.5.

"Permitted Liens" shall have the meaning set forth in Section 6.2.

"Permitted Refinancing" shall mean, with respect to any Indebtedness (the "Original Indebtedness"), any modification, refinancing, refunding, replacement, renewal or extension of such Original Indebtedness; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Original Indebtedness so modified, refinanced, refunded, replaced, renewed or extended except by an amount equal to unpaid accrued interest, penalties and premiums (including tender premiums) plus other amounts and fees (including commitment, underwriting, arrangement and similar fees, other reasonable and customary fees), commissions and expenses incurred, in connection with such modification, refinancing, refunding, replacement, renewal or extension (including upfront fees, original issue discount or initial yield payments), (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.1(c), Indebtedness resulting from such modification, refinancing, refunding, replaced, renewal or extension has a final maturity date equal to 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 Original Indebtedness being modified, refinanced, refunded, replaced, renewed or extended, (c) if the Original Indebtedness being modified, refinanced, refunded, replaced, renewed or extended is subordinated in right of payment to the Credit Party Obligations, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Credit Party Obligations on terms at least as favorable to the Lenders, taken as a whole, as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (d) if the Original Indebtedness being modified, refinanced, refunded, replaced, renewed or extended is secured on a subordinated or a junior basis to the Credit Party Obligations and/or subject to any intercreditor arrangements for the benefit of the Lenders, the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is secured and subject to intercreditor arrangements on terms at least as favorable to the Lenders, taken as a whole, as those contained in the documentation governing the Original Indebtedness being modified, refinanced, refunded, replaced, renewed or extended, (e) if the Original Indebtedness being modified, refinanced, refunded, replaced, renewed or extended is unsecured, the Indebtedness resulting from such modification, refinancing, refunding, replacement, renewal or extension is unsecured, (f) if the Indebtedness being modified, refinanced, refunded, renewed or extended is permitted pursuant to Section 6.1(b), Section 6.1(f) or Section 6.1(p), the covenants, events of default, security and guarantees of the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension are not, taken as a whole, materially less favorable to the Credit Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended (except for covenants or other provisions applicable exclusively to periods commencing after the Latest Maturity Date at the time such Indebtedness is incurred), and (g) the Indebtedness resulting from such modification, refinancing, refunding, replaced, renewal or extension shall not constitute an obligation (including pursuant to a

guarantee) of any Subsidiary that shall not have been (or, in the case of after-acquired Subsidiaries, shall not have been required to become pursuant to the terms of the Original Indebtedness) an obligor in respect of such Original Indebtedness. For the avoidance of doubt, it is understood that a Permitted Refinancing may constitute a portion of an issuance of Indebtedness in excess of the amount of such Permitted Refinancing; provided that such excess amount is otherwise permitted to be incurred under Section 6.1.

"Permitted Warrant Transaction" shall mean any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Lead Borrower's common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Lead Borrower) sold by the Lead Borrower substantially concurrently with any purchase by the Lead Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Lead Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Lead Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Lead Borrower; provided, that the terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by the Lead Borrower in good faith).

"Person" shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan Asset Regulations" shall mean 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Platform" shall mean Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar electronic transmission system chosen by the Administrative Agent to be its electronic transmission system.

"Pledge Agreement" shall mean the Pledge Agreement, dated as of the Closing Date, by the Credit Parties in favor of the Administrative Agent, for the benefit of the Secured Parties, as the same may from time to time be amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with the terms hereof and thereof.

"Preferred Equity Agreement" shall mean that certain Equity Commitment and Investment Agreement, dated as of March 8, 2021, by and between the Lead Borrower and Ampersand 2020 Limited Partnership, relating to the Lead Borrower's issuance of preferred stock designated as "Series A Convertible Preferred Stock".

"Prime Rate" shall mean the rate of interest last quoted by *The Wall Street Journal* as the "Prime Rate" in the U.S. or, if *The Wall Street Journal* ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Pro Forma Basis", "Pro Forma Compliance" or "Pro Forma Effect" shall mean, 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 1.4.

"Pro Forma Financial Statements" shall mean a pro forma Consolidated balance sheet and related pro forma Consolidated statement of income of the Lead Borrower for the trailing twelve-month period

ended on the last day of and for the fiscal quarter or fiscal year, as applicable, with respect to which the most recent financial statements were delivered pursuant to clauses (a) or (b) of the definition of Historical Financial Statements, as applicable, prepared immediately after giving effect to the Transactions, as if the Transactions had occurred as of such date (in the case of the balance sheet) or at the beginning of such period (in the case of the income statement), which need not be prepared in compliance with Regulation S-X of the Securities Act of 1933, as amended, or include adjustments for purchase accounting.

"Products" shall mean any item or any service that is designed, created, manufactured, managed, performed, or otherwise used, offered, or handled by or on behalf of the Lead Borrower or any of its Restricted Subsidiaries.

"Properties" shall have the meaning set forth in Section 3.10(a).

"Proposed Change" shall have the meaning set forth in Section 9.1(f).

"PTE" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Health Laws" shall mean all applicable Requirements of Law relating to the procurement, development, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, or promotion of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and similar state laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

"Qualified ECP Guarantor" shall mean, in respect of any Swap Obligation, each Guarantor that constitutes an "eligible contract participant" as defined under the Commodity Exchange Act or any regulations promulgated thereunder.

"Qualified Equity Interests" shall mean Equity Interests of any Person that are not Disqualified Equity Interests.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" shall have the meaning set forth in Section 9.27.

"Recipient" shall mean (a) the Administrative Agent, (b) any Lender or (c) any Issuing Lender, as applicable.

"Recovery Event" shall mean the receipt by the Lead Borrower or its Restricted Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective property or assets.

"Reference Time" with respect to any setting of the then-current Benchmark shall mean (i) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) U.S. Government Securities Business Days preceding the date of such setting, (ii) if, following a Benchmark Transition Event and a Benchmark Replacement Date with respect to the Term SOFR Rate, such Benchmark is Daily Simple SOFR, then four (4) U.S. Government Securities Business Days prior to such setting or (iii) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

"Refinanced Debt" shall have the meaning set forth in the definition of "Credit Agreement Refinancing Indebtedness."

"Refinancing Amendment" shall mean an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Lead Borrower executed by each of (a) the Borrowers, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.23.

"Refinancing Notes" shall have the meaning set forth in the definition of "Credit Agreement Refinancing Indebtedness."

"Refinancing Revolving Facility" shall have the meaning set forth in the definition of "Credit Agreement Refinancing Indebtedness."

"Refinancing Term Facility" shall have the meaning set forth in the definition of "Credit Agreement Refinancing Indebtedness."

"Register" shall have the meaning set forth in Section 9.6(c).

"Registrations" shall mean all Permits and exemptions issued or allowed by any Governmental Authority (including but not limited to new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, pharmacy registrations, and wholesale distributor permits) held by, or applied by contract to, the Lead Borrower or any of its Restricted Subsidiaries, that are required for the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of the Products of the Lead Borrower or any of its Restricted Subsidiaries.

"Regulatory Matters" shall mean, collectively, activities and Products that are subject to Public Health Laws.

"Reimbursement Obligation" shall mean the obligation of the Borrowers to reimburse any Issuing Lender pursuant to Section 2.3(d) for amounts drawn under Letters of Credit issued by such Issuing Lender.

"Related Parties" shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Relevant Governmental Body" shall mean the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or any successor thereto.

"Relevant Rate" shall mean (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

"Removal Effective Date" shall have the meaning set forth in Section 8.7(b).

"Reorganization" shall mean, with respect to any Multiemployer Plan, the condition that such ERISA Plan is in reorganization within the meaning of such term as used in Section 4241 of ERISA.

"Reportable Event" shall mean any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty-day notice period is waived under PBGC Reg. §4043.

"Required Lenders" shall mean, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders; provided that the Total Credit Exposure of any Defaulting Lender shall be excluded in determining Required Lenders**.**

"Required Revolving Lenders" shall mean, at any time, Revolving Lenders (other than Defaulting Lenders) having Revolving Credit Exposures and unused Revolving Commitments representing more than 50% of the aggregate Revolving Credit Exposures and unused Revolving Commitments at such time; provided, that the Revolving Credit Exposures and unused Revolving Commitments of Defaulting Lenders shall be excluded in the calculation of Required Revolving Lenders.

"Requirement of Law" shall mean, as to any Person, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority (in each case whether or not having the force of law); in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resignation Effective Date" shall have the meaning set forth in Section 8.7(a).

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

"Responsible Officer" shall mean, for any Credit Party, the chief executive officer, the president or chief financial officer of such Credit Party and any additional responsible officer that is designated as such to the Administrative Agent.

"Restricted Debt Payment" has the meaning assigned to such term in Section 6.9(b).

"Restricted Group Reporting Period" shall mean any fiscal quarter or fiscal year of the Lead Borrower if, as of the end of such period, the combined revenues of the Unrestricted Subsidiaries exceed 20% of the combined revenues of the Lead Borrower and its consolidated Subsidiaries for the four quarter period then ended.

"Restricted Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Lead Borrower or any of its Restricted Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Lead Borrower or any of its Restricted Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of the Lead Borrower or any of its Restricted Subsidiaries, now or hereafter outstanding, (d) the payment by the Lead Borrower or any of its Restricted Subsidiaries of any management, advisory or consulting fee to any Affiliate (excluding ordinary course investment banking fees and consulting fees) or (e) the payment of any extraordinary salary, bonus or other

form of compensation to any Person who is directly or indirectly a significant partner, shareholder or owner of any such Person, to the extent such extraordinary salary, bonus or other form of compensation is not included in the corporate overhead of the Lead Borrower or such Restricted Subsidiary. For the avoidance of doubt none of (x) any payments of cash and/or deliveries in shares of Equity Interests (or other securities and/or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) pursuant to the terms of, or otherwise in performance of its obligations under, or any repurchase and/or exchange of, any Convertible Notes (including, without limitation, making payments of interest, principal or premium thereon, making payments due upon required repurchase thereof and/or making payments and deliveries upon conversion or settlement thereof), (y) the purchase of any Permitted Bond Hedge Transaction or any payment, exercise thereof and/or settlement thereof according to its terms or (z) any payments of cash and/or deliveries of Equity Interests (or other securities or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) in connection with any Permitted Warrant Transaction (including in connection with any exercise and/or early unwind or settlement thereof whether according to the terms of such Permitted Warrant Transaction or otherwise) shall constitute a "Restricted Payment".

"Restricted Subsidiary" shall mean any Subsidiary other than an Unrestricted Subsidiary.

"Returns" shall mean, with respect to any Investment, any dividends, distributions, interest, fees, premiums, return of capital, repayment of principal, income, profits (from a Disposition or otherwise) and other amounts received or realized in respect of such Investment, including in connection with the disposition of such Investment.

"Revolver Extension Request" shall have the meaning set forth in Section 2.23(b)(ii).

"Revolver Extension Series" shall have the meaning set forth in Section 2.23(b)(ii).

"Revolving Commitment" shall mean, with respect to each Revolving Lender, the commitment of such Revolving Lender to make Revolving Loans in an aggregate principal amount at any time outstanding up to an amount equal to such Revolving Lender's Revolving Commitment Percentage as specified in Schedule 2.1(a), or in the Assignment and Assumption pursuant to which such Lender became a Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b), as such amount may be reduced from time to time in accordance with the provisions hereof.

"Revolving Commitment Percentage" shall mean the Initial Revolving Commitment Percentage, the Incremental Revolving Commitment Percentage and/or the Other Revolving Commitment Percentage.

"Revolving Credit Exposure" shall mean, as to any Revolving Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Revolving Lender's Applicable Percentage of the LOC Obligations and Swingline Loans at such time.

"Revolving Facility" shall mean the Revolving Commitments and the extensions of credit thereunder.

"Revolving Facility Increase" shall have the meaning set forth in Section 2.22(a)(i).

"Revolving Lender" shall mean, as of any date of determination, a Lender holding a Revolving Commitment, a Revolving Loan or a Participation Interest on such date.

"Revolving Loan Note" or "Revolving Loan Notes" shall mean the promissory notes of the Borrowers provided pursuant to Section 2.1(e) in favor of any of the Revolving Lenders evidencing the Revolving Loan provided by any such Revolving Lender pursuant to Section 2.1(a), individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"Revolving Loans" shall have the meaning set forth in Section 2.1(a).

"Revolving Maturity Date" shall mean (a) with respect to the Revolving Commitment established on the Closing Date (and Revolving Loans thereunder) and any Revolving Facility Increase established after the Closing Date (and Revolving Loans thereunder), the date that is five (5) years following the Closing Date; provided that if any Convertible Notes remains outstanding on the date that is 91 days prior to the final maturity date of the Convertible Notes, the Revolving Maturity Date pursuant to this clause (a) shall instead be such date unless (i) the Lead Borrower and its Restricted Subsidiaries have Unrestricted Cash on such date in an amount equal to at least the principal amount of the then-outstanding Convertible Notes or (ii) the average Daily VWAP (as defined in the Convertible Notes Indenture) of the common stock of the Lead Borrower for the most recently ended thirty (30) trading days immediately prior to such date is at least 120% of the then applicable Conversion Price (as defined in the Convertible Notes Indenture) and (b) with respect to any Other Revolving Commitment and Other Revolving Loans, the final maturity date specified in the applicable Refinancing Amendment (or, in each case, with respect to any Revolving Lender that has extended the maturity of its Revolving Commitment pursuant to Section 2.23(b), the extended maturity date set forth in the Revolver Extension Request delivered by the Lead Borrower and such Revolving Lender to the Administrative Agent pursuant to Section 2.23(b)); provided, however, if such date is not a Business Day, the Maturity Date shall be the next succeeding Business Day but, as to any specific Revolving Commitment, as the maturity of such Revolving Commitment shall have been extended by the holder thereof in accordance with the terms hereof.

"RFR Borrowing" shall mean, as to any Borrowing, the RFR Loans comprising such Borrowing.

"RFR Loan" shall mean a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

"Rule 2a-7" shall have the meaning set forth in the definition of "Cash Equivalents."

"S&P" shall mean S&P Global Ratings, a Standard & Poor's Financial Services LLC business, a subsidiary of S&P Global Inc., and any successor to its rating agency business.

"Sanctioned Jurisdiction" shall mean, at any time, a country, territory or geographical region which is itself the subject or target of any comprehensive or country/region-wide Sanctions (on the Closing Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" shall mean any Person with whom dealings are restricted or prohibited under Sanctions, including:

(a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or the U.S. Department of Commerce), the United Nations Security Council, the European Union or any of its member states, or His Majesty's Treasury of the United Kingdom;

(b) any Person organized or resident in, or any governmental entity or governmental instrumentality of, a Sanctioned Jurisdiction; or

(c) any Person fifty percent (50%) or more directly or indirectly owned in the aggregate by, or controlled by, any Person(s) described in clauses (a) or (b) hereof.

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state, (e) His Majesty's Treasury of the United Kingdom or (f) any other relevant sanctions authority.

"Sarbanes-Oxley" shall mean the Sarbanes-Oxley Act of 2002.

"SEC" shall mean the Securities and Exchange Commission or any successor Governmental Authority.

"Secured Parties" shall mean the Administrative Agent, the Lenders, the Bank Product Providers and the Indemnitees.

"Securities Act" shall mean the Securities Act of 1933, together with any amendment thereto or replacement thereof and any rules or regulations promulgated thereunder.

"Securities Laws" shall mean the Securities Act, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

"Security Agreement" shall mean the Security Agreement, dated as of the Closing Date, by the Credit Parties in favor of the Administrative Agent, for the benefit of the Secured Parties, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

"Security Documents" shall mean the Security Agreement, the Pledge Agreement and all other agreements, documents and instruments relating to, arising out of, or in any way connected with any of the foregoing documents or granting to the Administrative Agent, for the benefit of the Secured Parties, Liens or security interests to secure, *inter alia*, the Credit Party Obligations whether now or hereafter executed and/or filed, each as may be amended from time to time in accordance with the terms hereof, executed and delivered in connection with the granting, attachment and perfection of the Administrative Agent's security interests and liens arising thereunder, including, without limitation, UCC financing statements.

"Series A Convertible Preferred Stock" shall have the meaning set forth in the definition of Preferred Equity Agreement.

"Single Employer Plan" shall mean any ERISA Plan that is not a Multiemployer Plan.

"SOFR" shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" shall mean the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" shall mean the NYFRB's Website or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

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

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

"Specified Acquisition Agreement Representations" shall mean such of the representations made by or with respect to the Company and its subsidiaries in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Lead Borrower (or its Affiliates) have the right to terminate their respective obligations under the Acquisition Agreement to consummate the Acquisition (or the right to otherwise decline to consummate the Acquisition), as a result of the inaccuracy of such representations in the Acquisition Agreement.

"Specified Equity Contribution" shall have the meaning set forth in Section 5.9(c).

"Specified Event of Default" shall mean an Event of Default under Section 7.1(a) or Section 7.1(f).

"Specified Representations" shall mean the representations of the Credit Parties set forth in (i) Section 3.3(a) relating to organizational existence of the Credit Parties, (ii) Section 3.4 relating to the power and authority, due authorization, execution and delivery, and enforceability, in each case, related to entering into and performing their respective obligations under the Credit Documents, (iii) Section 3.5(b) relating to no conflicts with or violations of Organizational Documents related to the entering into and performing their respective obligations under the Credit Documents, (iv) Section 3.17, (v) Section 3.8, (vi) Section 3.27(a)(i), (vii) the second paragraph of Section 3.11, (viii) the first sentence of Section 3.7 and (ix) Section 3.25, subject in all respects to the limitations of the Perfection Requirements.

"Specified Transaction" shall mean any acquisition (including the commencement of activities constituting such business), other Investment, Disposition (including, in the case of Dispositions of business entities, the termination or discontinuance of activities constituting such business not in the ordinary course of business), issuance, incurrence, assumption or repayment of Indebtedness (including Indebtedness issued, incurred, assumed or repaid as a result of, or to finance, any relevant transaction and for which the financial effect is being calculated but excluding any Indebtedness incurred or prepaid under any existing revolving credit or line of credit for working capital purposes in the ordinary course unless accompanied by a permanent reduction of the commitments thereunder), Restricted Payment, subsidiary designation, merger and other business combinations, discontinuance of any subsidiary, constitution or Disposition of any line of business or division.

"Subordinated Debt" shall mean any Indebtedness incurred by the Lead Borrower or any Restricted Subsidiary which by its terms is specifically subordinated in right of payment to the prior payment of the Credit Party Obligations.

"Subsidiary" shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, limited liability company, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Lead Borrower.

"Subsidiary Borrower" shall mean the Initial Subsidiary Borrower and each Additional Subsidiary Borrower (if any).

"Supported QFC" shall have the meaning set forth in Section 9.27.

"Swap Obligations" shall mean, with respect to any Guarantor, an obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of § 1a(47) of the Commodity Exchange Act.

"Swingline Commitment" shall mean the commitment of the Swingline Lender to make Swingline Loans in an aggregate principal amount at any time outstanding up to the Swingline Committed Amount, and the commitment of the Revolving Lenders to purchase participation interests in the Swingline Loans as provided in Section 2.4(b)(ii), as such amounts may be reduced from time to time in accordance with the provisions hereof.

"Swingline Committed Amount" shall mean the amount of the Swingline Lender's Swingline Commitment as specified in Section 2.4(a).

"Swingline Lender" shall mean JPMorgan Chase Bank, N.A. (acting through such of its affiliates or branches as it deems appropriate), in its capacity as lender of Swingline Loans hereunder, or such other Lender as designated by the Lead Borrower and approved by the Administrative Agent; provided that such Lender has agreed to be a Swingline Lender, together with any permitted successor thereto.

"Swingline Loan" shall have the meaning set forth in Section 2.4(a).

"Swingline Loan Note" shall mean the promissory note of the Borrowers in favor of the Swingline Lender evidencing the Swingline Loans provided pursuant to Section 2.4(d), as such promissory note may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"Target" shall have the meaning set forth in the definition of "Permitted Acquisition".

"Taxes" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Benchmark" when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

"Term Loan" or "Term Loans" shall mean, individually or collectively, as the context requires, (a) the Initial Term Loans, (b) any Other Term Loans and/or (c) any Incremental Term Facilities.

"Term Loan Commitment" shall mean with respect to any Lender, (i) such Lender's Initial Term Loan Commitment, (ii) such Lender's Other Term Commitments, if any, and/or (iii) such Lender's commitments under any Incremental Term Facility.

"Term Loan Commitment Percentage" shall mean the Initial Term Loan Commitment Percentage, the Incremental Term Facility Commitment Percentage and/or the Other Term Commitment Percentage.

"Term Loan Extension Request" shall have the meaning set forth in Section 2.23(b)(i).

"Term Loan Extension Series" shall have the meaning set forth in Section 2.23(b)(i).

"Term Loan Facility" shall mean, individually or collectively, as the context requires, the Initial Term Loan Facility, the Incremental Term Facility and/or the facility under the Other Term Loans.

"Term Loan Lender" shall mean a Lender holding a Term Loan Commitment or a portion of the outstanding Term Loans.

"Term Loan Note" or "Term Loan Notes" shall mean the promissory notes of the Borrowers (if any) in favor of any of the Lenders evidencing the portion of the Initial Term Loan provided by any such Lender pursuant to Section 2.2(a), individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"Term Maturity Date" shall mean (a) with respect to the Initial Term Loans, the date that is five (5) years following the Closing Date; provided that if any Convertible Notes remain outstanding on the date that is 91 days prior to the final maturity date of the Convertible Notes, the Term Maturity Date with respect to the Initial Term Loans shall instead be such date unless (i) the Lead Borrower and its Restricted Subsidiaries have Unrestricted Cash on such date in an amount equal to at least the principal amount of the then-outstanding Convertible Notes or (ii) the average Daily VWAP (as defined in the Convertible Notes Indenture) of the common stock of the Lead Borrower for the most recently ended thirty (30) trading days immediately prior to such date is at least 120% of the then applicable Conversion Price (as defined in the Convertible Notes Indenture), (b) with respect to any Other Term Loans, the final maturity date specified in the applicable Refinancing Amendment, and (c) with respect to any Incremental Term Facilities, subject to Section 2.22, the final maturity date specified in the applicable Incremental Facility Amendment (or, in each case, with respect to any Term Loan Lender that has extended the maturity of its Term Loans pursuant to Section 2.23(b), the extended maturity date set forth in the Term Loan Extension Request delivered by the Lead Borrower and such Term Loan Lender to the Administrative Agent pursuant to Section 2.23(b)); provided, however, if such date is not a Business Day, the Maturity Date shall be the next succeeding Business Day.

"Term SOFR Determination Day" has the meaning assigned to it under the definition of Term SOFR Reference Rate.

"Term SOFR Rate" shall mean, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

"Term SOFR Reference Rate" shall mean, for any day and time (such day, the "Term SOFR Determination Day"), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government

Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

"Test Period" shall mean, as of any date of determination, the period of four consecutive fiscal quarters ending on such date for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date.

"Total Credit Exposure" shall mean, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and outstanding Term Loans of such Lender at such time.

"Total Net Leverage Ratio" shall mean, as of any date of determination, for the Lead Borrower and its Restricted Subsidiaries on a Consolidated basis, the ratio of (a) Consolidated Funded Debt on such date (net of Unrestricted Cash in an aggregate amount of up to $100,000,000) to (b) Consolidated EBITDA for the most recently ended Test Period.

"Trademark License" shall mean any agreement, whether written or oral, providing for the grant by or to a Person of any right to use any Trademark.

"Trademarks" shall mean (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with the goodwill associated therewith, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof and (b) all renewals thereof.

"Transaction Costs" shall have the meaning set forth in the definition of "Transactions."

"Transactions" shall mean (a) the execution and delivery of the Credit Documents on the Closing Date and the initial funding of the Loans hereunder, (b) the consummation of the Closing Date Refinancing, (c) the consummation of the Acquisition and other related transactions contemplated by the Acquisition Agreement on the Acquisition Closing Date and (d) the payment (or reimbursement) of all fees, closing payments, premiums, costs and expenses incurred in connection with the transactions described in the foregoing provisions of this definition, including to fund any original issue discount or upfront fees (the "Transaction Costs").

"Type" shall mean, as to any Loan, its nature as an ABR Loan, Term Benchmark Loan or RFR Loan, as the case may be.

"UCC" shall mean the Uniform Commercial Code from time to time in effect in any applicable jurisdiction.

"UK Financial Institution" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" shall mean the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unrestricted Cash" shall mean cash and Cash Equivalents of the Credit Parties (or, for purposes of clause (i) of the proviso to clause (a) in each of the definitions of "Revolving Maturity Date" and "Term Maturity Date", the Lead Borrower and its Restricted Subsidiaries), excluding cash and Cash Equivalents that are "restricted" (in accordance with GAAP) on the Consolidated balance sheet of the Lead Borrower and its Subsidiaries as of such date but including the aggregate amount of cash and Cash Equivalents restricted in respect of the Obligations.

"Unrestricted Subsidiary" shall mean any Subsidiary (other than a Borrower) designated by the Lead Borrower as an Unrestricted Subsidiary pursuant to Section 5.13 on or subsequent to the Closing Date.

"U.S. Borrower" shall mean any Borrower that is a U.S. Person.

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

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes" shall have the meaning set forth in Section 9.27.

"U.S. Tax Compliance Certificate" shall have the meaning set forth in Section 2.16(g)(ii)(B)(3)(x).

"Voting Stock" shall mean, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote may be or have been suspended by the happening of such a contingency.

"Weighted Average Life to Maturity" shall mean, 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 scheduled installment, sinking fund, serial maturity or other required payments of principal, including payment at final scheduled maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"Wholly Owned Subsidiary" shall mean, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than (a) directors' qualifying shares or (b) shares required by applicable Requirements of Law to be owned by a resident of the relevant jurisdiction) are, as of such date, owned, controlled or held by such Person or one or more Wholly Owned Subsidiaries of such Person or by such Person and one or more Wholly Owned Subsidiaries of such Person.

"Withholding Agent" shall mean any Credit Party and the Administrative Agent.

"Works" shall mean all works which are subject to copyright protection pursuant to Title 17 of the United States Code.

"Write-Down and Conversion Powers" shall mean, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2 **Other Definitional Provisions.**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, amended and restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.3 **Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the most recently delivered audited Consolidated financial statements of the Lead Borrower, except as otherwise specifically prescribed herein. Notwithstanding anything to the contrary contained herein, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Lead Borrower and its Restricted Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either the Lead Borrower or the

Required Lenders shall so request, the Administrative Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP without giving effect to such change therein and (ii) the Lead Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary in any Credit Document, it is understood and agreed that, for purposes of this Agreement and the other Credit Documents, the determination of whether a lease is required to be accounted for as a Capital Lease in the financial statements of any Person or for purposes of any financial covenants, basket amounts, ratios and definitions contained herein or in any other Credit Document or for any other purpose under the Credit Documents shall, in each case, be made by reference to GAAP as in effect on December 31, 2018, and any change in GAAP after December 31, 2018 that results in any lease which is, or would be, classified as an operating lease under GAAP as it exists on December 31, 2018 being classified as a Capital Lease or a financial lease, as applicable, under GAAP at any time thereafter (regardless of when such lease is entered into) shall be ignored for all purposes under the Credit Documents, including in respect of all financial covenants, basket amounts, ratios and definitions contained herein or in any other Credit Document.

Section 1.4 **Pro Forma Calculations.**

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio, the Interest Coverage Ratio and the Total Net Leverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA, shall be calculated in the manner prescribed by this Section 1.4; provided that notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.4, when calculating the First Lien Net Leverage Ratio and Interest Coverage Ratio for purposes of determining actual compliance (and not compliance on a Pro Forma Basis) with the Financial Covenants and the Applicable Margins, (A) the events described in this Section 1.4 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect and (B) when calculating any such ratio or test for purposes of the incurrence of any Indebtedness, such calculation shall be made without "netting" the cash proceeds of such Indebtedness. It being understood and agreed that, if any financial ratio, test or compliance with covenants determined by reference to Consolidated EBITDA or Consolidated Total Assets is required to be made prior to the first date upon which financial statements are required to be delivered (or are actually delivered, if earlier) pursuant to Section 5.1(a) or Section 5.1(b), as the case may be, such financial ratio, test or compliance with covenants determined by reference to Consolidated EBITDA or Consolidated Total Assets shall be made on a pro forma basis as of June 30, 2024.

(b) For purposes of calculating any financial ratios and tests, including the First Lien Net Leverage Ratio, the Interest Coverage Ratio and the Total Net Leverage Ratio and compliance with covenants determined by reference to Consolidated EBITDA, Specified Transactions (with any incurrence or repayment of any Indebtedness in connection therewith to be subject to clause (d) of this Section 1.4) that have been made (i) during the applicable Test Period or (ii) if applicable as described in clause (a) above, subsequent to the end of such Test Period and prior to or simultaneously 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 EBITDA and Consolidated Interest Expense and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (with the interest expense with respect to any Indebtedness that bears interest at a floating rate, for purposes of such pro forma calculation, being deemed to have an interest rate equal to the interest rate applicable thereto on the last day of the applicable Test Period or, if incurred following the last day of such Test Period, on the date of incurrence thereof). If since

the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Lead Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.4, then such financial ratio or test shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.4.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made (i) to take into account any fluctuations in cash or Permitted Investments on the balance sheet of the Lead Borrower and its Restricted Subsidiaries that have occurred since the end of the applicable Test Period and (ii) in good faith by a Responsible Officer of the Lead Borrower and may include, for the avoidance of doubt, any amounts that may otherwise be added back pursuant to clause (b)(v)(B) of the definition of Consolidated EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to such Test Period.

(d) In the event that the Lead Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness subject to paragraph (a), subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test (other than the First Lien Net Leverage Ratio for purposes of determining actual compliance with such Financial Covenant pursuant to Section 5.9(a)) shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period.

Section 1.5 **Limited Condition Transactions.**

Notwithstanding anything in this Agreement or any Credit Document to the contrary, for purposes of determining (a) Pro Forma Compliance with any financial ratio or financial test in the Credit Documents (other than determining actual compliance with the Financial Covenants), (b) the amount or availability of the Incremental Facility Increase Amount, Available Amount or any other basket in any Credit Document (including any basket based on Consolidated EBITDA or Consolidated Total Assets), (c) compliance with the representations and warranties (other than for purposes of borrowings under the Revolving Commitments) or (d) whether a Default or Event of Default has occurred and is continuing or would immediately result therefrom (other than for purposes of borrowings under the Revolving Commitments), in each case, in connection with the consummation of any Limited Condition Transaction, the date of determination shall, at the option of the Lead Borrower (the Lead Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), be the date the definitive agreements for such Limited Condition Transaction is entered into (the "LCT Test Date") immediately after giving Pro Forma Effect to such Limited Condition Transaction and all related acquisitions, Investments and other transactions entered into (or to be entered into) or consummated (or to be consummated) in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the most recently ended Test Period for which financial statements are required to be delivered (or are actually delivered, if earlier) immediately prior to the LCT Test Date; *provided*, that notwithstanding the foregoing, if the Lead Borrower has made such an LCT Election and if the proceeds of an Incremental Facility Increase Amount are to be used to finance a Limited Condition Transaction, then such financing may be subject to customary "SunGard" or "certain funds" conditionality and the representations and warranties required shall be limited to the Specified Representations and acquisition agreement representations and warranties (to the extent such acquisition agreement representations and warranties allow the Lead Borrower or its applicable Restricted Subsidiary to terminate its obligations under such acquisition agreement or not consummate such acquisition). For the avoidance of doubt, (x) if the Lead Borrower has made an LCT Election and if any of such ratios, baskets or amounts for which compliance was determined or tested as of the LCT Test Date are exceeded, or any representation or

warranty would be breached or any Default or Event of Default blocker would apply, as a result of fluctuations in such ratio, basket or amount (including due to fluctuations in Consolidated EBITDA of the Lead Borrower or the Person subject to such Limited Condition Transaction) or as a result of the occurrence of any Default or Event of Default or other event, in each case, at or prior to the consummation of the relevant Limited Condition Transaction, such ratios, baskets or amounts will be deemed not to have been exceeded as a result of such fluctuations, such representation or warranty shall be deemed not to have been breached, and such Default or Event of Default shall be deemed not to have occurred, in each case, solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken, and (y) such ratios, baskets or amounts shall not be tested at the time of consummation of such Limited Condition Transaction and all related acquisitions, Investments and other transactions entered into (or to be entered into) or consummated (or to be consummated) in connection therewith; provided that if the Lead Borrower has made an LCT Election, then in connection with any subsequent calculation of any ratio, basket or amount with respect to any other transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement (or, if applicable, the irrevocable notice or similar event) for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether (x) such subsequent transaction (other than with respect to Restricted Payments or Restricted Debt Payments) is permitted under the Loans, any such ratio, basket or amount shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and all related acquisitions, Investments and other transactions entered into (or to be entered into) or consummated (or to be consummated) in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (y) such subsequent Restricted Payments or Restricted Debt Payments are permitted under the Loans, any such ratio, basket or amount shall be required to be satisfied on a Pro Forma Basis both (1) assuming such Limited Condition Transaction and all related acquisitions, Investments and other transactions entered into (or to be entered into) or consummated (or to be consummated) in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (2) assuming such Limited Condition Transaction and all related acquisitions, Investments and other transactions entered into (or to be entered into) or consummated (or to be consummated) in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated.

Section 1.6 **Certain Determinations.**

(a) For purposes of determining compliance at any time with the provisions of this Agreement, in the event that any Indebtedness (excluding Indebtedness under this Agreement), together with any corresponding Lien, meets the criteria of more than one category of exceptions, thresholds, baskets, or other provisions of transactions or items permitted pursuant to any clause of Sections 6.1 or 6.2, the Lead Borrower, in its sole discretion, may, at any time, classify or reclassify (on one or more occasions) and/or divide or re-divide (on one or more occasions) such transaction or item (or portion thereof) among one or more such categories of exceptions, thresholds, baskets or provisions of transactions or items permitted pursuant to any clause of Sections 6.1 or 6.2, as elected by the Lead Borrower in its sole discretion. It is understood and agreed that any Indebtedness (including any Incremental Facilities), Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition or Affiliate transaction or other transaction need not be permitted solely by reference to one category of permissive exception, threshold, basket or provision under this Agreement, but may instead be permitted in part under any combination thereof.

(b) With respect to any amounts incurred or transactions entered into or consummated (including any Indebtedness (including any Incremental Facilities), Lien, Restricted Payment, Investment, Disposition or Affiliate transaction or other transaction), in reliance on a combination of Fixed Baskets and Incurrence-Based Baskets, it is understood and agreed that (i) the Incurrence-Based Baskets shall first be calculated without giving effect to any Fixed Baskets being relied upon for any portion of such incurrence

or transactions, (ii) thereafter, the incurrence of the portion of such amounts or other applicable transaction to be entered into in reliance on any Fixed Baskets shall be calculated (and Indebtedness (excluding any Incremental Facilities), together with any corresponding Lien, may subsequently be reclassified into Incurrence-Based Baskets in accordance with clause (a) above). In calculating the maximum amount of Indebtedness permitted to be incurred under Fixed Baskets and Incurrence-Based Baskets at the same time, only the portion of such Indebtedness intended to be incurred under Incurrence-Based Baskets shall be included in the calculation of financial ratios at the time of such initial calculation (and the portion of such Indebtedness intended to be incurred under Fixed Baskets shall be deemed to not have been incurred in calculating such financial ratios at the time of such initial calculation) and (iii) the incurrence of the portion of any such amount under the Fixed Baskets shall be included in any subsequent calculation of the Incurrence-Based Baskets to the extent outstanding at such time.

(c) Accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of Section 6.1.

(d) For purposes of determining compliance with Section 6.5, (i) the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less any amount paid, repaid, returned, distributed or otherwise received in cash in respect of such Investment and (ii) in the event that an Investment meets the criteria of any one of the categories described in Section 6.5 at the time such Investment is made, there shall not be any requirement for such Investment to meet any other category described in Section 6.5 at such time or thereafter.

Section 1.7 **Cashless Roll.**

Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Lead Borrower, the Administrative Agent and such Lender, and such extension, replacement, renewal or refinancing shall be deemed to comply with any requirement hereunder or any other Credit Document that such payment be made "in dollars", "in immediately available funds", "in cash" or any other similar requirement.

Section 1.8 **Calculation of Baskets.**

If any of the baskets set forth in Article VI of this Agreement are exceeded solely as a result of fluctuations to Consolidated EBITDA for the most recently completed Test Period after the last time such baskets were calculated for any purpose under Article VI, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations.

Section 1.9 **Interest Rates; Benchmark Notification.**

The interest rate on a Loan denominated in Dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.13(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same

volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.10 **Time References.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.11 **Execution of Documents.**

Unless otherwise specified, all Credit Documents and all other certificates executed in connection therewith must be signed by an Authorized Officer.

Section 1.12 **Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

Section 1.13 **Divisions.**

For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

Article II

THE LOANS; AMOUNT AND TERMS

Section 2.1 **Revolving Loans.**

(a) Revolving Commitment. During the Commitment Period, subject to the terms and conditions hereof, each Revolving Lender severally, but not jointly, agrees to make revolving credit loans in Dollars ("Revolving Loans") to the Borrowers from time to time in an aggregate principal amount not to exceed its Revolving Commitment; provided, however, that with regard to each Revolving Lender individually, the making of any such Revolving Loan would not cause such Revolving Lender's Revolving

Credit Exposure to exceed its Revolving Commitment. Revolving Loans may consist of ABR Loans, RFR Loans or Term Benchmark Loans, or a combination thereof, as the Lead Borrower may request, and may be repaid and reborrowed in accordance with the provisions hereof. Notwithstanding the foregoing, in no event shall the Lead Borrower be permitted to request pursuant to this Section 2.1 prior to a Benchmark Transition Event and Benchmark Replacement Date with respect to the Term SOFR Rate, an RFR Loan bearing interest based on Daily Simple SOFR (it being understood and agreed that Daily Simple SOFR shall only apply to the extent provided in Sections 2.13(a) and 2.13(f), as applicable).

(b) Revolving Loan Borrowings.

(i) Notice of Borrowing. The Lead Borrower shall request a Revolving Loan borrowing by delivering a written Notice of Borrowing (or telephone notice promptly confirmed in writing by delivery of a written Notice of Borrowing, which delivery may be by fax) to the Administrative Agent not later than 11:00 A.M. (x) on the Business Day of the requested borrowing in the case of ABR Loans, (y) on the third Business Day prior to the date of the requested borrowing in the case of Term Benchmark Loans and (z) on the fifth U.S. Government Securities Business Day before the date of the requested borrowing in the case of RFR Loans. Each such Notice of Borrowing shall be irrevocable and shall specify (A) that a Revolving Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed and (D) whether the borrowing shall be comprised of ABR Loans, Term Benchmark Loans, RFR Loans or a combination thereof, and if Term Benchmark Loans are requested, the Interest Period(s) therefor. If the Lead Borrower shall fail to specify in any such Notice of Borrowing the Type of Borrowing being requested, then the requested Borrowing shall be an ABR Borrowing. If the Lead Borrower shall fail to specify an Interest Period for a requested Term Benchmark Borrowing, then such notice shall be deemed to be a request for a Term Benchmark Borrowing with an Interest Period of one month. The Administrative Agent shall give notice to each Revolving Lender promptly upon receipt of each Notice of Borrowing, the contents thereof and each such Revolving Lender's share thereof.

(ii) Minimum Amounts. Each Revolving Borrowing that is made as an ABR Borrowing or RFR Borrowing shall be in a minimum aggregate amount of $250,000 and in integral multiples of $100,000 in excess thereof (or the remaining amount of the unused Revolving Commitments, if less). Each Revolving Borrowing that is made as a Term Benchmark Borrowing shall be in a minimum aggregate amount of $250,000 and in integral multiples of $100,000 in excess thereof (or the remaining amount of the unused Revolving Commitments, if less).

(iii) Advances. Each Revolving Lender will make its Revolving Commitment Percentage of each Borrowing of Revolving Loans available to the Administrative Agent for the account of the Borrowers at the office of the Administrative Agent as the Administrative Agent may designate in writing, by 1:00 P.M. on the date specified in the applicable Notice of Borrowing, in Dollars and in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrowers by the Administrative Agent by crediting the account of the Borrowers on the books of such office (or such other account that the Lead Borrower may designate in writing to the Administrative Agent) with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.

(c) Repayment. Subject to the terms of this Agreement, Revolving Loans may be borrowed, repaid and reborrowed during the Commitment Period, subject to Section 2.7(a). The principal amount of all Revolving Loans shall be due and payable in full on the Revolving Maturity Date, unless accelerated sooner pursuant to Section 7.2.

(d) Interest. Subject to the provisions of Section 2.8, Revolving Loans shall bear interest as follows:

(i) ABR Loans. During such periods as any Borrowing of Revolving Loans shall be comprised of ABR Loans, each such ABR Loan shall bear interest at a per annum rate equal to the sum of the Alternate Base Rate plus the Applicable Margin;

(ii) RFR Loans. During such periods as any Borrowing of Revolving Loans shall be comprised of RFR Loans, each such RFR Loan shall bear interest at a per annum rate equal to the sum of the Adjusted Daily SOFR Rate plus the Applicable Margin; and

(iii) Term Benchmark Loans. During such periods as any Borrowing of Revolving Loans shall be comprised of Term Benchmark Loans, each such Term Benchmark Loan shall bear interest at a per annum rate equal to the sum of the Adjusted Term SOFR Rate plus the Applicable Margin.

Interest on Revolving Loans shall be payable in arrears on each Interest Payment Date.

(e) Revolving Loan Notes; Covenant to Pay. The Borrowers' obligations to pay each Revolving Lender shall be evidenced by this Agreement and, upon such Revolving Lender's request, by a duly executed promissory note of the Borrowers to such Revolving Lender in substantially the form of Exhibit 2.1(e). The Borrowers, jointly and severally, covenant and agree to pay the Revolving Loans in accordance with the terms of this Agreement.

Section 2.2 **Initial Term Loans.**

(a) Initial Term Loans.

(i) Subject solely to the satisfaction (or waiver) of the conditions precedent set forth in Section 4.3, each Initial Term Loan Lender severally, but not jointly, agrees to make available to the Initial Subsidiary Borrower (through the Administrative Agent) on the Acquisition Closing Date a term loan in Dollars (each, an "Initial Term Loan", and the Initial Term Loans and the Initial Term Loan Commitments, collectively, the "Initial Term Loan Facility") in a principal amount equal to its Initial Term Loan Commitment. Upon receipt by the Administrative Agent of the proceeds of the Initial Term Loans, such proceeds will then be made available to the Initial Subsidiary Borrower by the Administrative Agent by crediting the account of the Initial Subsidiary Borrower on the books of the office of the Administrative Agent as the Administrative Agent may designate in writing, with the aggregate of such proceeds made available to the Administrative Agent by the Initial Term Loan Lenders and in like funds as received by the Administrative Agent (or by crediting such other account(s) as directed by the Initial Subsidiary Borrower as are reasonably acceptable to the Administrative Agent). The Initial Term Loans may consist of ABR Loans, RFR Loans or Term Benchmark Loans, or a combination thereof, as the Initial Subsidiary Borrower may request in the Notice of Borrowing delivered to the Administrative Agent prior to the Acquisition Closing Date. Notwithstanding the foregoing, in no event shall the Initial Subsidiary Borrower be permitted to request pursuant to this Section 2.2 prior to a Benchmark Transition Event and Benchmark Replacement Date with respect to the Term SOFR Rate, an RFR Loan bearing interest based on Daily Simple SOFR (it being understood and agreed that Daily Simple SOFR shall only apply to the extent provided in Sections 2.13(a) and 2.13(f), as applicable). Amounts repaid or prepaid on the Initial Term Loans may not be reborrowed.

(ii) Repayment of Initial Term Loan. The principal amount of the Initial Term Loans shall be repaid in consecutive quarterly installments on the last day of each March, June, September and December (commencing on the first such day that is at least three (3) full calendar months after the Acquisition Closing Date) prior to the Term Maturity Date in an amount for each such installment equal to (x) for any such day that is on or prior to the one year anniversary of the Closing Date, 0.625% of the original principal amount of the Initial Term Loans funded on the Acquisition Closing Date, (y) for any such day that is following the one year anniversary of the Closing Date but on or prior to the three year anniversary of the Closing Date, 1.25% of the original principal amount of the Initial Term Loans funded on the Acquisition Closing Date and (z) for any such day that is following the three year anniversary of the Closing Date, 1.875% of the original principal amount of the Initial Term Loans funded on the Acquisition Closing Date (provided, however, if any such payment date is not a Business Day, such payment shall be due on the preceding Business Day), unless accelerated sooner pursuant to Section 7.2 (which payments shall be (x) reduced as a result of the application of prepayments in accordance with the order of priority set forth in Sections 2.7(b)(vii) and 2.7(c) or (y) increased in accordance with the immediately succeeding sentence and Section 2.22, as applicable). In connection with any Incremental Term Facilities that will constitute part of the same Class as the Initial Term Loans, the amount of the scheduled amortization payment that would otherwise be required pursuant to the immediately preceding sentence shall be increased for the Lenders on a pro rata basis to the extent necessary to ensure that the Lenders holding Initial Term Loans continue to receive a payment that is not less than the same amount that such Lenders would have received absent the incurrence of such Incremental Term Facilities (i.e., the amortization percentage set forth in the immediately preceding sentence shall be automatically adjusted to reflect the Modified Amortization Percentage); provided that, if such Incremental Term Facilities are to be fungible with the Initial Term Loans, notwithstanding any other conditions specified in this Section 2.2(a)(ii), the amortization schedule for such fungible Incremental Term Facilities may provide for amortization based on the Modified Amortization Percentage to ensure that such Incremental Term Facilities will be fungible with the Initial Term Loans; provided further that, without the consent of any other Credit Party or Lender, the Lead Borrower and the Administrative Agent may effect such amendments to this Agreement as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of this Section 2.2(a)(ii). The immediately preceding sentence of this Section 2.2(a)(ii) shall supersede any provision in Section 9.1 to the contrary. The Borrowers shall, jointly and severally, repay the aggregate outstanding principal amount of any Term Loans funded under an Incremental Term Facility that is a separate tranche in accordance with the applicable terms set forth in the Incremental Facility Amendment pursuant to which such Incremental Term Facility is added to this Agreement or established hereunder.

The outstanding principal amount of the Initial Term Loans and all accrued but unpaid interest and other amounts payable with respect to the Initial Term Loans shall be repaid on the Term Maturity Date.

(b) Interest on the Initial Term Loans. Subject to the provisions of Section 2.8, the Initial Term Loans shall bear interest as follows:

(i) ABR Loans. During such periods as any Borrowing of Initial Term Loans shall be comprised of ABR Loans, each such ABR Loan shall bear interest at a per annum rate equal to the sum of the Alternate Base Rate plus the Applicable Margin;

(ii) RFR Loans. During such periods as any Borrowing of Initial Term Loans shall be comprised of RFR Loans, each such RFR Loan shall bear interest at a per annum rate equal to the sum of the Adjusted Daily SOFR Rate plus the Applicable Margin; and

(iii) Term Benchmark Loans. During such periods as any Borrowing of Initial Term Loans shall be comprised of Term Benchmark Loans, each such Term Benchmark Loan shall bear interest at a per annum rate equal to the sum of the Adjusted Term SOFR Rate plus the Applicable Margin.

Interest on the Initial Term Loans shall be payable in arrears on each Interest Payment Date.

(c) Term Loan Notes; Covenant to Pay. The Borrowers' obligations to pay each Term Loan Lender shall be evidenced by this Agreement and, upon such Term Loan Lender's request, by a duly executed promissory note of the Borrowers to such Term Loan Lender in substantially the form of Exhibit 2.2(c); provided, that, with respect to the Initial Term Loans borrowed by the Initial Subsidiary Borrower, any such promissory note shall be executed solely by the Initial Subsidiary Borrower. The Borrowers, jointly and severally, covenant and agree to pay the Term Loans in accordance with the terms of this Agreement.

Section 2.3 **Letter of Credit Subfacility.**

(a) Issuance. Subject to the terms and conditions hereof and of the LOC Documents, if any, and any other terms and conditions which an Issuing Lender may reasonably require, during the Commitment Period, each Issuing Lender shall issue, and the Revolving Lenders shall participate in, standby Letters of Credit for the account of the Borrowers from time to time upon request in a form acceptable to the Issuing Lender; provided, however, that (i) the aggregate amount of LOC Obligations in respect of Letters of Credit issued by any Issuing Lender shall not exceed such Issuing Lender's Letter of Credit Commitment, (ii) no Letter of Credit shall be issued or increased if it would cause any Revolving Lender's Revolving Credit Exposure to exceed such Lender's Revolving Commitment, (iii) all Letters of Credit shall be denominated in Dollars and (iv) there shall be no more than twenty (20) Letters of Credit outstanding at any time. Except as otherwise expressly agreed in writing upon by all the Revolving Lenders, no Letter of Credit shall have an original expiry date more than the earlier of (i) twelve (12) months from the date of issuance (unless otherwise agreed by the applicable Issuing Lender) and (ii) the fifth Business Day prior to the Revolving Maturity Date; provided, however, so long as no Event of Default has occurred and is continuing and subject to the other terms and conditions to the issuance of Letters of Credit hereunder, the expiry dates of Letters of Credit may be extended annually or periodically from time to time on the request of the Borrowers or by operation of the terms of the applicable Letter of Credit to a date not more than twelve (12) months from the date of extension; provided, further, that no Letter of Credit, as originally issued or as extended, shall have an expiry date extending beyond the date that is five (5) Business Days prior to the Revolving Maturity Date except to the extent (1) each Revolving Lender has approved such later expiry date or (2) such Letter of Credit is Cash Collateralized in an amount equal to 103% of the LOC Obligations attributable to such Letter of Credit or is backstopped in each case pursuant to arrangements reasonably acceptable to the Administrative Agent and the applicable Issuing Lender, in each case, on or prior to the date of issuance or extension of such Letter of Credit with an expiry date that is beyond five (5) Business Days prior to the Revolving Maturity Date. Each Letter of Credit shall comply with the related LOC Documents. The issuance and expiry date of each Letter of Credit shall be a Business Day. Each Letter of Credit issued hereunder shall be in a minimum original face amount of $100,000 or such lesser amount as approved by the Issuing Lender.

(b) Notice and Reports. The request for the issuance of a Letter of Credit shall be submitted to the Issuing Lender at least five (5) Business Days prior to the requested date of issuance. The Issuing Lender will promptly upon request provide to the Administrative Agent for dissemination to the Revolving Lenders a detailed report specifying the Letters of Credit which are then issued and outstanding and any activity with respect thereto which may have occurred since the date of any prior report, and including therein, among other things, the account party, the beneficiary, the face amount, expiry date as well as any

payments or expirations which may have occurred. The Issuing Lender will further provide to the Administrative Agent promptly upon request copies of the Letters of Credit. The Issuing Lender will provide to the Administrative Agent promptly upon request a summary report of the nature and extent of LOC Obligations then outstanding.

(c) Participations. Each Revolving Lender upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a risk participation from the Issuing Lender in such Letter of Credit and the obligations arising thereunder and any Collateral relating thereto, in each case in an amount equal to its Revolving Commitment Percentage of the obligations under such Letter of Credit and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to the Issuing Lender therefor and discharge when due, its Revolving Commitment Percentage of the obligations arising under such Letter of Credit; provided that any Person that becomes a Revolving Lender after the Closing Date shall be deemed to have purchased a Participation Interest in all outstanding Letters of Credit on the date it becomes a Lender hereunder and any Letter of Credit issued on or after such date, in each case in accordance with the foregoing terms. Without limiting the scope and nature of each Revolving Lender's participation in any Letter of Credit, to the extent that the Issuing Lender has not been reimbursed as required hereunder or under any LOC Document, each such Revolving Lender shall pay to the Issuing Lender its Revolving Commitment Percentage of such unreimbursed drawing in same day funds pursuant to and in accordance with the provisions of subsection (d) hereof. The obligation of each Revolving Lender to so reimburse the Issuing Lender shall be absolute and unconditional and shall not be affected by the occurrence of a Default, an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrowers to reimburse the Issuing Lender under any Letter of Credit, together with interest as hereinafter provided.

(d) Reimbursement. In the event of any drawing under any Letter of Credit, the Issuing Lender will promptly notify the Lead Borrower and the Administrative Agent. The Borrowers shall, jointly and severally, reimburse the Issuing Lender the Business Day immediately following the day of drawing under any Letter of Credit if notified prior to 3:00 P.M. on a Business Day or, if after 3:00 P.M., on the next following Business Day (either with the proceeds of a Revolving Loan obtained hereunder or otherwise) in same day funds as provided herein or in the LOC Documents. If the Borrowers shall fail to reimburse the Issuing Lender as provided herein, the unreimbursed amount of such drawing shall automatically bear interest at a per annum rate equal to the Default Rate. Unless the Lead Borrower shall immediately notify the Issuing Lender and the Administrative Agent of its intent to otherwise reimburse the Issuing Lender, the Lead Borrower shall be deemed to have requested a Mandatory LOC Borrowing in the amount of the drawing as provided in subsection (e) hereof, the proceeds of which will be used to satisfy the Reimbursement Obligations, in which event any such drawing shall not automatically bear interest at the Default Rate. The Borrowers' Reimbursement Obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of set-off, counterclaim or defense to payment any Borrower may claim or have against an Issuing Lender, the Administrative Agent, any Lender, the beneficiary of the Letter of Credit drawn upon or any other Person, including, without limitation, any defense based on any failure of any Borrower to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit. The Administrative Agent will promptly notify the other Revolving Lenders of the amount of any unreimbursed drawing and each Revolving Lender shall promptly pay to the Administrative Agent for the account of the applicable Issuing Lender, in Dollars and in immediately available funds, the amount of such Revolving Lender's Revolving Commitment Percentage of such unreimbursed drawing. Such payment shall be made by 12:00 noon on the Business Day such notice is received by such Revolving Lender from the Administrative Agent if such notice is received at or before 10:00 A.M., otherwise such payment shall be made at or before 12:00 noon, on the Business Day next succeeding the Business Day such notice is received. If such Revolving Lender does not pay such amount to the Administrative Agent for the account of the applicable Issuing Lender in full upon such request, such Revolving Lender shall, on demand, pay to the Administrative Agent for the account of the applicable

Issuing Lender interest on the unpaid amount during the period from the date of such drawing until such Revolving Lender pays such amount to the Administrative Agent for the account of such Issuing Lender in full at a rate per annum equal to, if paid within two (2) Business Days of the date of drawing, the NYFRB Rate and thereafter at a rate equal to the Alternate Base Rate. Each Revolving Lender's obligation to make such payment to the Issuing Lender, and the right of the Issuing Lender to receive the same, shall be absolute and unconditional, shall not be affected by any circumstance whatsoever and without regard to the termination of this Agreement or the Commitments hereunder, the existence of a Default or Event of Default or the acceleration of the Obligations hereunder and shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Repayment with Revolving Loans. On any day on which the Lead Borrower shall have requested, or been deemed to have requested, a Revolving Loan to reimburse a drawing under a Letter of Credit, the Administrative Agent shall give notice to the Revolving Lenders that a Revolving Loan has been requested or deemed requested in connection with a drawing under a Letter of Credit, in which case a Borrowing of Revolving Loans comprised entirely of ABR Loans (each such borrowing, a "Mandatory LOC Borrowing") shall be made (without giving effect to any termination of the Commitments pursuant to Section 7.2) pro rata based on each Revolving Lender's respective Revolving Commitment Percentage (determined before giving effect to any termination of the Commitments pursuant to Section 7.2) and the proceeds thereof shall be paid directly to the Administrative Agent for the account of the Issuing Lender for application to the respective LOC Obligations. Each Revolving Lender hereby irrevocably agrees to make such Revolving Loans on the day such notice is received by the Revolving Lenders from the Administrative Agent if such notice is received at or before 2:00 P.M., otherwise such payment shall be made at or before 12:00 noon, on the Business Day next succeeding the day such notice is received, in each case notwithstanding (i) the amount of Mandatory LOC Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (ii) whether any conditions specified in Section 4.2 are then satisfied, (iii) whether a Default or an Event of Default then exists, (iv) failure for any such request or deemed request for Revolving Loan to be made by the time otherwise required in Section 2.1(b), (v) the date of such Mandatory LOC Borrowing, or (vi) any reduction in the Revolving Commitments after any such Letter of Credit may have been drawn upon. In the event that any Mandatory LOC Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the occurrence of a Bankruptcy Event), then each such Revolving Lender hereby agrees that it shall forthwith fund its Participation Interests in the outstanding LOC Obligations on the Business Day such notice to fund is received by such Revolving Lender from the Administrative Agent if such notice is received at or before 2:00 P.M., otherwise such payment shall be made at or before 12:00 noon, on the Business Day next succeeding the Business Day such notice is received; provided, further, that in the event any Lender shall fail to fund its Participation Interest as required herein, then the amount of such Revolving Lender's unfunded Participation Interest therein shall automatically bear interest payable by such Revolving Lender to the Administrative Agent for the account of the Issuing Lender upon demand, at the rate equal to, if paid within two (2) Business Days of such date, the NYFRB Rate, and thereafter at a rate equal to the Alternate Base Rate.

(f) Modification, Extension. The issuance of any supplement, modification, amendment, renewal, or extension to any Letter of Credit shall, for purposes hereof, be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(g) Conflict with LOC Documents. In the event of any conflict between this Agreement and any LOC Document (including any letter of credit application), this Agreement shall control.

(h) Designation of Subsidiaries as Account Parties. Notwithstanding anything to the contrary set forth in this Agreement, including, without limitation, Section 2.3(a), a Letter of Credit issued hereunder may contain a statement to the effect that such Letter of Credit is issued for the account of a Restricted

Subsidiary of the Lead Borrower; provided that, notwithstanding such statement, the Borrowers shall be the actual account parties for all purposes of this Agreement for such Letter of Credit and such statement shall not affect any Borrower's Reimbursement Obligations hereunder with respect to such Letter of Credit.

(i) Designation of Additional Issuing Lenders. The Lead Borrower may, at any time and from time to time, designate as additional Issuing Lenders one or more Revolving Lenders reasonably acceptable to the Administrative Agent and the Lead Borrower that agree to serve in such capacity as provided below. The acceptance by a Revolving Lender of an appointment as an Issuing Lender hereunder shall be evidenced by an agreement, which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Lead Borrower, executed by the Lead Borrower, the Administrative Agent and such designated Revolving Lender and, from and after the effective date of such agreement, (i) such Revolving Lender shall have all the rights and obligations of an Issuing Lender under this Agreement and (ii) references herein to the term "Issuing Lender" shall be deemed to include such Revolving Lender in its capacity as an issuer of Letters of Credit hereunder.

(j) Replacement and Resignation of Issuing Lender.

(1) An Issuing Lender may be replaced at any time by written agreement among the Lead Borrower, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Lender. At the time any such replacement shall become effective, the Borrowers shall, jointly and severally, pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to this Agreement. From and after the effective date of any such replacement, (x) the successor Issuing Lender shall have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit to be issued by it thereafter and (y) references herein to the term "Issuing Lender" shall be deemed to include such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit.

(ii) Subject to the appointment and acceptance of a successor Issuing Lender, any Issuing Lender may resign as an Issuing Lender at any time upon thirty days' prior written notice to the Administrative Agent, the Lead Borrower and the Lenders, in which case, such resigning Issuing Lender shall be replaced in accordance with clause (i) above.

(k) Cash Collateral. At any point in time in which there is a Defaulting Lender, each Issuing Lender may require the Borrowers to Cash Collateralize the LOC Obligations in respect of Letters of Credit issued by it in accordance with and to the extent provided in Section 2.20.

Section 2.4 **Swingline Loan Subfacility.**

(a) Swingline Commitment. During the Commitment Period, subject to the terms and conditions hereof, the Swingline Lender, in its individual capacity, may, in its sole discretion, make certain revolving credit loans to the Borrowers (each a "Swingline Loan" and, collectively, the "Swingline Loans") for the purposes hereinafter set forth; provided, however, (i) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed $10,000,000 (the "Swingline Committed Amount"), and (ii) after giving effect to any such Swingline Loan, the Revolving Credit Exposure of any Revolving Lender shall not exceed such Revolving Lender's Revolving Credit Commitment. Swingline Loans hereunder may be repaid and reborrowed in accordance with the provisions hereof.

(b) Swingline Loan Borrowings.

(i) Notice of Borrowing and Disbursement. Upon receiving a Notice of Borrowing from the Lead Borrower not later than 10:00 A.M. on any Business Day requesting that a Swingline Loan be made, the Swingline Lender will, if it so elects in its sole discretion and in reliance upon the agreements of the other Lenders set forth in this Section, make Swingline Loans available to the Borrowers on the same Business Day such request is received by the Administrative Agent (each a "Swingline Borrowing"). Each such notice of a Swingline Borrowing shall be irrevocable and shall specify (i) the principal amount of such Swingline Borrowing, (ii) the date of such Swingline Borrowing (which shall be a Business Day) and (iii) the account of the Borrowers to which the proceeds of such Swingline Borrowing should be credited. Swingline Loan borrowings hereunder shall be made in minimum amounts of $250,000 (or the remaining available amount of the Swingline Committed Amount if less) and in integral amounts of $100,000 in excess thereof.

(ii) Repayment of Swingline Loans. Each Swingline Loan borrowing shall be due and payable on the earliest of (A) the Maturity Date, (B) five (5) Business Days following such borrowing and (C) the date of any Revolving Loan borrowing while any Swingline Loan is outstanding. The Swingline Lender may, at any time, in its sole discretion, by written notice to the Lead Borrower and the Administrative Agent, demand repayment of its Swingline Loans by way of a Revolving Loan borrowing, in which case the Borrowers shall be deemed to have requested a Revolving Loan borrowing comprised entirely of ABR Loans in the amount of such Swingline Loans; provided, however, that, in the following circumstances, any such demand shall also be deemed to have been given one Business Day prior to each of (A) the Maturity Date, (B) the occurrence of any Bankruptcy Event, (C) upon acceleration of the Obligations hereunder, whether on account of a Bankruptcy Event or any other Event of Default, and (D) the exercise of remedies in accordance with the provisions of Section 7.2 hereof (each such Revolving Loan borrowing made on account of any such deemed request therefor as provided herein being hereinafter referred to as "Mandatory Swingline Borrowing"). Each Revolving Lender hereby irrevocably agrees to make such Revolving Loans promptly upon any such request or deemed request on account of each Mandatory Swingline Borrowing in the amount and in the manner specified in the preceding sentence on the date such notice is received by the Revolving Lenders from the Administrative Agent if such notice is received at or before 2:00 P.M., otherwise such payment shall be made at or before 12:00 noon, on the Business Day next succeeding the date such notice is received notwithstanding (1) the amount of Mandatory Swingline Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (2) whether any conditions specified in Section 4.2 are then satisfied, (3) whether a Default or an Event of Default then exists, (4) failure of any such request or deemed request for Revolving Loans to be made by the time otherwise required in Section 2.1(b)(i), (5) the date of such Mandatory Swingline Borrowing, or (6) any reduction in the Revolving Commitments or termination of the Revolving Commitments prior to such Mandatory Swingline Borrowing or contemporaneously therewith. If any portion of any such amount paid (or deemed to be paid) to the Swingline Lender should be recovered by or on behalf of a Borrower from the Swingline Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Revolving Lenders in the manner contemplated by Section 2.11. In the event that any Mandatory Swingline Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code), then each Revolving Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Swingline Borrowing would otherwise have occurred, but adjusted for any payments received from a Borrower on or after such date and prior to such purchase) from the Swingline Lender such Participation Interest in the outstanding Swingline Loans as shall be necessary to cause each such Revolving Lender to share in such Swingline Loans ratably based

upon its respective Revolving Commitment Percentage (determined before giving effect to any termination of the Commitments pursuant to Section 7.2); provided that (x) all interest payable on the Swingline Loans shall be for the account of the Swingline Lender until the date as of which the respective Participation Interest is purchased, and (y) at the time any purchase of a Participation Interest pursuant to this sentence is actually made, the purchasing Revolving Lender shall be required to pay to the Swingline Lender interest on the principal amount of such Participation Interest purchased for each day from and including the day upon which the Mandatory Swingline Borrowing would otherwise have occurred to but excluding the date of payment for such Participation Interest, at the rate equal to, if paid within two (2) Business Days of the date of the Mandatory Swingline Borrowing, the NYFRB Rate, and thereafter at a rate equal to the Alternate Base Rate. The Borrowers shall have the right to repay the Swingline Loan in whole or in part from time to time in accordance with Section 2.7(a).

(c) Resignation and Removal of Swingline Lender. A Swingline Lender may resign as Swingline Lender upon 30 days' prior written notice to the Administrative Agent, the Revolving Lenders and the Lead Borrower. A Swingline Lender may be replaced at any time by written agreement among the Lead Borrower, the Administrative Agent, the replaced Swingline Lender (provided that no consent will be required if the replaced Swingline Lender has no Swingline Loans outstanding) and the successor Swingline Lender. The Administrative Agent shall notify the Revolving Lenders of any such replacement of the Swingline Lender. At the time any such replacement or resignation shall become effective, the Borrowers shall, jointly and severally, prepay any outstanding Swingline Loans made by the resigning or removed Swingline Lender. From and after the effective date of any such replacement or resignation, (x) any successor Swingline Lender shall have all the rights and obligations of a Swingline Lender under this Agreement with respect to Swingline Loans made thereafter and (y) references herein to the term "Swingline Lender" shall be deemed to refer to such successor or to any previous Swingline Lender, or to such successor and all previous Swingline Lenders, as the context shall require.

(d) Repayment of Participations. At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Lender its Revolving Commitment Percentage or other applicable share provided in this Agreement of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swingline Lender.

(e) Interest on Swingline Loans. Subject to the provisions of Section 2.8, Swingline Loans shall bear interest at a per annum rate equal to the Alternate Base Rate plus the Applicable Margin for Revolving Loans that are ABR Loans. Interest on Swingline Loans shall be payable in arrears on each Interest Payment Date. The Swingline Lender shall be responsible for invoicing the Lead Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its ABR Loan or risk participation pursuant to this Section 2.4 to refinance such Lender's Revolving Commitment Percentage or other applicable share provided in this Agreement of any Swingline Loan, interest in respect of such Revolving Commitment Percentage or other applicable share provided in this Agreement shall be solely for the account of the Swingline Lender.

(f) Swingline Loan Note; Covenant to Pay. The Swingline Loans shall be evidenced by this Agreement and, upon request of the Swingline Lender, by a duly executed promissory note of the Borrowers in favor of the Swingline Lender substantially in the form of Exhibit 2.4(d). The Borrowers, jointly and severally, covenant and agree to pay the Swingline Loans in accordance with the terms of this Agreement.

(g) Cash Collateral. At any point in time in which there is a Defaulting Lender, the Swingline Lender shall not be obligated to make any Swingline Loans unless the Swingline Lender has entered into

arrangements satisfactory to it and the Lead Borrower to eliminate the Swingline Lender's risk with respect to the Defaulting Lender's participation in such Swingline Loan, including requiring the Borrowers to Cash Collateralize the outstanding Swingline Loans pursuant to Section 2.20.

(h) Payments Directly to Swingline Lender. The Borrowers shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

Section 2.5 **Fees.**

(a) Commitment Fees. Subject to Section 2.21, (i) in consideration of the Revolving Commitments, the Borrowers, jointly and severally, agree to pay to the Administrative Agent, for the ratable benefit of the Revolving Lenders, a commitment fee (the "Revolving Commitment Fee") at a per annum rate equal to the Applicable Margin for the Commitment Fees on the daily unused amount of the Revolving Commitments, which Revolving Commitment Fee will commence accruing on the Closing Date, and (ii) in consideration of the Initial Term Loan Commitments, the Borrowers, jointly and severally, agree to pay to the Administrative Agent, for the ratable benefit of the Initial Term Loan Lenders, a commitment fee (the "Initial Term Loan Commitment Fee", and together with the Revolving Commitment Fee, collectively, the "Commitment Fees") at a per annum rate equal to the Applicable Margin for the Commitment Fees on the daily unused amount of the Initial Term Loan Commitments, which Initial Term Loan Commitment Fee will commence accruing on the date that is two months after the Closing Date. The Commitment Fees shall be calculated quarterly in arrears. For purposes of computation of the Revolving Commitment Fee, LOC Obligations shall be considered usage of the Revolving Commitments but Swingline Loans shall not be considered usage of the Revolving Commitments. The Commitment Fees shall be payable quarterly in arrears on the fifteenth day following the last day of each calendar quarter.

(b) Letter of Credit Fees. Subject to Section 2.21, in consideration of the Letter of Credit Commitments, the Borrowers, jointly and severally, agree to pay to the Administrative Agent, for the ratable benefit of the Revolving Lenders, a fee (the "Letter of Credit Fee") at a per annum rate equal to the Applicable Margin for Revolving Loans that are Term Benchmark Loans on the daily maximum amount available to be drawn under each Letter of Credit from the date of issuance to the date of expiration thereof. The Letter of Credit Fee shall be payable quarterly in arrears on the fifteenth day following the last day of each calendar quarter.

(c) Issuing Lender Fees. In addition to the Letter of Credit Fees payable pursuant to subsection (b) hereof, the Borrowers, jointly and severally, shall pay to each Issuing Lender for its own account without sharing by the other Lenders the reasonable and customary charges from time to time of such Issuing Lender with respect to the amendment, transfer, administration, cancellation and conversion of, and drawings under, Letters of Credit issued by such Issuing Lender (collectively, the "Issuing Lender Fees"). Each Issuing Lender may charge, and retain for its own account without sharing by the other Lenders, an additional facing fee (the "Letter of Credit Facing Fee") of 0.125% per annum on the daily maximum amount available to be drawn under each such Letter of Credit issued by it. The Issuing Lender Fees and the Letter of Credit Facing Fee shall be payable quarterly in arrears on the fifteenth day following the last day of each calendar quarter.

(d) Administrative Fee. The Lead Borrower agrees to pay to the Administrative Agent the annual administrative fee as described in the Fee Letter.

Section 2.6 **Commitment Reductions.**

(a) Voluntary Reductions. The Borrowers shall have the right to terminate or permanently reduce the unused portion of the Revolving Commitments or Initial Term Loan Commitments at any time

or from time to time upon not less than five (5) Business Days' prior written notice by the Lead Borrower to the Administrative Agent (which shall notify the applicable Lenders thereof) of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction which shall be in a minimum amount of $1,000,000 or a whole multiple of $100,000 in excess thereof and shall be irrevocable and effective upon receipt by the Administrative Agent; provided that (i) a notice of termination or reduction of the Revolving Commitments or Initial Term Loan Commitments delivered by the Lead Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the occurrence of some other identifiable event or condition, in which case such notice may be revoked by the Lead Borrower (by notice to the Administrative Agent on or prior to the specified effective date of termination or reduction) if such condition is not satisfied and (ii) no such reduction or termination of the Revolving Commitments shall be permitted if after giving effect thereto, the Revolving Credit Exposure of any Lender would exceed such Lender's Revolving Commitment. Any reduction in the Commitments of any Class shall be applied to the Commitment of each Lender of such Class in accordance to its Applicable Percentage.

(b) Letter of Credit Commitments. If the Revolving Commitments are reduced below the then current Letter of Credit Commitments, the Letter of Credit Commitments shall automatically be reduced by an aggregate amount such that the aggregate Letter of Credit Commitments equal the aggregate Revolving Commitments (with such reduction applied on a pro rata basis to the respective Letter of Credit Commitments of each Issuing Lender based on the respective amounts thereof).

(c) Swingline Committed Amount. If the Revolving Commitments are reduced below the then current Swingline Committed Amount, the Swingline Committed Amount shall automatically be reduced by an amount such that the Swingline Committed Amount equals the Revolving Commitment.

(d) Maturity Date. The Revolving Commitments, the Swingline Commitment and the Letter of Credit Commitment shall automatically terminate on the Revolving Maturity Date. The Initial Term Loan Commitments shall automatically terminate upon the funding in full of the Initial Term Loans thereunder. To the extent still outstanding on the Acquisition Outside Date, the Initial Term Loan Commitments shall terminate on the Acquisition Outside Date.

Section 2.7 **Prepayments.**

(a) Optional Prepayments and Repayments. The Borrowers shall have the right to prepay the Term Loans of any Class and repay the Revolving Loans and Swingline Loans in whole or in part from time to time without premium or penalty except as provided below. Each partial prepayment or repayment of (i) Revolving Loans or Term Loans that are ABR Loans or RFR Loans shall be in a minimum principal amount of $500,000 and integral multiples of $100,000 in excess thereof (or the remaining outstanding principal amount), (ii) Revolving Loans or Term Loans that are Term Benchmark Loans shall be in a minimum principal amount of $500,000 and integral multiples of $100,000 in excess thereof (or the remaining outstanding principal amount) and (iii) Swingline Loans shall be in a minimum principal amount of $500,000 and integral multiples of $100,000 in excess thereof (or the remaining outstanding principal amount). The Lead Borrower shall give three (3) Business Days' irrevocable notice of prepayment in the case of Term Benchmark Loans, five (5) Business Days' irrevocable notice of prepayment in the case of RFR Loans and same-day irrevocable notice on any Business Day in the case of ABR Loans, to the Administrative Agent (which shall notify the applicable Lenders); provided, that a notice of an optional prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case, such notice may be revoked by the Lead Borrower (by notice to the Administrative Agent on or prior to the specified prepayment date) if such condition is not satisfied. To the extent that the Borrowers elect to prepay the Term Loans of any Class, amounts prepaid under this

Section shall be applied to scheduled instalments at the direction of the Lead Borrower and, absent such direction, in direct order of maturity first to ABR Loans and then to Term Benchmark Loans, in each case, ratably to the then remaining amortization payments thereof. To the extent the Borrowers elect to repay the Revolving Loans and/or Swingline Loans, amounts prepaid under this Section shall be applied to the Revolving Loans and/or Swingline Loans, as applicable, then held by the Revolving Lenders in accordance with their respective Revolving Commitment Percentages (or, if any Swingline Loan is held by the Swingline Lender, any payment thereof shall be solely to the Swingline Lender). Within the foregoing parameters, prepayments of any Class of Loans under this Section shall be applied first to ABR Loans and then to Term Benchmark Loans at the direction of the Lead Borrower (and absent direction to the contrary from the Lead Borrower, in direct order of Interest Period maturities). All prepayments under this Section shall be subject to Section 2.15, but otherwise without premium or penalty. Interest on the principal amount prepaid shall be payable on the date of such prepayment (except for a prepayment of ABR Loans prior to the end of the Commitment Period).

(b) Mandatory Prepayments.

(i) Revolving Commitments. If at any time after the Closing Date, the Revolving Credit Exposure of any Lender exceeds the Revolving Commitment of such Lender, the Borrowers shall, jointly and severally, immediately prepay the Revolving Loans and Swingline Loans and (after all Revolving Loans and Swingline Loans have been repaid) Cash Collateralize the LOC Obligations in an amount sufficient to eliminate such excess (such prepayment to be applied as set forth in clause (vii) below).

(ii) Asset Dispositions. Following any Asset Disposition (or related series of Asset Dispositions) or receipt by the Lead Borrower or any Restricted Subsidiary of Extraordinary Receipts, the Borrowers shall, jointly and severally, prepay the Term Loans in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds derived from such Asset Disposition (or related series of Asset Dispositions) or such Extraordinary Receipts (such prepayment to be applied as set forth in clause (vii) below) within five (5) Business Days of the receipt thereof; provided, however, that, so long as no Event of Default has occurred and is continuing, such Net Cash Proceeds shall not be required to be so applied to the extent the Lead Borrower delivers to the Administrative Agent a certificate stating that it intends to use such Net Cash Proceeds to restore, rebuild, repair, construct, improve, replace, refurbish, remodel, refresh, renovate or otherwise acquire assets (other than inventory) (and pay transaction expenses associated therewith) useful to the business of the Lead Borrower and its Restricted Subsidiaries, including pursuant to a Permitted Acquisition or a third party investment, and such reinvestment is consummated within 365 days of the receipt of such Net Cash Proceeds or the subject of a binding written agreement with a third party entered into such 365-day period which is consummated with 180 days after the end of such 365-day period, it being expressly agreed that Net Cash Proceeds not so reinvested shall be applied to prepay the Term Loans immediately thereafter (such prepayment to be applied as set forth in clause (vii) below); provided further that a prepayment of the Term Loans shall only be required under this Section 2.7(b)(ii) if the amount of such prepayment for any fiscal year exceeds the greater of $18.0 million and 10% of Consolidated EBITDA for the most recently completed Test Period prior to the date of receipt of such Net Cash Proceeds (and, in such case, only the amount by which such prepayment amount for such fiscal year exceeds such threshold shall be required to be prepaid hereunder).

(iii) Debt Issuances. Immediately upon receipt by the Lead Borrower or any of its Restricted Subsidiaries of proceeds from any Debt Issuance, the Borrowers shall, jointly and severally, prepay the Term Loans in an aggregate amount equal to one hundred percent (100%) of

the Net Cash Proceeds of such Debt Issuance (such prepayment to be applied as set forth in clause (vii) below).

(iv) [Reserved].

(v) [Reserved].

(vi) [Reserved].

(vii) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section shall be applied as follows:

(A) with respect to all amounts prepaid pursuant to Section 2.7(b)(i), (1) first to the outstanding Swingline Loans, (2) second to the outstanding Revolving Loans and (3) third to Cash Collateralize the LOC Obligations; and

(B) with respect to all amounts prepaid pursuant to Sections 2.7(b)(ii) and (b)(iii), to the Term Loans of each Class on a pro rata basis based on the respective principal amounts thereof (in each case, as to any Class of Term Loans, to the remaining amortization payments thereof in direct order of maturity). Within the parameters of the applications set forth above, prepayments of any Class of Term Loans shall be applied first to ABR Loans and then to Term Benchmark Loans; provided that if, at the time that any such prepayment would be required hereunder, the Lead Borrower or any Restricted Subsidiary is required to offer to repurchase or prepay any other Indebtedness that is secured on a *pari passu* basis with the Obligations pursuant to the terms of the documentation governing such Indebtedness with Net Cash Proceeds of such prepayment event (such Indebtedness (or Credit Agreement Refinancing Indebtedness in respect thereof) required to be offered to be repurchased or prepaid, the "Other Applicable Indebtedness"), then the Borrowers may apply such Net Cash Proceeds on a *pro rata* basis to the prepayment of the Term Loans and to the repurchase or prepayment of the Other Applicable Indebtedness (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness (or accreted amount if such Other Applicable Indebtedness is issued with original issue discount) at such time; provided that the portion of such Net Cash Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Net Cash Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds shall be allocated to the Term Loans in accordance with the terms hereof), and the amount of the prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.7(b) shall be reduced on a dollar-for-dollar basis accordingly; provided further that, to the extent the holders of the Other Applicable Indebtedness decline to have such Indebtedness prepaid or repurchased, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof. All prepayments under this Section shall be subject to Section 2.15 and be accompanied by interest on the principal amount prepaid through the date of prepayment, but otherwise without premium or penalty.

(c) [Reserved].

(d) [Reserved].

(e) Notice of Mandatory Prepayment. The Lead Borrower shall notify the Administrative Agent of any prepayment under Section 2.7(b) at least three Business Days prior to the date of such prepayment (or such shorter period (i) as may be required to comply with the prepayment conditions set forth in Section 2.7(b) or (ii) as shall be reasonably acceptable to the Administrative Agent). Each notice delivered by the Lead Borrower pursuant to this Section 2.7(e) shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid, and include a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof.

(f) Bank Product Obligations Unaffected. Any repayment or prepayment made pursuant to this Section shall not affect any Borrower's or Restricted Subsidiary's obligation to continue to make payments under any Bank Product, which shall remain in full force and effect notwithstanding such repayment or prepayment, subject to the terms of such Bank Product.

Section 2.8 **Default Rate and Payment Dates.**

(a) Upon the occurrence and during the continuance of a (i) Bankruptcy Event or a Payment Event of Default, the principal of and, to the extent permitted by law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents shall automatically bear interest at a rate per annum which is equal to the Default Rate and (ii) any other Event of Default hereunder, at the option of the Required Lenders, the principal of and, to the extent permitted by law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents shall automatically bear interest, at a per annum rate which is equal to the Default Rate, in each case from the date of such Event of Default until such Event of Default is waived in accordance with Section 9.1. Any default interest owing under this Section 2.8(a) shall be due and payable on the earlier to occur of (x) demand by the Administrative Agent (which demand the Administrative Agent shall make if directed by the Required Lenders) and (y) the applicable Maturity Date.

(b) If all or a portion of the principal amount of any Loan which is a Term Benchmark Loan shall not be paid when due or continued as a Term Benchmark Loan in accordance with the provisions of Section 2.9 (whether at the stated maturity, by acceleration or otherwise), such Loan shall be converted to an ABR Loan at the end of the Interest Period applicable thereto.

Section 2.9 **Conversion and Continuation Options.**

(a) The Lead Borrower may, in the case of Revolving Loans and the Term Loans of any Class, elect from time to time to convert ABR Loans to Term Benchmark Loans or to continue Term Benchmark Loans, by delivering a Notice of Conversion/Extension to the Administrative Agent at least three Business Days prior to the proposed date of conversion or continuation. In addition, the Lead Borrower may elect from time to time to convert all or any portion of a Term Benchmark Loan to an ABR Loan by giving the Administrative Agent irrevocable written notice thereof by 11:00 A.M. one (1) Business Day prior to the proposed date of conversion. If the date upon which an ABR Loan is to be converted to a Term Benchmark Loan is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Loan shall bear interest as if it were an ABR Loan. Term Benchmark Loans may only be converted to ABR Loans on the last day of the applicable Interest Period. If the date upon which a Term Benchmark Loan is to be converted to an ABR Loan is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Loan shall bear interest as if it were an ABR Loan. All or any part of outstanding ABR Loans may be converted as provided herein; provided that (i) no Loan may be converted into a Term Benchmark Loan when any Event of Default has occurred and is continuing and (ii) partial conversions shall be in an

aggregate principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. All or any part of outstanding Term Benchmark Loans may be converted as provided herein; provided that partial conversions shall be in an aggregate principal amount of $500,000 or a whole multiple of $100,000 in excess thereof.

(b) Any Term Benchmark Loans may be continued as such upon the expiration of an Interest Period with respect thereto by compliance by the Lead Borrower with the notice provisions contained in Section 2.9(a); provided, that no Term Benchmark Loan may be continued as such when any Event of Default has occurred and is continuing, in which case such Loan shall be automatically converted to an ABR Loan at the end of the applicable Interest Period with respect thereto. If (i) the Lead Borrower shall fail to give timely notice of an election to continue a Term Benchmark Loan, such Term Benchmark Loan shall automatically continue as a Term Benchmark Loan with a one month Interest Period or (ii) the continuation of Term Benchmark Loans is not permitted hereunder, such Term Benchmark Loans shall be automatically converted to ABR Loans at the end of the applicable Interest Period with respect thereto.

Section 2.10 **Computation of Interest and Fees; Usury.**

(a) Interest payable hereunder with respect to any ABR Loan based on the Prime Rate shall be calculated on the basis of a year of 365 days (or 366 days, as applicable) for the actual days elapsed. All other fees, interest and all other amounts payable hereunder shall be calculated on the basis of a 360-day year for the actual days elapsed. The Administrative Agent shall promptly notify the Lead Borrower and the applicable Lenders of each determination of the Term SOFR Rate on the Business Day of the determination thereof. Any change in the interest rate on a Loan resulting from a change in the Alternate Base Rate shall become effective as of the opening of business on the day on which such change in the Alternate Base Rate shall become effective. The Administrative Agent shall as soon as practicable notify the Lead Borrower and the applicable Lenders of the effective date and the amount of each such change.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Lead Borrower, deliver to the Lead Borrower a statement showing the computations used by the Administrative Agent in determining any interest rate.

(c) In no way, nor in any event or contingency (including, but not limited to, prepayment or acceleration of the maturity of any Obligation), shall the interest taken, reserved, contracted for, charged, or received under this Agreement exceed the maximum nonusurious amount permissible under applicable law. If, from any possible construction of any of the Credit Documents, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such interest shall be automatically reduced to the maximum nonusurious amount permitted under applicable law, without the necessity of execution of any amendment or new document. All interest paid or agreed to be paid to the Lenders with respect to the Loans shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Loans so that the amount of interest on account of such Indebtedness does not exceed the maximum nonusurious amount permitted by applicable law.

Section 2.11 **Payments Generally; Pro Rata Treatment and Payments.**

(a) The Borrowers shall make each payment or prepayment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LOC Obligations, or of amounts payable under Sections 2.14, 2.15 or 2.16 or otherwise) in Dollars prior to 1:00 P.M., on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment or

counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 383 Madison Avenue, New York, New York, except payments to be made directly to Issuing Lenders or Swingline Lenders as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.5 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in Dollars.

(b) If at any time that payments are not required to be applied in the manner required by Section 2.11(c) insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed Letter of Credit drawings, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed Letter of Credit drawings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed Letter of Credit drawings then due to such parties.

(c) Allocation of Payments After Exercise of Remedies. Notwithstanding any other provisions of this Agreement to the contrary, after the exercise of remedies (other than the application of default interest pursuant to Section 2.8) by the Administrative Agent pursuant to Section 7.2 (or after the Commitments shall automatically terminate and the Loans (with accrued interest thereon) and all other amounts under the Credit Documents (including, without limitation, the maximum amount of all contingent liabilities under Letters of Credit) shall automatically become due and payable in accordance with the terms of such Section), all amounts collected or received by the Administrative Agent on account of the Credit Party Obligations shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket attorneys' fees) of the Administrative Agent in connection with enforcing the rights of the Lenders under the Credit Documents;

SECOND, to the payment of any fees owed to the Administrative Agent and the Issuing Lenders;

THIRD, to the payment of all reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Credit Documents or otherwise with respect to the Credit Party Obligations owing to such Lender to the extent provided in Section 9.5;

FOURTH, to the payment of all of the Credit Party Obligations consisting of accrued fees and interest, and including, with respect to any Bank Product, any fees, premiums and scheduled periodic payments due under such Bank Product and any interest accrued thereon;

FIFTH, to the payment of the outstanding principal amount of the Credit Party Obligations and the payment or cash collateralization of the outstanding LOC Obligations,

and including with respect to any Bank Product, any breakage, termination or other payments due under such Bank Product and any interest accrued thereon;

SIXTH, to all other Credit Party Obligations and other obligations which shall have become due and payable under the Credit Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

SEVENTH, to the payment of the surplus, if any, to the Borrowers or whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (b) each of the Lenders and any Bank Product Provider shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Loans and LOC Obligations held by such Lender or the outstanding obligations payable to such Bank Product Provider bears to the aggregate then outstanding Loans and LOC Obligations and obligations payable under all Bank Products) of amounts available to be applied pursuant to clauses "THIRD", "FOURTH", "FIFTH" and "SIXTH" above; and (c) to the extent that any amounts available for distribution pursuant to clause "FIFTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Administrative Agent in a cash collateral account and applied (i) first, to reimburse the Issuing Lender from time to time for any drawings under such Letters of Credit and (ii) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "FIFTH" and "SIXTH" above in the manner provided in this Section. Notwithstanding the foregoing terms of this Section, only Collateral proceeds and payments under the Guaranty (as opposed to ordinary course principal, interest and fee payments hereunder) shall be applied to obligations under any Bank Product. Amounts distributed with respect to any Bank Product Debt may, at the option of the Administrative Agent, be the amount of such Bank Product last reported to the Administrative Agent by the applicable Bank Product Provider.

Section 2.12 **Non-Receipt of Funds; Administrative Agent's Clawback.**

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received written notice from a Lender prior to the proposed date of any Extension of Credit that such Lender will not make available to the Administrative Agent such Lender's share of such Extension of Credit, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Agreement and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Extension of Credit available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by a Borrower, the interest rate applicable to ABR Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Extension of Credit to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Extension of Credit. Any payment by a Borrower shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Lead Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Lead Borrower with respect to any amount owing under subsections (a) and (b) of this Section shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the applicable conditions to the applicable Extension of Credit set forth in Article IV are not satisfied or waived in accordance with the terms thereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 9.5(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any such payment under Section 9.5(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.5(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.13 **Inability to Determine Interest Rate; Benchmark Replacement.**

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.13, if:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis) for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR; or

(ii) the Administrative Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time, the Adjusted Daily Simple SOFR will not adequately and fairly

reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing;

then the Administrative Agent shall give notice thereof to the Lead Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Lead Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Lead Borrower delivers a new Notice of Borrowing or Notice of Conversion/Extension in accordance with the terms of this Agreement (1) any Notice of Conversion/Extension that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Notice of Borrowing that requests a Term Benchmark Borrowing shall instead be deemed to be a Notice of Conversion/Extension or a Notice of Borrowing, as applicable, for (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.13(a)(i) or (ii) above or (y) an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.13(a)(i) or (ii) above and (2) if the Adjusted Daily Simple SOFR is the subject of Section 2.13(a)(i) or (ii) above, any Notice of Borrowing that requests an RFR Borrowing shall instead be deemed to be a Notice of Borrowing for an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowing, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Lead Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.13(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (x) the Administrative Agent notifies the Lead Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Lead Borrower delivers a new Notice of Conversion/Extension or Notice of Borrowing in accordance with this Agreement, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.13(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.13(a)(i) or (ii) above, on such day, and (2) if the Adjusted Daily Simple SOFR is the subject of Section 2.13(a)(i) or (ii) above, any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute, an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Credit Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark (including any related adjustments) for all purposes hereunder and under any Credit Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Credit Document, the Administrative Agent will have the right, in consultation with the Lead Borrower, to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement

Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Credit Document.

(d) The Administrative Agent will promptly notify the Lead Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.13, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Credit Document, except, in each case, as expressly required pursuant to this Section 2.13.

(e) Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Lead Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Lead Borrower may revoke any request for (i) a Term Benchmark Borrowing, conversion to or continuation of Term Benchmark Loans to be made, converted or continued or (ii) a RFR Borrowing or conversion to RFR Loans, during any Benchmark Unavailability Period and, failing that, the Lead Borrower will be deemed to have converted any request for a Term Benchmark Borrowing or RFR Borrowing, as applicable, into a request for a Borrowing of or conversion to (A) solely with respect to any such request for a Term Benchmark Borrowing, an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Lead Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.13, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

Section 2.14 **Yield Protection.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or Issuing Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Lender or other Recipient, the Borrowers will, jointly and severally, pay to such Lender, Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or Issuing Lender determines that any Change in Law affecting such Lender or Issuing Lender or any lending office of such Lender or such Lender's or Issuing Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Lender's capital or on the capital of such Lender's or Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Lender's policies and the policies of such Lender's or Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will, jointly and severally, pay to such Lender or Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Borrowers shall, jointly and severally, pay such Lender or Issuing Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Lender's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or Issuing Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date such Lender or Issuing Lender, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Lender's intention to claim compensation therefore (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.15 **Compensation for Losses.**

Promptly following demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall, jointly and severally, promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than an ABR Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than an ABR Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a Term Benchmark Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 2.19;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

Section 2.16 **Taxes.**

(a) Defined Terms. For purposes of this Section 2.16, the term "Lender" includes any Issuing Lender and the term "applicable law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrowers. The Borrowers shall, jointly and severally, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Borrowers shall, jointly and severally, indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrowers have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligations of the Borrowers to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.6(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrowers to a Governmental Authority pursuant to this Section 2.16, the Lead Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.16(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), whichever of the following is applicable:

1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2) executed copies of IRS Form W-8ECI;

3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit 2.16(a) to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to a Borrower as described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.16(b) or Exhibit 2.16(c), IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in

the form of Exhibit 2.16(d) on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Lead Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower or the Administrative Agent as may be necessary for the Lead Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lead Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16 (including by the payment of additional amounts pursuant to this Section 2.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

Section 2.17 **Indemnification; Nature of Issuing Lender's Duties.**

(a) In addition to its other obligations under Section 2.3 and Section 9.5, the Borrowers, jointly and severally, hereby agrees to protect, indemnify, pay and save each Issuing Lender and each Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that such Issuing Lender or such Lender may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit or (ii) the failure of an Issuing Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

(b) As between the Borrowers, the Issuing Lender and each Lender, the Borrowers shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. Neither any Issuing Lender nor any Lender shall be responsible: (i) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (iii) for failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (iv) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) for errors in interpretation of technical terms; (vi) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (vii) for any consequences arising from causes beyond the control of the Issuing Lender or any Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of any Issuing Lender's rights or powers hereunder.

(c) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by any Issuing Lender or any Lender, under or in connection with any Letter of Credit or the related certificates, if taken or omitted in the absence of gross negligence or willful misconduct, shall not put such Issuing Lender or such Lender under any resulting liability to any Borrower. It is the intention of the parties that this Agreement shall be construed and applied to protect and indemnify the Issuing Lender and each Lender against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by the Borrowers, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any Governmental Authority. The Issuing Lenders and the Lenders shall not, in any way, be liable for any failure by an Issuing Lender or anyone else to pay any drawing under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of the Issuing Lenders and the Lenders.

(d) Nothing in this Section is intended to limit the Reimbursement Obligation of the Borrowers contained in Section 2.3(d) or Section 9.5 hereof. The obligations of the Borrowers under this Section shall survive the termination of this Agreement. No act or omissions of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the Issuing Lender and the Lenders to enforce any right, power or benefit under this Agreement.

(e) Notwithstanding anything to the contrary contained in this Section, the Borrowers shall have no obligation to indemnify any Issuing Lender or any Lender in respect of any liability incurred by such Issuing Lender or such Lender arising out of the gross negligence or willful misconduct of such Issuing Lender, as determined by a court of competent jurisdiction in a final, non-appealable judgment.

Section 2.18 **[Reserved].**

Section 2.19 **Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.14, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall (at the request of the Lead Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or Section 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby, jointly and severally, agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.14, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.19(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Lead Borrower may, at the sole expense and effort of the Borrowers, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.6), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.14 or Section 2.16) and obligations under this Agreement and the related Credit Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrowers shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.6;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under Section 2.15) from the assignee (to the extent of such outstanding principal) or the Borrowers (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Lead Borrower to require such assignment and delegation cease to apply.

Section 2.20 **Cash Collateral.**

(a) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or any Issuing Lender (with a copy to the Administrative Agent), the Borrowers shall, jointly and severally, Cash Collateralize all Fronting Exposure of the Issuing Lenders with respect to such Defaulting Lender (determined after giving effect to Section 2.21(b) and any Cash Collateral provided by the Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LOC Obligations, to be applied pursuant to clause (c) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Lenders as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon demand by the Administrative Agent, jointly and severally, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.20 or Section 2.21 in respect of Letters of Credit, shall be applied to the satisfaction of the Defaulting Lender's obligations to fund participations in respect of LOC Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Lender's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.20 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each Issuing Lender that there exists excess Cash Collateral; provided that, subject to Section 2.21, the Person providing Cash Collateral and each Issuing Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the extent that such Cash Collateral was provided by the Borrowers, such Cash Collateral shall remain subject to the security interest granted pursuant to the Credit Documents.

Section 2.21 **Defaulting Lenders.**

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 9.1.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.7 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Lender or Swingline Lender hereunder; *third*, to Cash Collateralize the Issuing Lender's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.20; *fourth*, as the Borrowers may request (so long as no Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.20; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders or Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lenders or Swingline Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or LOC Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LOC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LOC Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LOC Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable facility without giving effect to Section 2.21(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.21(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Commitment Fees. No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant Section 2.20.

(C) Reallocation of Fees. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall, jointly and severally (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LOC Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LOC Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 9.25, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (x) *first*, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) *second*, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 2.20.

(b) Defaulting Lender Cure. If the Lead Borrower, the Administrative Agent, each Swingline Lender and each Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Revolving Commitment Percentages (without giving effect to Section 2.21(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) no Issuing Lender shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.22 **Incremental Facilities.**

(a) Revolving Facility Increases.

(i) General Terms. Subject to the terms and conditions set forth herein and notwithstanding any previous reduction in the Revolving Commitments or the Initial Term Loan Commitments, as provided in Section 2.6, the Borrowers shall have the right, at any time and from time to time until the Maturity Date, to increase the Revolving Commitments (each such increase, a "Revolving Facility Increase") by an aggregate principal amount not to exceed, when combined with the amount of any Incremental Term Facilities and Incremental Equivalent Debt, the Incremental Facility Increase Amount.

(ii) Terms and Conditions. The following terms and conditions shall apply to any Revolving Facility Increase: (A) any Revolving Facility Increase shall be identical (including with respect to Applicable Margin other than with respect to upfront fees) to and pursuant to the same documentation applicable to the existing Revolving Commitments and Revolving Loans (other than the amendment evidencing such Revolving Facility Increase), (B) (i) if such Revolving Facility Increase is in connection with a Limited Condition Transaction, and if agreed by the Lenders providing such Revolving Facility Increase (any such Lender, an "Incremental Revolving Lender"), no Specified Event of Default shall exist immediately prior to or after giving effect to such Revolving Facility Increase or (ii) otherwise no Event of Default shall exist immediately prior to or after giving effect to such Revolving Facility Increase, (C) subject to customary "SunGard" limitations (to the extent agreed by the Incremental Revolving Lenders and to the extent such Revolving Facility Increase is in connection with a Limited Condition Transaction), each of the representations and warranties made by any Credit Party set forth in Article III hereof or in any other Credit Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date of such Revolving Facility Increase (or, if incurred in connection with a Limited Condition Transaction, at the election of the Lead Borrower, on the date of the execution of the definitive documentation with respect to such Limited Condition Transaction) with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) as of such earlier date, (D) (i) any loans made pursuant to a Revolving Facility Increase shall constitute Obligations and will be secured and guaranteed with the other Obligations on a pari passu basis, (ii) any loans made pursuant to a Revolving Facility Increase shall not be secured by any lien on any asset of the Borrowers, any Guarantor or any of their respective subsidiaries that does not also secure the Loans and (iii) no Revolving Facility Increase may be guaranteed by any Person that is not a Guarantor, (E) any Incremental Revolving Lender shall be entitled to the same voting rights as the existing Lenders and shall be entitled to receive proceeds of prepayments on the same terms as the existing Revolving Lenders, (F) any such Revolving Facility Increase shall be in a minimum principal amount of $10,000,000 and integral multiples of $5,000,000 in excess thereof (or the remaining amount of the Revolving Facility Increase, if less), (G) the Borrowers shall execute a Revolving Loan Note in favor of any new Lender or any existing Lender whose Revolving Commitment is increased pursuant to this Section, in each case, if requested by such Lender, (H) subject to clauses (B) and (C) above, the conditions to Extensions of Credit in Section 4.2 shall have been satisfied, (I) the Administrative Agent shall have received (1) upon request of the Administrative Agent, an opinion or opinions of counsel for the Credit Parties, addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent and substantially similar to the opinion delivered to the

Administrative Agent on the Closing Date, (2) any authorizing corporate documents as the Administrative Agent may reasonably request and (3) if applicable, a duly executed Notice of Borrowing, (J) the maturity date of any Revolving Facility Increase shall be no sooner than the Maturity Date, and (K) the Administrative Agent shall have received from the Lead Borrower an updated Compliance Certificate, in form and substance reasonably satisfactory to the Administrative Agent, demonstrating that, both immediately prior to and after giving effect to any such Revolving Facility Increase and any borrowings thereunder on the closing date for such Revolving Facility Increase on a Pro Forma Basis, the Borrowers will be in compliance with each of the Financial Covenants, (1) based on the financial statements most recently delivered pursuant to Section 5.1(a) or Section 5.1(b) and (2) assuming all amounts thereunder are fully drawn**.**

(iii) Revolving Facility Increase. In connection with the closing of any Revolving Facility Increase, the outstanding Revolving Loans and Participation Interests shall be reallocated by causing such fundings and repayments among the Lenders of Revolving Loans as necessary such that, after giving effect to such Revolving Facility Increase, each Lender will hold Revolving Loans and Participation Interests based on its Revolving Commitment Percentage (after giving effect to such Revolving Facility Increase); provided that (i) such reallocations and repayments shall not be subject to any processing and/or recordation fees and (ii) the Borrowers shall, jointly and severally, be responsible for any costs arising under Section 2.18 resulting from such reallocation and repayments.

(b) Incremental Term Facilities.

(i) General Terms. Subject to the terms and conditions set forth herein, the Borrowers shall have the right, at any time and from time to time until the Maturity Date, to incur additional Indebtedness under this Agreement pursuant to one or more tranches of term loans (each an "Incremental Term Facility" and together with any Revolving Facility Increase, "Incremental Facilities") in an aggregate amount not to exceed, when combined with the amount of any Revolving Facility Increases, the Incremental Facility Increase Amount.

(ii) Terms and Conditions. The following terms and conditions shall apply to any Incremental Term Facility:

(A) (x) if agreed by the Lenders providing the applicable Incremental Term Facility (any such Lender, an "Incremental Term Lender") and to the extent the proceeds of the applicable Incremental Term Facility are being used to finance a Limited Condition Transaction, no Specified Event of Default shall exist immediately prior to or after giving effect to such Incremental Term Facility or (y) otherwise, no Event of Default shall exist immediately prior to or after giving effect to such Incremental Term Facility,

(B) subject to customary "SunGard" limitations (to the extent agreed to by the Incremental Term Lenders and to the extent the proceeds of the applicable Incremental Term Facility are being used to finance a Limited Condition Transaction), each of the representations and warranties made by any Credit Party set forth in Article III hereof or in any other Credit Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date of such credit extension (or, if incurred in connection with a Limited Condition Transaction, at the election of the Lead Borrower, on the date of the execution of the definitive documentation with respect to such Limited Condition Transaction) with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an

earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) as of such earlier date,

(C) (x) any loans made pursuant to an Incremental Term Facility shall constitute Obligations and will be secured and guaranteed with the other Obligations on a pari passu basis, (y) any loans made pursuant to an Incremental Term Facility shall not be secured by any lien on any asset of any Borrower, any Guarantor or any of their respective subsidiaries that does not also secure the Loans and (z) no Incremental Facility may be guaranteed by any Person that is not a Guarantor,

(D) the terms and documentation in respect of any Incremental Term Facility, to the extent not consistent with the Initial Term Loan Facility, shall be on terms and pursuant to documentation to be determined by the Lead Borrower and the lenders thereunder; provided that, to the extent such terms and documentation are not substantially identical with the Initial Term Loans (except to the extent permitted by Section 2.22(b)(ii)(E)(2), Sections 2.22(b)(ii)(J) and Sections 2.22(c) and other than the amendment effectuating such Incremental Term Facility), such terms and documentation shall be no more restrictive to the Lead Borrower and its Restricted Subsidiaries, taken as a whole, than the terms applicable to the existing Loans or otherwise be reasonably satisfactory to the Administrative Agent (except to the extent (1) such terms are offered to be conformed (or added) to this Agreement for the benefit of the Initial Term Loan Lenders pursuant to an amendment or (2) such terms are applicable solely to periods after the Latest Maturity Date applicable to the Initial Term Loan existing at the time of the incurrence of such Incremental Term Facility); provided further that, to the extent applicable and reasonably requested by the Administrative Agent, such Incremental Term Facility shall be subject to customary intercreditor documentation reasonably satisfactory to the Administrative Agent and the Lead Borrower,

(E) any Incremental Term Lender (1) shall be entitled to the same voting rights as the existing Lenders and (2) may participate on a pro rata basis or a less than pro rata basis (but not greater than pro rata basis) than the Initial Term Loans in any voluntary or mandatory prepayment or commitment reduction hereunder,

(F) any such Incremental Term Facility shall be in a minimum principal amount of $10,000,000 and integral multiples of $5,000,000 in excess thereof (or the remaining amount of the Incremental Facility Increase Amount, if less),

(G) the proceeds of any such Incremental Term Facility will be used for the purposes set forth in Section 3.11,

(H) the Borrowers shall execute a promissory note in favor of any new Lender or any existing Lender, in each case, if requested by such Lender,

(I) subject to clauses (A) and (B) above, the conditions to Extensions of Credit in Section 4.2 shall have been satisfied,

(J) the Incremental Term Facility shall have a maturity date no earlier than the Term Maturity Date of the Initial Term Loans, and shall have a Weighted Average Life

to Maturity no shorter than the then remaining Weighted Average Life to Maturity of the Initial Term Loans,

(K) the Incremental Term Facility shall have mandatory prepayment provisions no more favorable to the new Lenders than the prepayment provisions applicable to the Initial Term Loan Facility,

(L) the Administrative Agent shall have received (1) upon request of the Administrative Agent, an opinion or opinions of counsel for the Credit Parties, addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent and substantially similar to the opinion delivered to the Administrative Agent on the Closing Date, (2) any authorizing corporate documents as the Administrative Agent may reasonably request and (3) if applicable, a duly executed Notice of Borrowing, and

(M) the Administrative Agent shall have received from the Lead Borrower an updated Compliance Certificate, in form and substance reasonably satisfactory to the Administrative Agent, demonstrating that, both immediately prior to and after giving effect to any such Incremental Term Facilities on the closing date for such Incremental Term Facilities on a Pro Forma Basis, the Borrowers will be in compliance with each of the Financial Covenants set forth in Section 5.9 based on the financial statements most recently delivered pursuant to Section 5.1(a) or Section 5.1(b).

In the Lead Borrower's discretion, an Incremental Facility or Incremental Equivalent Debt may be incurred in reliance of either the Incremental Starter Basket or the Incremental Unlimited Prong or may be incurred concurrently in reliance of the Incremental Starter Basket and the Incremental Unlimited Prong, and proceeds from any such incurrence in reliance of the Incremental Starter Basket and the Incremental Unlimited Prong may be utilized in a single transaction by first calculating the incurrence under the Incremental Unlimited Prong and then calculating the incurrence under the Incremental Starter Basket and for the avoidance of doubt, any such incurrence under the Incremental Starter Basket shall be disregarded for purposes of the pro forma calculation of the First Lien Net Leverage Ratio and Total Net Leverage Ratio for purposes of effectuating the incurrence in reliance of the Incremental Unlimited Prong in such single transaction (and the Lead Borrower may classify and later reclassify indebtedness incurred under an Incremental Facility or Incremental Equivalent Debt as incurred under the Incremental Starter Basket or the Incremental Unlimited Prong, or both, on the date of incurrence and thereafter, to the extent permitted on the date of classification (or the date of any such reclassification)).

(c) Applicable Margin and Yield. The Applicable Margin and any other components of yield on any Incremental Term Facility shall be determined by the Lead Borrower and the Lenders thereunder.

(d) Participation. No Lender shall have any obligation to provide all or any portion of any such Incremental Term Facility or Revolving Facility Increase. The Borrowers may invite other banks, financial institutions and investment funds reasonably acceptable to the Administrative Agent (such consent not to be unreasonably withheld or delayed) to join this Agreement as Lenders hereunder for any portion of such Incremental Term Facility or Revolving Facility Increase; provided that such other banks, financial institutions and investment funds shall enter into such lender joinder agreements to give effect thereto as the Administrative Agent may reasonably request.

(e) Amendments. The Administrative Agent is authorized to enter into, on behalf of the Lenders, any amendment (any such amendment, an "Incremental Facility Amendment") to this Agreement

or any other Credit Document as may be necessary to incorporate the terms of any such Incremental Term Facility or Revolving Facility Increase.

(f) Limitation on Amount. The aggregate principal amount of all Incremental Term Facilities, Revolving Facility Increases and Incremental Equivalent Debt shall not exceed the sum of (1) the greater of (i) $180.0 million and (ii) 100% of Consolidated EBITDA for the most recently ended Test Period calculated on a Pro Forma Basis (the "Incremental Starter Basket") plus (2) an amount such that, after giving effect to any such Incremental Term Facilities or Revolving Facility Increases on a Pro Forma Basis (and, in the case of any Revolving Facility Increase and the Initial Term Loan Commitments, assuming all amounts thereunder are fully drawn and without netting the proceeds of such Incremental Facility or Incremental Equivalent Debt in the calculation of the First Lien Net Leverage Ratio), the First Lien Net Leverage Ratio shall not be greater than 3.50:1.00 (calculated on a Pro Forma Basis) or, solely in the case of Incremental Equivalent Debt that is unsecured or secured by Liens on the Collateral that are subordinated to the Liens securing the Obligations, the Total Net Leverage Ratio shall not be greater than 4.50:1.00 (calculated on a Pro Forma Basis) (the "Incremental Unlimited Prong") (collectively, the "Incremental Facility Increase Amount").

(g) Incremental Equivalent Debt. In addition, the Borrowers may utilize any portion of the Incremental Facility Increase Amount in effect at such time to issue or incur Indebtedness consisting of term loans (whether *pari passu*, subordinated in right of payment to the Obligations, unsecured or secured by Liens ranking junior or subordinate to the Liens securing the Obligations) or notes (whether *pari passu*, subordinated in right of payment to the Obligations, unsecured or secured by Liens ranking junior or subordinate to or *pari passu* with the Liens securing the Obligations) or any bridge facility, in each case in respect of the issuance of notes, issued in (A) a public offering, Rule 144A and/or other private placement and/or (B) a bridge facility or a syndicated loan financing or otherwise in lieu of an Incremental Term Facility ("Incremental Equivalent Debt"); provided that (i) such Incremental Equivalent Debt (x) to the extent such Incremental Equivalent Debt is pari passu to the Initial Term Loans in right of payment and with respect to security, does not mature earlier than the Latest Maturity Date of the existing Term Loans, (y) to the extent such Incremental Equivalent Debt is junior to the Initial Term Loans in right of payment or with respect to security (including by being unsecured), does not mature earlier than 91 days following the Latest Maturity Date applicable to the Initial Term Loans, and (z) does not have a Weighted Average Life to Maturity shorter than the Weighted Average Life to Maturity applicable to the existing Term Loans (provided that the requirement of this subclause (i) shall not apply to any Incremental Equivalent Debt consisting of a customary bridge facility, so long as the long-term indebtedness into which such customary bridge facility is to be converted satisfies this subclause (i)), (ii) such Incremental Equivalent Debt shall not be guaranteed by any Person that is not a Credit Party (unless such Person shall substantially concurrently become a Credit Party hereunder pursuant to Section 5.10), (iii) if secured, such Incremental Equivalent Debt (x) is not secured by any assets not securing the Loans (unless such assets shall substantially concurrently become a part of the Collateral) and (y) is subject to a customary intercreditor agreement reasonably satisfactory to the Administrative Agent and the Lead Borrower, (iv) no Event of Default shall have occurred and be continuing (provided that, solely with respect to any Incremental Equivalent Debt incurred in connection with a Limited Condition Transaction, (x) no Event of Default shall exist at the time of execution of the definitive documentation for such Limited Condition Transaction and (y) no Specified Event of Default shall exist at the time that such Incremental Equivalent Debt is effective hereunder), (v) any Incremental Equivalent Debt that is (x) *pari passu* with the Initial Term Loans in right of payment and with respect to security may provide for the ability to participate (1) on a pro rata basis, less than pro rata basis or greater than pro rata basis in any voluntary prepayments and (2) on a pro rata basis or less than pro rata basis (or greater than pro rata basis with respect to prepayments constituting permitted refinancings) in any mandatory prepayments, in each case, of the Term Loans and (y) junior to the Initial Term Loans in right of payment or with respect to security may provide for the ability to participate on a less than pro rata basis in any voluntary and/or mandatory prepayments of the Term Loans, but shall not be on a pro rata or

greater than pro rata basis; provided that any unsecured Incremental Equivalent Debt shall not share in any voluntary or mandatory prepayments of the Term Loans and (vi) the other terms and conditions (excluding pricing, interest rate margins, interest rate floors, discounts, fees, premiums, maturity and prepayment or redemption terms), if not substantially consistent with the terms of the existing Term Loans, are as otherwise reasonably satisfactory to the Administrative Agent (it being understood that (A) terms not substantially consistent with the existing Term Loans that are applicable only after the Latest Maturity Date at such time will be deemed to be satisfactory to the Administrative Agent, (B) terms contained in such Incremental Equivalent Debt that are, taken as a whole, more favorable to the lenders or the agent of such Incremental Equivalent Debt and are substantially concurrently conformed (or added) to the Credit Documents for the benefit of the lenders under the existing Term Loans or the Administrative Agent, as applicable, will be deemed to be satisfactory to the Administrative Agent and (C) terms contained in such Incremental Equivalent Debt that reflect then current market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by the Lead Borrower in good faith) will be deemed to be satisfactory to the Administrative Agent) (provided that, to the extent that any financial maintenance covenant is added for the benefit of such Incremental Equivalent Debt, no consent shall be required from the Administrative Agent or any of the Lenders if such financial maintenance covenant is either (a) also added for the benefit of the Lenders under the Credit Documents or (b) only applicable after the Latest Maturity Date at such time).

(h) This Section 2.22 shall supersede any provisions in Section 2.11 or Section 9.1 to the contrary.

Section 2.23 **Refinancing Amendments; Maturity Extension.**

(a) At any time after the Closing Date, provided that no Event of Default has occurred and is continuing or would result therefrom, the Borrowers may obtain, from any Lender and/or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of (i) all or any portion of the Term Loans then outstanding under this Agreement or (ii) all or any portion of the Revolving Loans (or unused Revolving Commitments) under this Agreement, in the form of (x) Other Term Loans or Other Term Commitments or (y) Other Revolving Loans or Other Revolving Commitments, as the case may be, in each case pursuant to a Refinancing Amendment. Each Class of Credit Agreement Refinancing Indebtedness incurred under this Section 2.23 shall be in an aggregate principal amount that is (x) not less than $10.0 million in the case of Other Term Loans or $5.0 million in the case of Other Revolving Loans and (y) an integral multiple of $1.0 million in excess thereof (unless such amount represents the total outstanding amount of the Refinanced Debt). Any Refinancing Amendment may provide for the issuance of Letters of Credit for the account of the Borrowers pursuant to any Other Revolving Commitments established thereby, in each case on terms substantially equivalent to the terms applicable to Letters of Credit under the Revolving Commitments. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Revolving Loans, Other Revolving Commitments and/or Other Term Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of this Section; provided that, for the avoidance of doubt, no such Refinancing Amendment shall amend, modify or otherwise affect the rights or duties of any Issuing Lender or the Swingline Lender without the prior written consent of such Issuing Lender or the Swingline Lender, as applicable. In addition, if so provided in the relevant Refinancing Amendment and with the consent of each Issuing Lender, participations in Letters of Credit expiring on or after the Revolving Maturity Date shall be

reallocated from Lenders holding Revolving Commitments to Lenders holding extended revolving commitments in accordance with the terms of such Refinancing Amendment; provided however that such participation interests shall, upon receipt thereof by the relevant Lenders holding Revolving Commitments, be deemed to be participation interests in respect of such Revolving Commitments and the terms of such participation interests (including, without limitation, the commission applicable thereto) shall be adjusted accordingly. To the extent reasonably requested by the Administrative Agent, the Lead Borrower shall deliver to the Administrative Agent, together with the applicable Refinancing Amendment, (A) documents, opinions and certificates of the type referred to in Section 4.1(b), Section 4.1(c) and Section 4.1(g) and (B) reaffirmation agreements and/or such amendments to the Security Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Lenders are provided with the benefit of the applicable Credit Documents.

(b) Extension of Term Loans; Extension of Revolving Loans.

(i) Extension of Term Loans. The Borrowers may at any time and from time to time request that all or a portion of the Term Loans of a given Class (each, an "Existing Term Loan Borrowing") be amended to extend the scheduled Term Maturity Date(s) with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so amended, "Extended Term Loans") and to provide for other terms consistent with this Section 2.23. In order to establish any Extended Term Loans, the Lead Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Borrowing) (each, a "Term Loan Extension Request") setting forth the proposed terms of the Extended Term Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Borrowing (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other similar fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Term Loan Borrowing and (y) be identical to the Term Loans under the Existing Term Loan Borrowing from which such Extended Term Loans are intended to be amended, except that: (i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan Borrowing, to the extent provided in the applicable Extension Amendment; provided however that at no time shall there be Classes of Extended Term Loans and Refinancing Term Facilities hereunder which have more than five (5) different Maturity Dates; (ii) the all-in yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the all-in yield for the Term Loans of such Existing Term Loan Borrowing, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and (iv) Extended Term Loans may have call protection as may be agreed by the Lead Borrower and the Lenders thereof; provided that no Extended Term Loans may be optionally prepaid prior to the Maturity Date of the Initial Term Loans, unless such optional prepayment is accompanied by a pro rata optional prepayment of the Initial Term Loans; provided however that (A) no Event of Default shall have occurred and be continuing at the time a Term Loan Extension Request is delivered to Lenders, (B) such Extended Term Loans of any given Term Loan Extension Series at the time of establishment thereof do not mature earlier than the Maturity Date of the Existing Term Loan Borrowing, (C) such Extended Term Loans of any given Term Loan Extension Series at the time of establishment thereof do not have a Weighted Average Life to Maturity shorter than the Weighted Average Life to Maturity applicable to the Existing Term Loan Borrowing, (D) all documentation in respect of such Extension Amendment shall be consistent with the foregoing and (E) any Extended Term

Loans that are (x) *pari passu* with the Initial Term Loans in right of payment and with respect to security may provide for the ability to participate (1) on a pro rata basis, less than pro rata basis or greater than pro rata basis in any voluntary prepayments and (2) on a pro rata basis or less than pro rata basis (or greater than pro rata basis with respect to prepayments constituting permitted refinancings) in any mandatory prepayments, in each case, of the Term Loans and (y) junior to the Initial Term Loans in right of payment or with respect to security may provide for the ability to participate on a less than pro rata basis in any mandatory prepayments of the Term Loans, but shall not be on a pro rata or greater than pro rata basis; provided that any unsecured Extended Term Loans shall not share in any mandatory prepayments of the Term Loans. Any Extended Term Loans amended pursuant to any Term Loan Extension Request shall be designated a series (each, a "Term Loan Extension Series") of Extended Term Loans for all purposes of this Agreement; provided that any Extended Term Loans amended from an Existing Term Loan Borrowing may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Borrowing (in which case scheduled amortization with respect thereto, if any, shall be proportionately increased). Each request for a Term Loan Extension Series of Extended Term Loans proposed to be incurred under this Section 2.23 shall be in an aggregate principal amount that is not less than $10.0 million (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount) and the Lead Borrower may impose an Extension Minimum Condition with respect to any Term Loan Extension Request, which may be waived by the Lead Borrower in its sole discretion.

(ii) Extension of Revolving Commitments. The Borrowers may at any time and from time to time request that all or a portion of the Revolving Commitments of a given Class (each, an "Existing Revolver Borrowing") be amended to extend the scheduled Revolving Maturity Date(s) with respect to all or a portion of any principal amount of such Revolving Commitments (any such Revolving Commitments which have been so amended, "Extended Revolving Commitments", and any Loans made pursuant thereto, "Extended Revolving Loans" and, together with the Extended Term Loans, the "Extended Loans") and to provide for other terms consistent with this Section 2.23. In order to establish any Extended Revolving Commitments, the Lead Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Borrowing) (each, a "Revolver Extension Request") setting forth the proposed terms of the Extended Revolving Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Borrowing (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other fees payable in connection therewith that are not generally shared with all relevant Lenders) and offered pro rata to each Lender under such Existing Revolver Borrowing and (y) be identical to the Revolving Commitments under the Existing Revolver Borrowing from which such Extended Revolving Commitments are to be amended, except that: (i) the Maturity Date of the Extended Revolving Commitments may be delayed to a later date than the Maturity Date of the Revolving Commitments of such Existing Revolver Borrowing, to the extent provided in the applicable Extension Amendment; provided however that at no time shall there be Classes of Extended Revolving Commitments and Other Revolving Commitments hereunder which have more than five (5) different Maturity Dates; (ii) the all-in yield with respect to extensions of credit under the Extended Revolving Commitments (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the all-in yield for extensions of credit under the Revolving Commitments of such Existing Revolver Borrowing, in each case, to the extent provided in the applicable Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Commitments); and (iv) all borrowings under the applicable

Revolving Commitments (i.e., the Existing Revolver Borrowing and the Extended Revolving Commitments of the applicable Revolver Extension Series) and repayments and commitment reductions thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Commitments (and related outstandings), (II) repayments required upon the Maturity Date of the non-extending Revolving Commitments and (III) repayments made in connection with a permanent repayment and termination of non-extended Revolving Commitments of the applicable Existing Revolver Borrowing); provided further that (A) no Event of Default shall have occurred and be continuing at the time a Revolver Extension Request is delivered to Lenders, (B) such Extended Revolving Commitments of any given Revolver Extension Series at the time of establishment thereof do not mature earlier than the Maturity Date of the Existing Revolver Borrowing and (C) all documentation in respect of such Extension Amendment shall be consistent with the foregoing. Any Extended Revolving Commitments amended pursuant to any Revolver Extension Request shall be designated a series (each, a "Revolver Extension Series") of Extended Revolving Commitments for all purposes of this Agreement; provided that any Extended Revolving Commitments amended from an Existing Revolver Borrowing may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolver Extension Series with respect to such Existing Revolver Borrowing. Each request for a Revolver Extension Series of Extended Revolving Commitments proposed to be incurred under this Section 2.23 shall be in an aggregate principal amount that is not less than $5.0 million (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such minimum amount) and the Lead Borrower may impose an Extension Minimum Condition with respect to any Revolver Extension Request, which may be waived by the Lead Borrower in its sole discretion.

(iii) Extension Request. The Lead Borrower shall provide the Revolver Extension Request or Term Loan Extension Request (as applicable) at least five (5) Business Days (or such shorter period as may be reasonably agreed by the Administrative Agent) prior to the date on which Lenders under the Existing Term Loan Borrowing or Existing Revolver Borrowing, as applicable, are requested to respond. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Borrowing amended into Extended Term Loans or any of its Revolving Commitments amended into Extended Revolving Commitments, as applicable, pursuant to any Extension Request. Any Lender holding a Loan under an Existing Term Loan Borrowing (each, an "Extending Term Lender") wishing to have all or a portion of its Term Loans under the Existing Term Loan Borrowing subject to such Extension Request amended into Extended Term Loans and any Revolving Lender (each, an "Extending Revolving Lender") wishing to have all or a portion of its Revolving Commitments under the Existing Revolver Borrowing subject to such Extension Request amended into Extended Revolving Commitments, as applicable, shall notify the Administrative Agent (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Term Loans under the Existing Term Loan Borrowing or Revolving Commitments under the Existing Revolver Borrowing, as applicable, which it has elected to request be amended into Extended Term Loans or Extended Revolving Commitments, as applicable. In the event that the aggregate principal amount of Term Loans under the Existing Term Loan Borrowing or Revolving Commitments under the Existing Revolver Borrowing, as applicable, in respect of which applicable Term Loan Lenders or Revolving Lenders, as the case may be, shall have accepted the relevant Extension Request exceeds the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested to be extended pursuant to the Extension Request, Term Loans or Revolving Commitments, as applicable, subject to Extension Elections shall be amended to Extended Term Loans or Extended Revolving Commitments, as applicable, on a pro rata basis (subject to rounding by the Administrative Agent, which shall be conclusive) based on the aggregate principal amount of Term Loans or Revolving Commitments, as applicable, included in each such Extension Election.

(iv) Extension Amendment. Extended Term Loans and Extended Revolving Commitments shall be established pursuant to an amendment (each, an "Extension Amendment") to this Agreement among the Borrowers, the Administrative Agent and each Extending Term Lender or Extending Revolving Lender, as applicable, providing an Extended Term Loan or Extended Revolving Commitment, as applicable, thereunder, which shall be consistent with the provisions set forth in Sections 2.23(b)(i) or (b)(ii) above, respectively (but which shall not require the consent of any other Lender). The effectiveness of any Extension Amendment shall be subject, to the extent reasonably requested by the Administrative Agent, to the receipt by the Administrative Agent of (i) documents, opinions and certificates of the type referred to in Section 4.1(b), Section 4.1(c) and Section 4.1(d) and (ii) reaffirmation agreements and/or such amendments to the Security Documents as may be reasonably requested by the Administrative Agent in order to ensure that the Extending Term Lenders or Extending Revolving Lenders, as applicable, are provided with the benefit of the applicable Credit Documents. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that this Agreement and the other Credit Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of the Extended Term Loans or Extended Revolving Commitments, as applicable, incurred pursuant thereto, (ii) modify the scheduled repayments set forth in Section 2.2(a)(ii) with respect to any Existing Term Loan Borrowing subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans required to be paid thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable Extension Amendment (with such amount to be applied ratably to reduce scheduled repayments of such Term Loans required pursuant to Section 2.2(a)(ii)), (iii) modify the prepayments set forth in Section 2.7 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto, (iv) address technical issues relating to funding and payments and (v) effect such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of this Section 2.23, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment.

(v) No conversion or extension of Loans or Commitments pursuant to any Extension Amendment in accordance with this Section 2.23 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(c) This Section 2.23 shall supersede any provisions in Section 2.11 or Section 9.1 to the contrary.

Article III

REPRESENTATIONS AND WARRANTIES

To induce the Lenders to enter into this Agreement and to make the Extensions of Credit herein provided for, the Borrowers hereby, jointly and severally, represent and warrant to the Administrative Agent and to each Lender that:

Section 3.1 **Financial Condition.**

(a) The Borrower Historical Financial Statements:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and

(ii) fairly present in all material respects the financial position of the Lead Borrower and its Subsidiaries as of the dates thereof (subject, in the case of the unaudited financial statements, to normal year-end adjustments and the absence of footnotes) and results of operations for the periods covered thereby.

(b) The five-year projections of the Lead Borrower and its Subsidiaries (prepared on an annual basis for the term of this Agreement) delivered to the Lenders on or prior to the Closing Date have been prepared in good faith based upon assumptions believed to be reasonable at the time in light of the conditions existing at the time such projections were created; *provided* that (1) such projections are not a guaranty of future performance, (2) whether or not any such projections are in fact achieved will depend upon future events and conditions, some of which are not within the control of the Lead Borrower or its Subsidiaries, and (3) actual results may vary from the projected results and such variations may be material.

Section 3.2 **No Material Adverse Effect.**

Since December 31, 2023, there has been no event or circumstance which has had or could reasonably be expected to have a Material Adverse Effect.

Section 3.3 **Corporate Existence; Compliance with Law; Patriot Act Information.**

The Lead Borrower and each of the Restricted Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, (b) has the requisite power and authority and the legal right to own and operate all its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged and has taken all actions necessary to maintain all rights, privileges, licenses and franchises necessary or required in the normal conduct of its business, (c) is duly qualified to conduct business and in good standing under the laws of (i) the jurisdiction of its organization or formation, (ii) the jurisdiction where its chief executive office is located and (iii) each other jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification except to the extent that the failure to so qualify or be in good standing in any such other jurisdiction could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (d) and its respective Registrations and Products are in compliance with all Requirements of Law, Organizational Documents, government permits and government licenses except to the extent such non-compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 3.3 as of the Closing Date is the following information for each Credit Party: the exact legal name and any former legal names of such Credit Party in the four (4) months prior to the Closing Date, the state of incorporation or organization, the type of organization, the jurisdictions in which such Credit Party is qualified to do business, the chief executive office, the principal place of business, the business phone number, the organization identification number, the federal tax identification number and ownership information (e.g. publicly held or if private or partnership, the owners and partners of each of the Credit Parties).

Section 3.4 **Corporate Power; Authorization; Enforceable Obligations.**

Each of the Credit Parties has full power and authority to enter into, deliver and perform the Credit Documents to which it is party and has taken all necessary limited liability company, partnership or corporate action to authorize the execution, delivery and performance by it of the Credit Documents to which it is party. Each Credit Document to which it is a party has been duly executed and delivered on behalf of each Credit Party. Each Credit Document to which it is a party constitutes a legal, valid and

binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 3.5 **No Legal Bar; No Default.**

The execution, delivery and performance by each Credit Party of the Credit Documents to which such Credit Party is a party, the borrowings thereunder and the use of the proceeds of the Loans (a) will not violate any Requirement of Law of any Credit Party, except for any violation which could not be reasonably expected to result in a Material Adverse Effect, (b) will not conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws, articles of organization, operating agreement or other organization documents of the Credit Parties or any material Contractual Obligation to which such Person is a party or by which any of its properties may be bound (except those as to which waivers or consents have been obtained) except for any violation of any such Contractual Obligation which could not be reasonably expected to result in a Material Adverse Effect, and (c) will not result in, or require, the creation or imposition of any Lien on any Credit Party's properties or revenues pursuant to any Requirement of Law or material Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens. Neither the Lead Borrower nor any of its Restricted Subsidiaries is in default under or with respect to any of its material Contractual Obligations except as could not reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

Section 3.6 **No Material Litigation.**

Except as set forth on Schedule 3.6, no litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrowers, threatened in writing against the Lead Borrower or any of its Restricted Subsidiaries or against any of its or their respective properties (a) with respect to the Credit Documents or any Extension of Credit or any of the Transactions, or (b) which could reasonably be expected to have a Material Adverse Effect. No permanent injunction, temporary restraining order or similar decree has been issued against the Lead Borrower or any of its Restricted Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

Section 3.7 **Investment Company Act; etc.**

No Credit Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

Section 3.8 **Margin Regulations.**

No part of the proceeds of any Extension of Credit hereunder will be used directly or indirectly for any purpose that violates, or that would require any Lender to make any filings in accordance with, the provisions of Regulation T, U or X of the Federal Reserve Board as now and from time to time hereafter in effect. The Lead Borrower and its Restricted Subsidiaries (a) are not engaged, principally or as one of their important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" "margin stock" within the respective meanings of each of such terms under Regulation U and (b) taken as a group do not own "margin stock" except as identified in the financial statements referred to in Section 3.1 or delivered pursuant to Section 5.1 and the aggregate value of all "margin stock" owned by the Lead Borrower and its Restricted Subsidiaries taken as a group does not exceed 25% of the value of their assets.

Section 3.9 **ERISA.**

(a) Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any ERISA Plan, and each ERISA Plan has complied in all material respects with the applicable provisions of ERISA and the Code except for any failures which could not be reasonably expected to result in a Material Adverse Effect. No termination of a Single Employer Plan has occurred resulting in any liability that has remained underfunded, and no Lien in favor of the PBGC or an ERISA Plan has arisen, during such five year period except for liabilities which could not be reasonably expected to result in a Material Adverse Effect. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such ERISA Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such ERISA Plan allocable to such accrued benefits, except to the extent such excess amount could not be reasonably expected to result in a Material Adverse Effect. Neither the Lead Borrower, any Restricted Subsidiary nor any Commonly Controlled Entity is currently subject to any liability for a complete or partial withdrawal from a Multiemployer Plan except for liabilities which could not be reasonably expected to result in a Material Adverse Effect.

(b) None of the Lead Borrower or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations).

Section 3.10 **Environmental Matters.**

(a) The facilities and properties owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries (the "Properties") do not contain any Materials of Environmental Concern in amounts or concentrations which (i) constitute a violation of, or (ii) could give rise to liability on behalf of the Lead Borrower or any Restricted Subsidiary under, any Environmental Law except for such non-compliance which could not be reasonably expected to result in a Material Adverse Effect.

(b) The Properties and all operations of the Lead Borrower and/or its Restricted Subsidiaries at the Properties are and have in the last five years been in compliance in all material respects, with all applicable Environmental Laws, except for any non-compliance which could not be reasonably expected to result in a Material Adverse Effect.

(c) Neither the Lead Borrower nor its Restricted Subsidiaries have received any material written or actual notice of material violation, alleged material violation, material non-compliance, material liability or potential material liability on behalf of the Lead Borrower or any Restricted Subsidiary with respect to Environmental Laws regarding any of the Properties or the business operated by the Lead Borrower or any of its Restricted Subsidiaries (the "Business"), nor does any Borrower have knowledge that any such notice will be received or is being threatened in writing.

(d) Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location that could give rise to liability on behalf of the Lead Borrower or any Restricted Subsidiary under any Environmental Law, and no Materials of Environmental Concern have been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability on behalf of the Lead Borrower or any Restricted Subsidiary under, any applicable Environmental Law except for such liabilities which could not be reasonably expected to result in a Material Adverse Effect.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of any Borrower, threatened in writing, under any Environmental Law to which the Lead

Borrower or any Restricted Subsidiary is or to the knowledge of any Borrower will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business, in each case, except for any such matter which could not reasonably be expected to result in a Material Adverse Effect.

(f) There has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of the Lead Borrower or any Restricted Subsidiary in connection with the Properties or otherwise in connection with the Business, in material violation of or in amounts or in a manner that could give rise to material liability on behalf of the Lead Borrower or any Restricted Subsidiary under Environmental Laws.

Section 3.11 **Use of Proceeds.**

The Borrowers will use (a) the proceeds of (i) the Term Loans made on the Acquisition Closing Date to finance the Transactions, (ii) the Revolving Loans made on and after the Closing Date, and Letters of Credit issued after the Closing Date, to finance the working capital needs of the Lead Borrower and its Restricted Subsidiaries and for general corporate purposes of the Lead Borrower and its Restricted Subsidiaries, and for any other purpose not prohibited by the Credit Documents (including, without limitation, Permitted Acquisitions) and (b) the proceeds of any Incremental Facility to finance Permitted Acquisitions, Investments and Restricted Payments and for other general corporate purposes of the Lead Borrower and its Restricted Subsidiaries, in each case, permitted by the Credit Documents, and any other purpose not prohibited by the Credit Documents and to pay fees, costs and expenses incurred in connection therewith and otherwise for general corporate purposes.

The Borrowers will not, directly or indirectly, use the proceeds of the Loans or use the Letters of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. (and any foreign counterpart thereto) or any other applicable anti-corruption law, or (ii) (A) to fund any activities or business of or with any Sanctioned Person, or in any Sanctioned Jurisdiction, or (B) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit, whether as Administrative Agent, Arranger, Issuing Lender, Lender, underwriter, advisor, investor, or otherwise).

Section 3.12 **Subsidiaries; Joint Ventures; Partnerships.**

Set forth on Schedule 3.12 is a complete and accurate list of all Subsidiaries, joint ventures and partnerships of the Lead Borrower and its Restricted Subsidiaries as of the Closing Date. Information on the attached Schedule includes the following: (a) the number of shares of each class of Equity Interests of each Subsidiary outstanding and (b) the number and percentage of outstanding shares of each class of Equity Interests owned by the Lead Borrower and its Restricted Subsidiaries. The outstanding Equity Interests of all such Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens (other than those arising under or contemplated in connection with the Credit Documents and Permitted Liens). As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of any Restricted Subsidiary, except as contemplated in connection with the Credit Documents.

Section 3.13 **Ownership.**

Each of the Lead Borrower and its Restricted Subsidiaries is the owner of, and has good and marketable title to or a valid leasehold interest in, all of its respective assets, which, together with assets leased or licensed by the Lead Borrower and its Restricted Subsidiaries, represents all assets in the aggregate material to the conduct of the Business, and none of such assets is subject to any Lien other than Permitted Liens. The Lead Borrower and each of its Restricted Subsidiaries enjoys peaceful and undisturbed possession under all of its leases and all such leases are valid and subsisting and in full force and effect.

Section 3.14 **Consent; Governmental Authorizations.**

No approval, consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with acceptance of Extensions of Credit by the Borrowers or the making of the Guaranty hereunder or with the execution, delivery or performance of any Credit Document by the Credit Parties (other than those which have been obtained) or with the validity or enforceability of any Credit Document against the Credit Parties (except such filings as are necessary in connection with the perfection of the Liens created by such Credit Documents).

Section 3.15 **Taxes.**

The Lead Borrower and each of its Restricted Subsidiaries has filed, or caused to be filed, all income tax returns and all other material tax returns (federal, state, local and foreign) required to be filed and paid or made provision for payment of (a) all material federal, state, local and other taxes levied or imposed on their income which are due and payable and (b) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. The Borrowers do not have actual knowledge as of the Closing Date of any proposed tax assessments against the Lead Borrower or any of its Restricted Subsidiaries.

Section 3.16 **Collateral Representations.**

(a) Intellectual Property. Set forth on Schedule 3.16(a), as of the Closing Date, is a list of all registered Intellectual Property (including all applications for registration and issuance) owned by each of the Credit Parties or that each of the Credit Parties licenses on an exclusive basis (including the name/title, current owner, registration or application number, and registration or application date and such other information as reasonably requested by the Administrative Agent).

(b) Pledged Debt. Set forth on Schedule 3.16(b), as of the Closing Date, is a description of all promissory notes and debt securities of any other Person owned by the Credit Parties on the Closing Date.

(c) Electronic Chattel Paper, Letter-of-Credit Rights and Uncertificated Investment Property. Set forth on Schedule 3.16(c), as of the Closing Date, is a description of all Electronic Chattel Paper (as defined in the UCC), Letter-of-Credit Rights (as defined in the UCC) in excess of $5.0 million and uncertificated Investment Property (as defined in the UCC) of the Credit Parties, including the name of (i) the applicable Credit Party, (ii) in the case of Electronic Chattel Paper, the account debtor, (iii) in the case of Letter-of-Credit Rights, the issuer or nominated person, as applicable, and (iv) in the case of uncertificated Investment Property, the issuer of such Investment Property.

(d) Commercial Tort Claims. Set forth on Schedule 3.16(d), as of the Closing Date, is a description of all Commercial Tort Claims (as defined in the UCC) of the Credit Parties in excess of $5.0

million (detailing such Commercial Tort Claim in such detail as reasonably requested by the Administrative Agent).

(e) Pledged Equity Interests. Set forth on Schedule 3.16(e), as of the Closing Date, is a list of (i) 100% (or, if less, the full amount owned by such Credit Party) of the issued and outstanding Equity Interests owned by such Credit Party of each Subsidiary (other than an Excluded Subsidiary), (ii) 65% (or, if less, the full amount owned by such Credit Party) of each class of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% (or, if less, the full amount owned by such Credit Party) of each class of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of each first-tier CFC and FSHCO owned by such Credit Party (other than any Immaterial Subsidiary and any Unrestricted Subsidiary) and (iii) all other Equity Interests required to be pledged to the Administrative Agent pursuant to the Security Documents.

Section 3.17 **Solvency.**

As of the Closing Date, immediately after giving effect to the consummation of the Transactions to occur on the Closing Date and the incurrence of the indebtedness and obligations being incurred in connection with this Agreement, (a) the sum of the debt (including contingent liabilities) of the Lead Borrower and its Subsidiaries on a consolidated basis does not exceed the fair value of the assets of the Lead Borrower and its Subsidiaries on a consolidated basis, (b) the present fair saleable value of the assets of the Lead Borrower and its Subsidiaries, on a consolidated basis, taken as a whole, is not less than the amount that will be required to pay the probable liabilities (including contingent liabilities) and debts of the Lead Borrower and its Subsidiaries on a consolidated basis, as they become absolute and matured in the ordinary course of business, (c) the capital of the Lead Borrower and its Subsidiaries on a consolidated basis is not unreasonably small in relation to their business, on a consolidated basis, as contemplated as of the Closing Date, and (d) the Lead Borrower and its Subsidiaries on a consolidated basis have not incurred and do not intend to incur, or believe that they will incur, debts including contingent obligations, beyond their ability to pay such debts as they become due in the ordinary course of business. For purposes of this Section 3.17, the amount of any contingent liability shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Accounting Standards Codification 450).

Section 3.18 **Compliance with FCPA.**

Each of the Lead Borrower and its Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and any foreign counterpart thereto. None of the Lead Borrower, its Subsidiaries, their respective directors or officers nor, to the knowledge of the Borrowers, employees or any Borrower Agent has (a) directly or indirectly, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (b) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (c) failed to disclose fully any contribution made by the Lead Borrower or any of its Subsidiaries (or made by any person acting on its behalf of which the Borrowers are aware) which is in violation of law, or (d) violated in any material respect any provision of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and any foreign counterpart thereto.

Section 3.19 **[Reserved].**

Section 3.20 **[Reserved].**

Section 3.21 **Labor Matters.**

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Lead Borrower or any of its Restricted Subsidiaries as of the Closing Date and none of the Lead Borrower or its Restricted Subsidiaries (a) has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years or (b) has knowledge of any potential or pending strike, walkout or work stoppage that could reasonably be expected to have a Material Adverse Effect. No unfair labor practice complaint is pending against the Lead Borrower or any of its Restricted Subsidiaries that could reasonably be expected to have a Material Adverse Effect. There are no strikes, walkouts, work stoppages or other material labor difficulty pending or to any Borrower's knowledge, threatened in writing against the Lead Borrower or any of its Restricted Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

Section 3.22 **Accuracy and Completeness of Information.**

(a) All written factual information (other than (i) estimates, budgets, forecasts, pro forma data, financial projections and other forward-looking financial information concerning the Lead Borrower and its Subsidiaries and (ii) other forward-looking information and any information of a general economic or industry specific nature) heretofore, contemporaneously or hereafter furnished by or on behalf of the Lead Borrower or any of its Restricted Subsidiaries to the Administrative Agent, the Arrangers or any Lender for purposes of or in connection with this Agreement or any other Credit Document, or any of the Transactions, when furnished and taken as a whole, is or will be true and accurate in all material respects and does not or, in the case of any such information made available after the Closing Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances in which such statements are made (giving effect to all supplements and updates thereto which shall be deemed to cure any prior inaccuracy); provided, that, with respect to such written factual information relating to the Company and its subsidiaries furnished by or on behalf of the Lead Borrower or any of its Restricted Subsidiaries on or before the Acquisition Closing Date, the foregoing representation and warranty is to the knowledge of the Lead Borrower. There is no fact now known to the Lead Borrower or any of its Restricted Subsidiaries which, individually or in the aggregate, has, or could reasonably be expected to have, a Material Adverse Effect, which fact has not been set forth herein, in the financial statements of the Lead Borrower and its Restricted Subsidiaries furnished to the Administrative Agent and the Lenders, or in any certificate, opinion or other written statement made or furnished by any Credit Party to the Administrative Agent and the Lenders.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certificate is true and correct in all respects other than immaterial typographical or clerical errors which do not impact the substance thereof.

Section 3.23 **[Reserved].**

Section 3.24 **Insurance.**

Subject to Section 5.15(e), the insurance coverage of the Lead Borrower and its Restricted Subsidiaries is outlined as to carrier, policy number, expiration date, type and amount on Schedule 3.24 as of the Closing Date and such insurance coverage complies with the requirements set forth in Section 5.5(b).

Section 3.25 **Security Documents.**

The Security Documents create valid and enforceable security interests in, and Liens on, the Collateral purported to be covered thereby. Except as set forth in the Security Documents, such security interests and Liens are currently (or will be, upon (a) the filing of appropriate financing statements with the Secretary of State of the state of incorporation or organization for each Credit Party and the filing of appropriate assignments or notices with the United States Patent and Trademark Office and the United States Copyright Office, in each case in favor of the Administrative Agent, on behalf of the Lenders, and (b) the Administrative Agent obtaining control or possession over those items of Collateral in which a security interest is perfected through control or possession) perfected security interests and Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, prior to all other Liens other than Permitted Liens.

Section 3.26 **Classification of Senior Indebtedness.**

The Credit Party Obligations constitute "Senior Indebtedness", "Designated Senior Indebtedness" or any similar designation under and as defined in any agreement governing any Subordinated Debt and the subordination provisions set forth in each such agreement are legally valid and enforceable against the parties thereto.

Section 3.27 **Anti-Terrorism Laws; OFAC Rules and Regulations.**

(a) Neither the Lead Borrower, any of its Subsidiaries nor, to the knowledge of any Borrower, the Affiliates or respective officers, directors, brokers or Borrower Agents of the Lead Borrower, such Subsidiary or Affiliate (i) has violated any Anti-Terrorism Laws or (ii) has engaged in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering.

(b) Neither the Lead Borrower, any of its Subsidiaries nor, to the knowledge of the Borrowers, the Affiliates or respective officers, directors, employees, brokers or Borrower Agents of the Lead Borrower, such Subsidiary or Affiliate is a Person that is, or is owned or controlled by a Person that is, a Sanctioned Person.

(c) Neither the Lead Borrower, any of its Subsidiaries nor, to the knowledge of the Borrowers, the Affiliates or respective officers, directors, brokers or Borrower Agents of the Lead Borrower, such Subsidiary or Affiliate acting or benefiting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of goods, services or money to or for the benefit of any Sanctioned Person, or in any Sanctioned Jurisdiction, except as permitted by applicable law, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

Section 3.28 **[Reserved].**

Section 3.29 **[Reserved].**

Section 3.30 **[Reserved].**

Section 3.31 **Affected Financial Institution.**

Neither the Lead Borrower nor any of its Subsidiaries is an Affected Financial Institution.

Section 3.32 **Trade Relations.**

There exists no actual or, to any Borrower's knowledge, threatened in writing termination, cancellation or limitation of, or any modification or change in, the business relationship between the Lead Borrower or any of its Restricted Subsidiaries and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of the Lead Borrower and its Restricted Subsidiaries, or with any material supplier, except in each case, where the same could not reasonably be expected to have a Material Adverse Effect, and there exists no present condition or state of facts or circumstances which would prevent the Lead Borrower or any of its Restricted Subsidiaries from conducting such business after the consummation of the transactions contemplated by this Agreement in substantially the same manner in which it has heretofore been conducted.

Section 3.33 **[Reserved]**

Section 3.34 **Health Care Laws and Permits.**

(a) Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each of the Lead Borrower and its Restricted Subsidiaries are in compliance with all applicable Health Care Laws.

(b) Each of the Lead Borrower and its Restricted Subsidiaries holds and is operating in material compliance with all Permits, except where the failure to hold or operate in material compliance with such Permits could not result in a Material Adverse Effect. Neither the Lead Borrower nor any of its Restricted Subsidiaries has received any written notice of proceedings relating to, and to the knowledge of each Borrower there are no facts or circumstances that would reasonably be expected to lead to, the revocation, suspension, termination or modification of any such certificate Permit, except where such revocation, suspension, termination or modification of any such Permit has not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) The Lead Borrower and its Restricted Subsidiaries have not received any written notice or, to the knowledge of Borrowers, other communication from any Governmental Authority, regarding any actual or alleged violation of, any applicable Health Care Law by the Lead Borrower or any of its Restricted Subsidiaries, except where such actual or alleged violation has not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) No Included Product is the subject of, or subject to (as applicable), any recall, market withdrawal or seizure, or any warning letter or other written communication from any Governmental Authority to the Lead Borrower or any of its Restricted Subsidiaries requiring such action or asserting that an Included Product fails to comply with applicable law, except where such action, letter or communication has not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Lead Borrower nor any Restricted Subsidiary has received written notification from any Governmental Authority that an Included Product fails to comply with applicable Law, which failure would reasonably be expected to result in sanctions or adversely affect the Permits of the Lead Borrower and its Restricted Subsidiaries' facilities, except where such sanctions or adverse effect on the Permits have not had, and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.35 **Regulatory Matters.**

(a) To the knowledge of the Borrowers, neither the FDA nor other Governmental Authority is considering limiting, suspending, or revoking any Registrations or changing the marketing classification or labeling or other significant parameter affecting the Products of the Lead Borrower or any of its Restricted Subsidiaries in any manner that could be reasonably expected to result in a Material Adverse Effect. To the knowledge of the Borrowers, no event has occurred or condition or state of facts exists which could constitute a breach or default, or could cause revocation or termination of any material Registrations. To the knowledge of the Borrowers, any third party that is a manufacturer or contractor for the Lead Borrower or any of its Restricted Subsidiaries is in compliance with all Registrations required by the FDA or comparable Governmental Authority and all Public Health Laws insofar as they reasonably pertain to the Products of the Lead Borrower and its Restricted Subsidiaries, except for any failures that could be reasonably expected to result in a Material Adverse Effect.

(b) Since January 1, 2024, neither the Lead Borrower nor any of its Restricted Subsidiaries has received a written warning letter, notice of violation letter, consent decree, request for information or other notice, response or commitment made to or with a Governmental Authority with respect to Regulatory Matters that could reasonably be expected to have a Material Adverse Effect.

(c) As of the Closing Date, neither the Lead Borrower nor any of its Restricted Subsidiaries is undergoing any material inspection related to Regulatory Matters, or any other Governmental Authority investigation.

(d) During the period of three (3) calendar years immediately preceding the Closing Date, the Borrowers do not have any knowledge that the Lead Borrower or any of its Restricted Subsidiaries has, nor has it or any of its Restricted Subsidiaries received written notice that it has, introduced into commercial distribution any Products manufactured by or on behalf of the Lead Borrower or any of its Restricted Subsidiaries or distributed any products on behalf of another manufacturer that were upon their shipment by the Lead Borrower or any of its Restricted Subsidiaries adulterated or misbranded in violation of 21 U.S.C. § 331, and adverse determination with respect to which would result in a Material Adverse Effect. Neither the Lead Borrower nor any of its Restricted Subsidiaries has received any material written notice from any Governmental Authority alleging noncompliance with any Requirement of Law, which noncompliance could reasonably be expected to have a Material Adverse Effect. No Product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution, or commercialization activity, and, to the knowledge of the Borrowers, there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, withdrawal, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any Product; (ii) a material change in the labeling of any Product suggesting a compliance issue; or (iii) a termination, seizure or material suspension of manufacturing, researching, distributing or marketing of any Product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any Product are pending or to the knowledge of the Borrowers threatened in writing against the Lead Borrower or any of its Restricted Subsidiaries.

(e) As of the Closing Date, neither the Lead Borrower nor any of its Subsidiaries nor any of their respective officers, directors or employees, nor to the knowledge of the Lead Borrower, any of their agents or contractors (i) have been excluded or debarred from any federal healthcare program (including without limitation Medicare or Medicaid) or any other federal program or (ii) have received written notice from the FDA or any other Governmental Authority with respect to debarment or disqualification of any Person that could reasonably be expected to have, in the aggregate, a Material Adverse Effect. As of the Closing Date, neither the Lead Borrower nor any of its Subsidiaries nor any of their respective officers,

directors or employees, nor to the knowledge of the Borrowers, any of their agents or contractors have been convicted of any crime or engaged in any conduct for which (x) debarment is mandated or permitted by 21 U.S.C. § 335a or (y) such Person could be excluded from participating in the federal health care programs under Section 1128 of the Social Security Act or any similar law.

(f) The Lead Borrower and each of its Subsidiaries is in material compliance with the written procedures, record-keeping and reporting requirements required by the FDA or any comparable Governmental Authority pertaining to the reporting of adverse events and recalls involving the Products.

Article IV

CONDITIONS PRECEDENT

Section 4.1 **Conditions to Closing Date.**

This Agreement shall become effective upon, and the obligation of each Lender to make the initial Extensions of Credit on the Closing Date is subject to, the satisfaction of the following conditions precedent; provided that, for the avoidance of the doubt, the availability of the Initial Term Loans is subject solely to the satisfaction of the conditions precedent set forth in Section 4.3 on the Acquisition Closing Date:

(a) Execution of Credit Agreement and Credit Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a duly authorized officer of each party hereto, (ii) for the account of each Revolving Lender requesting a promissory note, a duly executed Revolving Loan Note, (iii) [reserved], (iv) for the account of the Swingline Lender requesting a promissory note, the Swingline Loan Note, and (v) counterparts of the Security Agreement and the Pledge Agreement, in each case conforming to the requirements of this Agreement and executed by duly authorized officers of the Credit Parties or other Person, as applicable.

(b) Authority Documents. The Administrative Agent shall have received the following:

(i) Articles of Incorporation/Charter Documents. Original certified articles of incorporation or other charter documents, as applicable, of each Credit Party certified (A) by an officer of such Credit Party (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date, and (B) to be true and complete as of a recent date by the appropriate Governmental Authority of the state of its incorporation or organization, as applicable.

(ii) Resolutions. Copies of resolutions of the board of directors or comparable managing body of each Credit Party approving and adopting the Credit Documents, the Transactions and authorizing execution and delivery thereof, certified by an officer of such Credit Party (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date.

(iii) Bylaws/Operating Agreement. A copy of the bylaws or comparable operating agreement of each Credit Party certified by an officer of such Credit Party (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date.

(iv) Good Standing. Original certificates of good standing, existence or its equivalent with respect to each Credit Party certified as of a recent date by the appropriate Governmental

Authorities of the state of incorporation or organization and each other state in which the failure to so qualify and be in good standing could reasonably be expected to have a Material Adverse Effect.

(v) Incumbency. An incumbency certificate of each Authorized Officer of each Credit Party certified by an officer (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) to be true and correct as of the Closing Date.

(c) Legal Opinion of Counsel. The Administrative Agent shall have received an opinion or opinions (including, if requested by the Administrative Agent, local counsel opinions) of counsel for the Credit Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Administrative Agent.

(d) Personal Property Collateral. The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Credit Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien and judgment searches;

(ii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iii) subject to the Perfection Requirements, stock or membership certificates, if any, evidencing the Equity Interests pledged to the Administrative Agent pursuant to the Pledge Agreement and undated stock or transfer powers duly executed in blank;

(iv) duly executed consents as are necessary, in the Administrative Agent's sole discretion, to perfect the Lenders' security interest in the Collateral;

(v) a completed Perfection Certificate dated the Closing Date and signed by an Authorized Officer of the Lead Borrower, together with all attachments contemplated thereby; and

(vi) subject to the Perfection Requirements and to the extent required to be delivered pursuant to the terms of the Security Documents, all instruments, documents and chattel paper in the possession of any of the Credit Parties, together with allonges or assignments as may be necessary or appropriate to perfect the Administrative Agent's and the Lenders' security interest in the Collateral.

(e) Representations and Warranties. The representations and warranties made by the Credit Parties herein and in the other Credit Documents shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct in all respects and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects, in each case on and as of Closing Date, except for any such representation or warranty made as of an earlier date, which representation and warranty shall be true and correct in all material respects (or, with respect to any such representation and warranty that contains a materiality qualification, be true and correct in all respects) as of such earlier date.

(f) Defaults. No Default or Event of Default shall have occurred and be continuing on the Closing Date, both before and after giving effect to any Extensions of Credit to be made on such date.

(g) Solvency Certificate. The Administrative Agent shall have received an officer's certificate prepared by the chief financial officer or other Authorized Officer approved by the Administrative Agent of the Lead Borrower as to the financial condition, solvency and related matters of the Lead Borrower and its Subsidiaries, after giving effect to the Transactions to occur on the Closing Date, in substantially the form of Exhibit 4.1(g) hereto.

(h) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing with respect to the Revolving Loans (if any) to be made on the Closing Date.

(i) Closing Date Refinancing. The Closing Date Refinancing shall be consummated prior to or substantially simultaneously with the effectiveness of this Agreement on the Closing Date.

(j) Closing Certificate. The Administrative Agent shall have received a certificate or certificates executed by an Authorized Officer of the Lead Borrower as of the Closing Date, substantially in the form of Exhibit 4.1(l), certifying as to satisfaction of the conditions referred to in Section 4.1 (e) and (f).

(k) Patriot Act, Beneficial Ownership Regulation, etc. So long as requested at least ten (10) Business Days prior to the Closing Date, the Administrative Agent shall have received:

(i) at least two (2) Business Days prior to the Closing Date, documentation and other information requested by the Administrative Agent in order to comply with requirements of the Patriot Act, applicable "know your customer" and anti-money laundering rules and regulations; and

(ii) at least two (2) days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrowers as required by 31 C.F.R. § 1010.2.

(l) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and out-of-pocket expenses, if any, owing on the Closing Date pursuant to the Fee Letter, and Section 2.5 substantially simultaneously with effectiveness of this Agreement on the Closing Date to the extent (in the case of expenses) invoiced at least three (3) Business Days prior to the Closing Date.

Without limiting the generality of the provisions of Section 8.4(b), for purposes of determining compliance with the conditions specified in this Section 4.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.2 **Conditions to All Extensions of Credit.**

The obligation of each Lender to make any Extension of Credit hereunder is subject to the satisfaction of the following conditions precedent on the date of making such Extension of Credit; provided that, for the avoidance of the doubt, the availability of the Initial Term Loans is subject solely to the satisfaction of the conditions precedent set forth in Section 4.3 on the Acquisition Closing Date:

(a) Representations and Warranties. Subject to an LCT Election, the representations and warranties made by the Credit Parties herein, in the other Credit Documents and which are contained in any certificate furnished at any time under or in connection herewith shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects, in each case on and as of the date of such Extension of Credit as if made on and as of such date except for any representation or warranty made as of an earlier date, which representation and warranty shall remain true and correct as of such earlier date.

(b) No Default or Event of Default. Subject to an LCT Election, no Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extension of Credit to be made on such date unless such Default or Event of Default shall have been waived in accordance with this Agreement.

(c) Compliance with Commitments. Immediately after giving effect to the making of any such Extension of Credit (and the application of the proceeds thereof), (i) the sum of the aggregate principal amount of outstanding Revolving Loans plus outstanding Swingline Loans plus outstanding LOC Obligations shall not exceed the aggregate amount of the Revolving Commitments then in effect, (ii) the outstanding LOC Obligations shall not exceed the aggregate amount of the Letter of Credit Commitments, and (iii) the outstanding Swingline Loans shall not exceed the Swingline Committed Amount.

(d) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing with respect to such Extension of Credit.

(e) Additional Conditions to Revolving Loans. If a Revolving Loan is requested, all conditions set forth in Section 2.1 shall have been satisfied.

(f) Additional Conditions to Letters of Credit. If the issuance of a Letter of Credit is requested, (i) all conditions set forth in Section 2.3 shall have been satisfied and (ii) there shall exist no Lender that is a Defaulting Lender unless the Issuing Lender has entered into satisfactory arrangements with the Borrowers or such Defaulting Lender to eliminate the Issuing Lender's risk with respect to such Defaulting Lender's LOC Obligations.

(g) Additional Conditions to Swingline Loans. If a Swingline Loan is requested, (i) all conditions set forth in Section 2.4 shall have been satisfied and (ii) there shall exist no Lender that is a Defaulting Lender unless the Swingline Lender has entered into satisfactory arrangements with the Borrowers or such Defaulting Lender to eliminate the Swingline Lender's risk with respect to such Defaulting Lender's in respect of its Swingline Commitment.

(h) Incremental Facilities. If a Revolving Facility Increase or an Incremental Term Facility is requested, all conditions set forth in Section 2.22 shall have been satisfied.

(i) Refinancing Facilities. If a Refinancing Revolving Facility or a Refinancing Term Facility is requested, all conditions set forth in the definition of Credit Agreement Refinancing Indebtedness shall have been satisfied; *provided*, that a certificate of a Responsible Officer delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Credit Agreement Refinancing Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Credit Agreement Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement of such definition shall be conclusive evidence thereof unless the Administrative Agent notifies the Lead Borrower

within such five (5) Business Day period that it disagrees with such determination (including a description of the basis upon which it disagrees).

Each request for an Extension of Credit and each acceptance by the Borrowers of any such Extension of Credit shall be deemed to constitute representations and warranties by the Credit Parties as of the date of such Extension of Credit that the conditions set forth above in paragraphs (a) through (g), as applicable, have been satisfied.

Section 4.3 **Conditions to Funding of Initial Term Loans on Acquisition Closing Date.**

The obligation of each Lender to make Initial Term Loans on the Acquisition Closing Date is subject to (and only to) the satisfaction of the following conditions precedent; provided that the Initial Term Loan Commitments and the obligation of each Lender to make Initial Term Loans shall automatically terminate if the following conditions precedent are not satisfied prior to the Acquisition Outside Date:

(a) Execution of Credit Documents. The Administrative Agent shall have received for the account of each Term Loan Lender requesting a promissory note, a duly executed Term Loan Note.

(b) [Reserved].

(c) [Reserved].

(d) Personal Property Collateral. The Administrative Agent shall have received, subject to the Perfection Requirements, stock certificates, if any, evidencing the Equity Interests of the Company pledged to the Administrative Agent pursuant to the Pledge Agreement and undated stock or transfer powers duly executed in blank.

(e) The Specified Representations shall be true and correct in all material respects (or, in the case of Specified Representations qualified by materiality, in all respects).

(f) The Specified Acquisition Agreement Representations shall be true and correct to the extent required by the terms of the definition thereof.

(g) Solvency Certificate. The Administrative Agent shall have received an officer's certificate prepared by the chief financial officer or other Authorized Officer approved by the Administrative Agent of the Lead Borrower as to the financial condition, solvency and related matters of the Lead Borrower and its Subsidiaries, after giving effect to the Transactions to occur on the Acquisition Closing Date and the funding of the Initial Term Loans, in substantially the form of Exhibit 4.1(g) hereto.

(h) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing with respect to the Loans to be made on the Acquisition Closing Date.

(i) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the Historical Financial Statements and the Pro Forma Financial Statements.

(j) No Material Adverse Effect. Since June 21, 2024, there shall not have occurred any Company Material Adverse Effect that is continuing.

(k) Closing Certificate. The Administrative Agent shall have received a certificate or certificates executed by an Authorized Officer of the Lead Borrower, dated the Acquisition Closing Date,

substantially in the form of Exhibit 4.1(l) certifying as to satisfaction of the conditions referred to in Section 4.3 (e), (f), (j) and (l).

(l) Acquisition. The Acquisition shall have been consummated, or substantially contemporaneously with the borrowing of the Initial Term Loans, shall be consummated, in all material respects in accordance with the terms of the Acquisition Agreement, without giving effect to any amendments, consents or waivers thereto by the Lead Borrower that are materially adverse to JPMorgan Chase Bank, N.A., in its capacity as an Initial Term Loan Lender ("JPMCB"), without the prior consent of JPMCB (such consent not to be unreasonably withheld, delayed or conditioned) (it being understood that (a) any reduction in the purchase price of, or consideration for, the Acquisition is not material and adverse to the interests of JPMCB or the other Lenders, but any reduction shall be applied to reduce the Initial Term Loan Commitments and (b) any amendment to the definition of "Company Material Adverse Effect" is materially adverse to the interests of JPMCB and the other Lenders).

(m) Company Refinancing. The Company Refinancing shall have been consummated, or substantially contemporaneously with the borrowing of the Initial Term Loans, shall be consummated.

(n) PATRIOT Act, Beneficial Ownership Regulation, etc. So long as requested at least ten (10) Business Days prior to the Acquisition Closing Date, the Administrative Agent shall have received, at least two (2) Business Days prior to the Acquisition Closing Date, documentation and other information requested by the Administrative Agent in order to comply with requirements of the Patriot Act, applicable "know your customer" and anti-money laundering rules and regulations.

(o) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and out-of-pocket expenses, if any, owing on the Acquisition Closing Date pursuant to the Fee Letter, the Original Fee Letter and Section 2.5 substantially simultaneously with the initial borrowing under the Term Loan Facility (which amounts may, at the option of the Borrowers, be offset against the proceeds of the Initial Term Loans) to the extent (in the case of expenses) invoiced at least three (3) Business Days prior to the Acquisition Closing Date.

Notwithstanding anything in this Agreement, any other Credit Document or any other documentation governing the Transactions to the contrary, (a) the only representations the accuracy of which shall be a condition to the availability and/or initial funding of the Initial Term Loans on the Acquisition Closing Date will be (i) the Specified Acquisition Agreement Representations and (ii) the Specified Representations, and (b) the terms of the Credit Documents shall be in a form such that they do not impair the availability and/or initial funding of the Initial Term Loans on the Acquisition Closing Date if the conditions set forth in this Section 4.3 are satisfied (or waived by the Administrative Agent) (it being understood and agreed that (I) to the extent any lien search or security interest in the Collateral (other than any Collateral the security interest in which may be perfected by satisfying the Perfection Requirements) is not or cannot be provided and/or perfected on the Acquisition Closing Date after the Credit Parties' use of commercially reasonable efforts to do so, without undue burden or expense, the provision and/or perfection of such security interest(s) will not constitute a condition precedent to the availability and/or initial funding of the Initial Term Loans on the Acquisition Closing Date, but such lien search and/or security interest(s) will be required to be provided and/or perfected after the Acquisition Closing Date pursuant to Schedule 5.15 (which schedule may be updated on or prior to the Acquisition Closing Date with the consent of the Administrative Agent and the Lead Borrower) and (II) there are no conditions (express or implied) to the availability and/or initial funding of the Initial Term Loans on the Acquisition Closing Date, including compliance with the terms of the Fee Letter or the Credit Documents, other than those that are expressly set forth in this Section 4.3, and such conditions shall be subject in all respects to the provisions of this paragraph).

Without limiting the generality of the provisions of Section 8.4(b), for purposes of determining compliance with the conditions specified in this Section 4.3, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Acquisition Closing Date specifying its objection thereto.

Article V

AFFIRMATIVE COVENANTS

The Lead Borrower hereby covenants and agrees that on the Closing Date, and thereafter (a) for so long as this Agreement is in effect, (b) until the Commitments have terminated, and (c) the Credit Party Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder are paid in full in cash (other than contingent indemnification obligations for which no claim has been made), the Lead Borrower shall, and shall cause each of its Restricted Subsidiaries, to:

Section 5.1 **Financial Statements.**

Furnish to the Administrative Agent (who shall provide a copy to each of the Lenders):

(a) Annual Financial Statements. As soon as available and in any event no later than ninety (90) days after the end of each fiscal year of the Lead Borrower, a copy of the Consolidated balance sheet of the Lead Borrower and its Subsidiaries as of the end of such fiscal year and the related Consolidated statements of income and retained earnings and of cash flows of the Lead Borrower and its Subsidiaries for such fiscal year, which shall be audited by and accompanied by an opinion from Eisner Amper LLP or another firm of independent certified public accountants of nationally recognized standing reasonably acceptable to the Administrative Agent, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like qualification or exception (except with respect to or as a result of impending maturity of the Loans becoming due and payable by its terms, any change in accounting practices or policies due to changes in GAAP that is required or approved by such auditors or any prospective non-compliance with the Financial Covenants then in effect); provided that the financial statements required pursuant to this Section 5.1(a) shall be delivered with customary "management's discussion and analysis of the financial condition and results of operations" with respect to the periods covered by such financial statements;

(b) Quarterly Financial Statements. As soon as available and in any event no later than forty-five (45) days after the end of each fiscal quarter of the Lead Borrower (excluding the last fiscal quarter of the Lead Borrower's fiscal year), a copy of the Consolidated balance sheet of the Lead Borrower and its Subsidiaries as of the end of such period and related Consolidated statements of income and retained earnings and of cash flows for the Lead Borrower and its Subsidiaries for such quarterly period and for the portion of the fiscal year ending with such period, in each case setting forth in comparative form Consolidated figures for the corresponding period or periods of the preceding fiscal year; provided that the financial statements required pursuant to this Section 5.1(b) shall be delivered with customary "management's discussion and analysis of the financial condition and results of operations" with respect to the periods covered by such financial statements;

(c) Unrestricted Subsidiary Consolidating Information. Simultaneously with the delivery of each set of Consolidated financial statements referred to in Sections 5.1(a) and 5.1(b) above for any Restricted Group Reporting Period, the related unaudited consolidating financial statements reflecting the

adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may in any case be in footnote form only) from such Consolidated financial statements; and

(d) Annual Operating Budget and Cash Flow. As soon as available, but in any event within ninety (90) days after the end of each fiscal year, beginning with the fiscal year ending December 31, 2026, a copy of the detailed annual operating budget or plan including cash flow projections of the Lead Borrower and its Subsidiaries for the next four fiscal quarter period prepared on a monthly basis, in form and detail reasonably acceptable to the Administrative Agent, together with a summary of the material assumptions made in the preparation of such annual budget or plan.

All such financial statements delivered pursuant to subsections (a) and (b) above shall present fairly in all material respects the financial condition and results of operations of the Lead Borrower and its consolidated Subsidiaries on a Consolidated basis in accordance with GAAP consistently applied throughout the periods reflected therein (subject, in the case of interim statements, to normal recurring year-end audit adjustments and the absence of footnotes) and further accompanied by a description of, and an estimation of the effect on the financial statements on account of, a change, if any, in GAAP as provided in Section 1.3(b) since the date of the Borrower Historical Financial Statements that had a material impact on such financial statements.

So long as the Lead Borrower is required to file periodic reports under Section 13(a) or Section 15(d) of the Exchange Act, the Lead Borrower may satisfy its obligation under Section 5.2(b) and to deliver the financial statements referred to in clauses (a) and (b) above by delivering such information or financial statements by electronic mail to such e-mail address as the Administrative Agent (who shall provide a copy to the Lenders) shall have provided to the Lead Borrower from time to time; provided, that such information and financial statements shall be deemed to have been delivered on the date on which the Lead Borrower posts such information or financial statements, or provides a link thereto, on the Lead Borrower's website on the Internet at https://investor.anipharmaceuticals.com/financials/sec-filings/default.aspx (or any new address identified by the Lead Borrower) or at http://www.sec.gov.

The Lead Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and each Issuing Lender materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on the Platform and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information (within the meaning of the United States federal securities laws, "MNPI") with respect to the Lead Borrower or its Affiliates, or the respective securities of any of the foregoing. The Lead Borrower hereby agrees that it will use commercially reasonable efforts to specifically label "Private — Contains Non-Public Information" that portion of the Borrower Materials delivered in connection with this Agreement that will contain any MNPI (although it may be sensitive and proprietary) concerning the Lead Borrower or its Affiliates or the respective securities of any of the foregoing (provided, however, that to the extent such Borrower Materials constitute confidential information, they shall be required to be treated as set forth in Section 9.28).

Section 5.2 **Certificates; Other Information.**

Furnish to the Administrative Agent and each of the Lenders:

(a) Compliance Certificate. Together with the delivery of financial statements under Section 5.1(a) or (b), a certificate of the Chief Financial Officer (or Authorized Officer performing the duties customarily performed by the Chief Financial Officer) of the Lead Borrower substantially in the form of Exhibit 5.2(a) hereto or any other form reasonably approved by the Administrative Agent (a "Compliance Certificate") (i) certifying as to whether a Default or an Event of Default has occurred and, if a Default or

an Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations of Consolidated EBITDA, the First Lien Net Leverage Ratio and the Interest Coverage Ratio, in each case, as of the last day of the fiscal year or fiscal quarter to which such financial statements relate and for the Test Period ending on such date and (iii) setting forth a list identifying each Subsidiary of the Lead Borrower as a Restricted Subsidiary or an Unrestricted Subsidiary and identifying any Restricted Subsidiary that has become, or ceased to be, a Material Subsidiary or an Excluded Subsidiary, in each case, as of the date of delivery of such Compliance Certificate or confirming that there has been no change in such information since the date of delivery of the most recent Compliance Certificate delivered hereunder.

(b) Reports; SEC Filings; Regulatory Reports; Press Releases; Etc. Promptly upon their becoming available, (i) copies of all reports (other than those provided pursuant to Section 5.1 and those which are of a promotional or non-material nature) and other financial information which the Lead Borrower sends to its shareholders, (ii) copies of all reports and all registration statements and prospectuses, if any, which any Credit Party may make to, or file with, the SEC (or any successor or analogous Governmental Authority) or any securities exchange or other private regulatory authority, (iii) all material regulatory reports and (iv) all press releases and other statements made available by any of the Credit Parties to the public concerning material developments in the business of any of the Credit Parties.

(c) General Information. Promptly, such additional financial and other information as the Administrative Agent, on behalf of any Lender, may from time to time reasonably request.

Section 5.3 **Payment of Taxes.**

Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, subject, where applicable, to specified grace periods, (a) all of its federal and other material taxes that are due and payable and (b) any additional material costs that are imposed as a result of any failure to so pay, discharge or otherwise satisfy such taxes, except when the amount or validity of any such taxes is currently being contested in good faith by appropriate proceedings and reserves, if applicable, in conformity with GAAP with respect thereto have been provided on the books of the Lead Borrower or its applicable Restricted Subsidiaries.

Section 5.4 **Conduct of Business and Maintenance of Existence.**

Except as expressly permitted under Section 6.4, continue to engage in business of the same general type as now conducted by it on the Closing Date and preserve, renew and keep in full force and effect its corporate or other formative existence and good standing, and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business.

Section 5.5 **Maintenance of Property; Insurance.**

(a) Keep all material property useful and necessary in its business in good working order and condition (ordinary wear and tear and obsolescence and casualty resulting in a Recovery Event excepted).

(b) Maintain with financially sound and reputable insurance companies liability, casualty, property and business interruption insurance (including, without limitation, insurance with respect to its tangible Collateral) in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business; and furnish to the Administrative Agent, upon the request of the Administrative Agent, full information as to the insurance carried. The Administrative Agent shall be named (i) as lenders' loss payee, as its interest may appear with respect to any property insurance, and (ii) as additional insured, as its interest may appear, with respect to

any such liability insurance, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments to be furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days (or ten (10) days in the case of non-payment) prior written notice before any such policy or policies shall be altered or canceled, and such policies shall provide that no act or default of the Lead Borrower or any of its Restricted Subsidiaries or any other Person shall affect the rights of the Administrative Agent or the Lenders under such policy or policies.

(c) In case of any material loss, damage to or destruction of the Collateral of any Credit Party, such Credit Party shall promptly give written notice thereof to the Administrative Agent generally describing the nature and extent of such damage or destruction.

Section 5.6 **Maintenance of Books and Records.**

Keep proper books, records and accounts in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its businesses and activities.

Section 5.7 **Notices.**

Give notice in writing to the Administrative Agent (which shall promptly transmit such notice to each Lender):

(a) promptly after the Lead Borrower knows thereof, the occurrence of any Default or Event of Default;

(b) promptly, any litigation, or any investigation or proceeding known or threatened in writing to any Credit Party (i) affecting the Lead Borrower or any of its Restricted Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of $10,000,000 or involving injunctions or requesting injunctive relief by or against the Lead Borrower or any Restricted Subsidiary, (ii) affecting or with respect to this Agreement, any other Credit Document or any security interest or Lien created thereunder, (iii) involving an environmental claim or potential liability under Environmental Laws which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iv) by any Governmental Authority relating to the Lead Borrower or any Restricted Subsidiary thereof and alleging fraud, deception or willful misconduct by such Person;

(c) as soon as possible and in any event within thirty (30) days after the Lead Borrower knows thereof: (i) the occurrence of any Reportable Event with respect to any ERISA Plan, a failure to make any required contribution to an ERISA Plan, the creation of any Lien in favor of the PBGC (other than a Permitted Lien) or an ERISA Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the Lead Borrower, any Commonly Controlled Entity or any Multiemployer Plan, with respect to the withdrawal from, or the terminating, Reorganization or Insolvency of, any ERISA Plan;

(d) promptly, any other development or event which could reasonably be expected to have a Material Adverse Effect;

(e) prompt written notice of any warning letter (or letter of similar effect or import) from the FDA received by any Person (to the knowledge of the Lead Borrower in the case of a Person that is not the Lead Borrower or a Subsidiary) seeking the withdrawal, recall, suspension, import detention or seizure of

any Product in excess of $10,000,000 or which could reasonably be expected to have, in the aggregate, a Material Adverse Effect; and

(f) promptly, any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) and (d) of such certification.

Each notice pursuant to this Section shall be accompanied by a statement of an Authorized Officer setting forth details of the occurrence referred to therein and stating what action the Lead Borrower proposes to take with respect thereto. In the case of any notice of a Default or Event of Default, the Lead Borrower shall specify that such notice is a Default or Event of Default notice on the face thereof.

Section 5.8 **Environmental Laws.**

(a) Comply in all material respects with all applicable Environmental Laws and obtain and comply in all material respects with and maintain any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws; and

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with in all material respects all lawful orders and directives of all Governmental Authorities regarding Environmental Laws except to the extent that the same are being contested in good faith by appropriate proceedings.

Section 5.9 **Financial Covenants.**

(a) First Lien Net Leverage Ratio. As of the last day of each fiscal quarter of the Lead Borrower (commencing with the fiscal quarter ending on or about December 31, 2024), not permit the First Lien Net Leverage Ratio to exceed 3.00 to 1.00 (the "Maximum Leverage Financial Covenant"). Notwithstanding the foregoing, in connection with any Material Acquisition, upon written notice from the Lead Borrower to the Administrative Agent, the Lead Borrower may elect to increase the maximum First Lien Net Leverage Ratio set forth above to 3.50 to 1.00 for four consecutive fiscal quarters following the consummation of such Material Acquisition, commencing with the fiscal quarter in which such Material Acquisition giving rise to such election occurred.

(b) Minimum Interest Coverage Ratio. As of the last day of each fiscal quarter of the Lead Borrower (commencing with the fiscal quarter ending on or about December 31, 2024), not permit the Interest Coverage Ratio to be less than 3.00 to 1.00 (the "Minimum Interest Coverage Financial Covenant" and together with the Maximum Leverage Financial Covenant, collectively, the "Financial Covenants").

(c) Specified Equity Contribution. Notwithstanding the above, the parties hereto acknowledge and agree that, solely for purposes of calculations made in determining compliance with this Section 5.9, any cash equity contribution (which equity shall be Qualified Equity Interests or other Equity Interests having terms reasonably satisfactory to the Administrative Agent (but excluding Disqualified Equity Interests)) made to the Lead Borrower by the holders of its Equity Interests following the request therefor by the Lead Borrower during the fiscal quarter or on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered with respect to a fiscal year pursuant to Section 5.1(a) or a fiscal quarter pursuant to Section 5.1(b), as applicable (such date, the "Cure Expiration Date"), will be deemed to increase, dollar for dollar, Consolidated EBITDA for the purposes of determining compliance with the Financial Covenants contained herein at the end of such fiscal year or fiscal quarter and each applicable subsequent period (any such equity contribution, a "Specified Equity Contribution"); provided that (i) in any four (4) fiscal quarter period, there shall be at least two (2) fiscal quarters in respect

of which no Specified Equity Contribution is made, (ii) there shall not be more than five (5) Specified Equity Contributions made during the term of this Agreement, (iii) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Lead Borrower to be in compliance with the Financial Covenants set forth above, (iv) the amount of any Indebtedness repaid with the proceeds of the Specified Equity Contribution shall be disregarded for purposes of calculating the Financial Covenants set forth above for the fiscal quarter for which such Specified Equity Contribution is made and (v) a Specified Equity Contribution shall only be included in the computation of the Financial Covenants for purposes of determining compliance by the Lead Borrower with this Section 5.9 and not for any other purpose under this Agreement (including, without limitation, any compliance with this Section 5.9 set forth in the definition of Permitted Acquisition and in the determination of the availability of any baskets set forth in Article V or Article VI). Upon the making of a Specified Equity Contribution, the Financial Covenants in this Section 5.9 shall be recalculated giving effect to the increase in Consolidated EBITDA; provided that nothing in this subsection shall waive any Default or Event of Default that exists pursuant to Section 5.9(a) until such recalculation. If, after giving effect to such recalculation, the Lead Borrower is in compliance with the Financial Covenants, the Lead Borrower shall be deemed to have satisfied the requirements of the Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date and the applicable Default or Event of Default that had occurred shall be deemed waived and not to have occurred for all purposes of this Agreement and the other Credit Documents. Notwithstanding anything herein to the contrary, in the event that the Lead Borrower fails to comply with the requirements of the Financial Covenants as of the last day of any fiscal quarter of the Lead Borrower, until the receipt by the Lead Borrower of the applicable Specified Equity Contribution (with notice of such receipt having been delivered to the Administrative Agent) or the waiver of all Events of Default, the Revolving Lenders shall have no obligations to make Revolving Loans, the Swingline Lender shall have no obligations to make Swingline Loans and the Issuing Lender(s) shall have no obligation to issue or amend Letters of Credit, pending actual receipt in immediately available funds of the applicable Specified Equity Contribution. Notwithstanding anything herein to the contrary, neither the Administrative Agent nor any Lender shall exercise the right to accelerate the Loans or terminate the Commitments and none of the Administrative Agent, any Lender or any other Secured Party shall exercise any right to foreclose on or take possession of the Collateral or exercise any remedy solely on the basis of an Event of Default having occurred and being continuing with respect to the Financial Covenants, in each case, at any time prior to the expiration of the Cure Expiration Date (except to the extent that the Lead Borrower has confirmed in writing that it does not intend to provide the Specified Equity Contribution).

Section 5.10 **Additional Guarantors.**

The Lead Borrower will cause each of its Subsidiaries (other than Excluded Subsidiaries), whether newly formed, after acquired or otherwise existing to promptly (and in any event within thirty (30) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement. In connection therewith, the Lead Borrower shall give prompt notice to the Administrative Agent after creating a Subsidiary or acquiring the Equity Interests of any other Person. In connection with the foregoing, the Lead Borrower shall comply with the requirements of Section 5.12 and shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.1(b) and (d) and, upon the reasonable request of the Administrative Agent, substantially the same documentation required pursuant to Sections 4.1(c).

Section 5.11 **Compliance with Law.**

Comply with its Organizational Documents and all Requirements of Law and orders (including Environmental Laws and Health Care Laws), and all applicable restrictions imposed by all Governmental

Authorities, applicable to it and the Collateral if noncompliance with any such Requirements of Law, order or restriction could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.12 **Pledged Assets.**

(a) Equity Interests. Each Credit Party will cause (a) 100% of the Equity Interests in each of its direct Subsidiaries (other than any Excluded Subsidiary) and (b) 65% of each class of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of each class of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) of its direct Subsidiaries that are CFCs or FSHCOs (other than any Immaterial Subsidiary and any Unrestricted Subsidiary), in each case to the extent owned by such Credit Party, to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Security Documents or such other security documents as the Administrative Agent shall reasonably request.

(b) Personal Property. Each Credit Party will cause all of its tangible and intangible personal property now owned or hereafter acquired by it (other than Excluded Assets (as defined in the Security Agreement) and except as permitted by the Security Documents) to be subject at all times to a first priority, perfected Lien (subject in each case to Permitted Liens) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Credit Party Obligations pursuant to the terms and conditions of the Security Documents or such other security documents as the Administrative Agent shall reasonably request.

Section 5.13 **Designation of Subsidiaries.**

The Lead Borrower may designate any Subsidiary (other than a Borrower) as of the Closing Date or subsequently acquired or organized Subsidiary (other than a Borrower) as an "Unrestricted Subsidiary" and subsequently re- designate any such Unrestricted Subsidiary as a Restricted Subsidiary; provided that (a) both (i) immediately prior to giving effect to such designation or re-designation and any related transactions and (ii) on a Pro Forma Basis, immediately after giving effect to any such designation or re-designation and any related transactions, no Event of Default shall have occurred and be continuing, (b) the Lead Borrower shall be in compliance with each of the Financial Covenants then in effect calculated on a Pro Forma Basis after giving effect to such designation and (c) no Unrestricted Subsidiary may own or hold (or have an exclusive license to) any Material Intellectual Property or other property necessary in the operation of the Lead Borrower and its Restricted Subsidiaries business; provided that the Fair Market Value of such subsidiary at the time it is designated as an Unrestricted Subsidiary shall be treated as an Investment by the Lead Borrower and any Indebtedness or Liens of such Subsidiary at the time it is designated as a Restricted Subsidiary must comply with Article VI.

Section 5.14 **Anti-Corruption Laws, Etc.**

The Lead Borrower will maintain in effect and enforce policies and procedures designed to promote and achieve compliance by the Lead Borrower, its Subsidiaries and their respective directors, officers, employees and Borrower Agents with the Beneficial Ownership Regulation, applicable Anti-Terrorism Laws, the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq. (and any foreign counterpart thereto) or any other applicable anti-corruption law and applicable Sanctions.

Section 5.15 **Further Assurances and Post-Closing Covenants.**

(a) [Reserved].

(b) [Reserved].

(c) Visits and Inspections. The Credit Parties shall permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, to visit and inspect its properties (including the Collateral); inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants (*provided* that the Credit Parties shall be afforded the opportunity to participate in any discussions with such independent accountants), its business, assets, liabilities, financial condition, results of operations and business prospects; provided, that so long as no Event of Default has occurred and is continuing, no more than one such inspection or visit shall occur per calendar year and the Lead Borrower shall only be required to pay for the reasonable out-of-pocket expenses of one such inspection or visit during a calendar year. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at any time without advance notice. Notwithstanding anything to the contrary in this Section, none of the Lead Borrower or any of its Restricted Subsidiaries shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third-party consent legally binding on the Lead Borrower or its Restricted Subsidiaries or (iii) is subject to attorney, client or similar privilege or constitutes or includes attorney work-product.

(d) Further Assurances. Upon the reasonable request of the Administrative Agent, promptly perform or cause to be performed any and all acts, provide or cause to be provided additional financial information or other information similar to what was provided pursuant to Section 4.1(k), in each case, with respect to the Credit Parties or any of their Subsidiaries and execute or cause to be executed any and all documents for filing under the provisions of the UCC or any other Requirement of Law which are necessary or advisable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Credit Parties under, the Credit Documents and all applicable Requirements of Law.

(e) Post-Closing Covenant. The Credit Parties shall execute and deliver the documents and complete the tasks set forth on Schedule 5.15, in each case within the time limits specified on such schedule (or such later period of time as agreed to by the Administrative Agent in its sole discretion).

Section 5.16 **Use of Proceeds.**

The proceeds of the Extensions of Credit shall be used by the Borrowers in accordance with Section 3.8 and Section 3.11.

Article VI

NEGATIVE COVENANTS

The Lead Borrower hereby covenants and agrees that on the Closing Date, and thereafter (a) for so long as this Agreement is in effect, (b) until the Commitments have terminated, and (c) the Credit Party Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder are paid in full in cash (other than contingent indemnification obligations for which no claim has been made), that:

Section 6.1 **Indebtedness.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, contract, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness arising or existing under this Agreement and the other Credit Documents (including any Indebtedness incurred pursuant to Section 2.22 or Section 2.23);

(b) (i) Indebtedness of the Lead Borrower and its Restricted Subsidiaries existing as of the Closing Date as referred to in the financial statements referenced in Section 3.1 or as otherwise set forth in Schedule 6.1(b) hereto and any Permitted Refinancings thereof and (ii) the Convertible Notes and any Permitted Refinancings thereof;

(c) Indebtedness of the Lead Borrower and its Restricted Subsidiaries incurred after the Closing Date consisting of Capital Leases or Indebtedness incurred to provide all or a portion of the purchase price or cost of construction of an asset; provided that (i) such Indebtedness when incurred shall not exceed the purchase price or cost of construction of such asset; (ii) no such Indebtedness shall be renewed, refinanced or extended for a principal amount in excess of the principal balance outstanding thereon at the time of such renewal, refinancing or extension; and (iii) the total amount of all such Indebtedness shall not exceed the greater of $22,500,000 and 12.5% of Consolidated EBITDA for the most recently ended Test Period at any time outstanding;

(d) to the extent permitted pursuant to Section 6.5, unsecured intercompany Indebtedness among the Lead Borrower and its Restricted Subsidiaries; provided that any such Indebtedness owing by a Credit Party to a Restricted Subsidiary that is not a Credit Party shall be (i) fully subordinated to the Credit Party Obligations hereunder on terms reasonably satisfactory to the Administrative Agent and (ii) to the extent required by the Administrative Agent, evidenced by promissory notes which shall be pledged to the Administrative Agent as Collateral for the Credit Party Obligations;

(e) Indebtedness and obligations owing under (i) Bank Products and (ii) other Hedging Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;

(f) Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary in a transaction permitted hereunder in an aggregate principal amount not to exceed the greater of $50,000,000 and 35% of Consolidated EBITDA for the most recently ended Test Period at any time outstanding for all such Indebtedness and any Permitted Refinancings thereof; provided that any such Indebtedness was not created in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Restricted Subsidiary of the Lead Borrower or another Restricted Subsidiary;

(g) Indebtedness arising from agreements providing for indemnification and purchase price adjustment obligations or similar obligations, or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of the Lead Borrower or its Restricted Subsidiaries pursuant to such agreements, in connection with Dispositions, other sales of assets, Permitted Acquisitions or other Investments permitted to be made in accordance with Section 6.5;

(h) unsecured Indebtedness or Indebtedness secured by a Lien on the Collateral that is junior to the Lien securing the Initial Term Loans; provided that (i) the Total Net Leverage Ratio of the Lead Borrower is not greater than 4.50 to 1.00, calculated on a Pro Forma Basis after giving effect to the incurrence of such Indebtedness, (ii) such Indebtedness does not mature earlier than the Latest Maturity

Date of the Initial Term Loans and does not have a Weighted Average Life to Maturity shorter than the Weighted Average Life to Maturity of the Initial Term Loans and (iii) at the time such Indebtedness is incurred, no Event of Default shall exist or shall result therefrom;

(i) Credit Agreement Refinancing Indebtedness incurred in accordance with the terms of this Agreement;

(j) Guaranty Obligations in respect of Indebtedness of the Lead Borrower or any Restricted Subsidiary to the extent such Indebtedness is permitted to exist or be incurred pursuant to this Section provided that (i) any such guarantee by the Lead Borrower or Restricted Subsidiary of the Indebtedness of a Restricted Subsidiary that is not a Credit Party is otherwise permitted pursuant to Section 6.5, (ii) no guarantee by any Restricted Subsidiary of any Subordinated Debt shall be permitted unless such Restricted Subsidiary shall have also provided a guarantee of the Credit Party Obligations and (iii) if the Indebtedness being guaranteed is contractually subordinated to the Credit Party Obligations, such guarantee shall be contractually subordinated to the guarantee of the Credit Party Obligations on terms at least as favorable (taken as a whole) to the Lenders as those contained in the subordination of such Indebtedness;

(k) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and other Indebtedness in respect of obligations under any agreement or arrangement to provide cash management services, including treasury, depository, overdraft, return items, purchasing card, travel and entertainment card, credit or debit card, electronic funds transfer, automated clearing house transfers of funds and other cash management arrangements in the ordinary course of business;

(l) trade payables, accruals and accounts payable in the ordinary course of business (in each case to the extent not overdue) not for Funded Debt;

(m) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such person in each case incurred in the ordinary course of business;

(n) Indebtedness in respect of performance bonds, bid bonds, surety and (other than surety bonds required in connection with any 401(d) plan(s) maintained by the Lead Borrower and its Restricted Subsidiaries) and similar obligations, not to exceed $2,000,000 in the aggregate at any time outstanding, in each case provided in the ordinary course of business;

(o) Indebtedness consisting of insurance premiums accrued but not yet due;

(p) (A) Incremental Equivalent Debt incurred in accordance with the terms of this Agreement and (B) any Permitted Refinancings thereof;

(q) Indebtedness in respect of taxes, assessments or governmental charges which are permitted to be outstanding in accordance with the terms hereof;

(r) Indebtedness consisting of judgments not otherwise constituting an Event of Default;

(s) Indebtedness consisting of deferred purchase price or notes issued to officers, directors and employees to purchase or redeem Equity Interests of Lead Borrower in an amount not to exceed $2,000,000 at any time outstanding;

(t) Permitted Target Indebtedness and any Permitted Refinancings thereof;

(u) Indebtedness of joint ventures and/or Indebtedness incurred on behalf thereof or representing guarantees of Indebtedness of joint ventures in an amount not to exceed the greater of $22,500,000 and 12.5% of Consolidated EBITDA for the most recently ended Test Period at any time outstanding;

(v) Contribution Indebtedness;

(w) (i) Indebtedness arising out of Permitted Acquisitions and other Investments permitted to be made in accordance with Section 6.5 to the extent consisting of earnout obligations and other contingent acquisition consideration and (ii) unsecured Indebtedness in the form of Contingent Payments; provided that at the time any such Indebtedness is incurred, no Event of Default shall exist or shall result therefrom; and

(x) (A) additional Indebtedness of the Lead Borrower or any Restricted Subsidiary and (B) any Permitted Refinancings thereof; provided that the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (x) shall not exceed the greater of $45,000,000 and 25% of Consolidated EBITDA for the most recently ended Test Period.

Section 6.2 **Liens.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, contract, create, incur, assume or permit to exist any Lien with respect to any of their respective property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

(a) Liens created by or otherwise existing under or in connection with this Agreement or the other Credit Documents (including any Indebtedness incurred pursuant to Section 2.22 or Section 2.23) in favor of the Administrative Agent on behalf of the Secured Parties;

(b) Liens (i) in favor of a Bank Product Provider in connection with a Bank Product; provided, that such Liens shall secure the Credit Party Obligations on a pari passu basis; and (ii) securing obligations in respect of Hedging Agreements specified on Schedule 6.1(b) in accordance with the terms thereof;

(c) Liens securing purchase money Indebtedness and Capital Lease Obligations (and refinancings thereof) to the extent permitted under Section 6.1(c); provided, that (i) any such Lien attaches to such property concurrently with or within one hundred eighty (180) days after the acquisition thereof and (ii) such Lien attaches solely to the property so acquired in such transaction;

(d) Liens for taxes, assessments, charges or other governmental levies not yet due or as to which the period of grace, if any, related thereto has not expired or which are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the Lead Borrower or its Restricted Subsidiaries, as the case may be, in conformity with GAAP;

(e) statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, landlords', repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith by appropriate proceedings; provided that a reserve or other appropriate provision shall have been made therefor and the aggregate amount of such Liens is less than $2,000,000;

(f) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed by ERISA) and deposits securing liability to insurance carriers under insurance or self-insurance arrangements;

(g) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights of way, restrictions and other similar encumbrances affecting real property which do not in any case materially interfere with the ordinary conduct of the business of the applicable Person;

(i) Liens existing on the Closing Date and set forth on Schedule 1.1(b); provided that (i) no such Lien shall at any time be extended to cover property or assets other than the property or assets subject thereto on the Closing Date and improvements thereon and (ii) the principal amount of the Indebtedness secured by such Lien shall not be extended, renewed, refunded or refinanced;

(j) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in this definition (other than Liens set forth on Schedule 1.1(b)); provided that such extension, renewal or replacement Lien shall be limited to all or a part of the property which secured the Lien so extended, renewed or replaced (plus improvements on such property);

(k) Liens arising in the ordinary course of business by virtue of any contractual, statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies covering deposit or securities accounts (including funds or other assets credited thereto) or other funds maintained with a depository institution or securities intermediary;

(l) any reservation, covenant, zoning, building or similar laws or rights reserved to or vested in any Governmental Authority;

(m) restrictions on transfers of securities imposed by applicable Securities Laws;

(n) Liens arising out of judgments or awards not resulting in an Event of Default; provided that the Lead Borrower or the applicable Restricted Subsidiary shall in good faith be prosecuting an appeal or proceedings for review, to the extent available;

(o) any Lien securing Indebtedness permitted under Section 6.1(f) existing on any property or assets prior to the acquisition thereof by the Lead Borrower or any Restricted Subsidiary or existing on any property or asset of any Person that becomes a Restricted Subsidiary after the date hereof prior to the time such Person becomes a Restricted Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of such Restricted Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be;

(p) any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by the Lead Borrower or any Restricted Subsidiary thereof in the ordinary course of its business and covering only the assets so leased, licensed or subleased;

(q) Liens in favor of the Administrative Agent, Issuing Lender and/or Swingline Lender to Cash Collateralize or otherwise secure the obligations of a Defaulting Lender to fund risk participations hereunder;

(r) assignments of insurance or condemnation proceeds provided to landlords (or their mortgagees) pursuant to the terms of any lease and Liens or rights reserved in any lease for rent or for compliance with the terms of such lease;

(s) Liens securing (i) Indebtedness permitted pursuant to Section 6.1(p) or (ii) Indebtedness permitted pursuant to Section 6.1(h) that are junior to the Lien securing the Initial Term Loans; provided, that the Liens securing such Indebtedness permitted pursuant to Section 6.1(h) are subordinated to the Liens securing the Credit Party Obligations pursuant to a subordination or intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent;

(t) additional Liens so long as the principal amount of Indebtedness and other obligations secured thereby does not exceed the greater of $45,000,000 and 25% of Consolidated EBITDA for the most recently ended Test Period preceding the date of creation or incurrence of such Lien in the aggregate;

(u) non-exclusive licenses or sublicenses of intellectual property granted by the Lead Borrower or any Restricted Subsidiary in the ordinary course of business;

(v) Liens on insurance premiums permitted under Section 6.1;

(w) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(x) Liens in the nature of setoff, refund or chargeback in favor of counterparties to contractual arrangements with the Lead Borrower or its Restricted Subsidiaries in the ordinary course of business;

(y) Liens on assets of the Company and its Subsidiaries that are existing on the Acquisition Closing Date with respect to Permitted Target Indebtedness; and

(z) Liens created by the Convertible Notes Indenture in favor of the trustee thereunder and securing the payment of the fees and expenses of the trustee in respect of the Convertible Notes Indenture.

Notwithstanding the foregoing, if the Lead Borrower or any Restricted Subsidiary shall grant a Lien on any of its assets in violation of this Section, then it shall be deemed to have simultaneously granted an equal and ratable Lien on any such assets in favor of the Administrative Agent for the ratable benefit of the Secured Parties, to the extent such Lien has not already been granted to the Administrative Agent.

Section 6.3 **Nature of Business.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, alter the character of its business in any material respect from that conducted as of the Closing Date; provided that the Lead Borrower or any Subsidiary thereof may engage in any line of business that is similar, corollary, ancillary, incidental or complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Lead Borrower or any subsidiary thereof as of the Closing Date.

Section 6.4 **Consolidation, Merger, Purchase and Sale of Assets, etc.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to,

(a) consummate a Disposition, except the following, without duplication, shall be expressly permitted:

(i) (A) the sale, transfer, lease or other disposition of inventory and materials in the ordinary course of business and (B) the conversion of cash into Cash Equivalents and Cash Equivalents into cash, in each case so long as such Disposition is for Fair Market Value;

(ii) the sale, transfer or other disposition of property or assets to an unrelated party not in the ordinary course of business where and to the extent that they are the result of a Recovery Event to the extent Net Cash Proceeds from such Recovery Event are reinvested or used to make mandatory prepayments pursuant to Section 2.7(b)(ii) or resulting from any condemnation or taking under power of eminent domain or similar proceeding;

(iii) the sale, lease, transfer or other disposition for Fair Market Value of machinery, parts and equipment no longer used or useful in the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries;

(iv) so long as no Event of Default shall exist or shall result therefrom, the (A) sale, lease or transfer of property or assets (1) from a Credit Party or a Restricted Subsidiary of a Credit Party to a Credit Party or (2) among Restricted Subsidiaries that are not Credit Parties or the (B) dissolution of (1) any Credit Party (other than a Borrower) to the extent any and all assets of such Credit Party are distributed to another Credit Party or (2) any Restricted Subsidiary that is not a Credit Party to the extent any and all assets of such Restricted Subsidiary are distributed to a Credit Party or another Restricted Subsidiary that is not a Credit Party;

(v) the termination of any Hedging Agreement; provided, that no Event of Default shall exist or shall result therefrom;

(vi) the sale, lease or transfer of property (including real property) or assets not to exceed the greater of $18,000,000 and 10% of Consolidated EBITDA for the most recently ended Test Period preceding such Disposition in the aggregate in any fiscal year; provided, that no Event of Default shall exist or shall result therefrom;

(vii) sales, transfers and dispositions of Accounts (as defined in the Security Agreement) in connection with the compromise, settlement or collection thereof;

(viii) licenses of intellectual property granted in the ordinary course of business;

(ix) lapse or termination of immaterial intellectual property that is no longer useful to its business; and

(x) termination, surrender or sublease of a real estate lease in the ordinary course of business;

(xi) Dispositions of property for Fair Market Value to Persons other than the Lead Borrower and its Restricted Subsidiaries not otherwise permitted under this Section 6.4; provided that (i) with respect to any Disposition pursuant to this clause (xi) for a purchase price in excess of

the greater of $18,000,000 and 10% of Consolidated EBITDA for the most recently ended Test Period preceding such Disposition, the Lead Borrower or a Restricted Subsidiary shall receive not less than 75.0% of such consideration in the form of cash or Cash Equivalents; provided, however, that for the purposes of this clause (i), (A) any liabilities (as shown on the most recent balance sheet of the Lead Borrower provided hereunder or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Lead Borrower's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Lead Borrower) of the Lead Borrower or such Restricted Subsidiary that are assumed by the transferee with respect to the applicable Disposition (or are otherwise extinguished by the transferee in connection with the transactions relating to such Disposition) and for which the Lead Borrower and all of the Restricted Subsidiaries shall have been validly released, shall be deemed to be cash, (B) any securities, notes or other obligations or assets received by the Lead Borrower or such Restricted Subsidiary from such transferee that are converted by the Lead Borrower or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received), within 180 days following the closing of the applicable Disposition, shall be deemed to be cash, and (C) any Designated Non-Cash Consideration received by the Lead Borrower or such Restricted Subsidiary in respect of such Disposition having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (xi) that is at that time outstanding, not in excess of the greater of $45,000,000 and 25% of Consolidated EBITDA for the most recently ended Test Period preceding such Disposition, 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 and (ii) the Net Cash Proceeds received in connection with any such Disposition shall be applied as (and to the extent) required by Section 2.7(b)(ii);

(xii) the sale, transfer or other disposition of assets (including forced divestitures) required by any Governmental Authority; provided that the Net Cash Proceeds received in connection therewith shall be applied as (and to the extent) required by Section 2.7(b)(ii); and

(xiii) Dispositions of non-core assets acquired in any Permitted Acquisition or other Investment permitted under Section 6.5; provided that the Net Cash Proceeds received in connection with any such Disposition shall be applied as (and to the extent) required by Section 2.7(b)(ii);

provided that Liens on any assets granted to or held by the Administrative Agent under any Credit Document to secure the Obligations will be automatically and immediately released upon the occurrence of any sale or other Disposition of such assets to a Person that is not a Credit Party that is permitted by the Credit Documents; or

(b) effect any merger or consolidation, except for (i) Investments or acquisitions permitted pursuant to Section 6.5 so long as the Credit Party subject to such merger or consolidation is the surviving entity, (ii) (y) the merger or consolidation of a Restricted Subsidiary that is not a Credit Party with and into a Credit Party; provided that such Credit Party will be the surviving entity and (z) the merger or consolidation of a Credit Party with and into another Credit Party; provided that if a Borrower is a party thereto, a Borrower will be the surviving corporation, (iii) the merger or consolidation of a Restricted Subsidiary that is not a Credit Party with and into another Restricted Subsidiary that is not a Credit Party and (iv) the Acquisition.

Section 6.5 **Advances, Investments and Loans.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, make any Investment except for the following (the "Permitted Investments"):

(a) cash and Cash Equivalents;

(b) Investments existing as of the Closing Date as set forth on Schedule 1.1(a);

(c) extensions of trade credit in the ordinary course of business, including receivables owing to the Lead Borrower or any of its Restricted Subsidiaries or any receivables and advances to suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(d) Investments in and loans to any Credit Party;

(e) loans and advances to officers, directors and employees in an aggregate amount not to exceed $10,000,000 at any time outstanding; provided that such loans and advances shall comply with all applicable Requirements of Law (including Sarbanes-Oxley);

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(g) Permitted Acquisitions and the Acquisition;

(h) Investments (i) by Credit Parties and Restricted Subsidiaries that are not Credit Parties in Subsidiaries that are not Credit Parties in an aggregate amount not to exceed the greater of $31,500,000 and 17.5% of Consolidated EBITDA for the most recently ended Test Period preceding the date of such Investment at any one time outstanding, (ii) in joint ventures in an aggregate amount not to exceed the greater of $22,500,000 and 12.5% of Consolidated EBITDA for the most recently ended Test Period preceding the date of such Investment at any one time outstanding and (iii) in Restricted Subsidiaries that are not Credit Parties by other Restricted Subsidiaries that are not Credit Parties; provided that in the event that the Total Net Leverage Ratio, as determined as of the last day of each of any two consecutive Test Periods, is less than 3.50 to 1.00, then the cumulative amount of Investments made prior to the last day of such most recent Test Period in reliance on clause (i) above shall be deemed to be $0.00 solely for purposes of resetting the amount available pursuant to clause (i) above;

(i) Investments consisting of Bank Products to the extent permitted hereunder;

(j) so long as no Event of Default has occurred and is continuing at the time of making such Investment or would immediately result therefrom, additional loan advances and/or Investments of a nature not contemplated by the foregoing clauses hereof; provided that such loans, advances and/or Investments made after the Closing Date pursuant to this clause shall not exceed an aggregate amount of the greater of $54,000,000 and 30% of Consolidated EBITDA for the most recently ended Test Period preceding the date of such Investment at any one time outstanding;

(k) notes payable or stock or other securities issued by account debtors pursuant to negotiated agreements with respect to settlement of such account debtor's Accounts (as defined in the Security Agreement) in the ordinary course of business;

(l) additional Investments in an aggregate outstanding amount not to exceed the Available Amount as of such date, so long as, no Event of Default has occurred and is continuing or would immediately result therefrom;

(m) additional Investments; provided, that (i) on a Pro Forma Basis immediately after giving effect to the making of such Investment, the use of proceeds thereof and all related pro forma adjustments, the Total Net Leverage Ratio, recomputed as of the last day of the most recent fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date and for the Test Period ending on such date, is less than or equal to 3.50:1.00 and (ii) no Event of Default has occurred and is continuing at the time of consummation of such Investment;

(n) Investments of a Restricted Subsidiary acquired after the Closing Date or of a Person acquired by, merged into, consolidated with or amalgamated with the Lead Borrower or any Restricted Subsidiary in accordance with Section 6.4 and this Section 6.5 after the Closing Date or that otherwise becomes a Restricted Subsidiary after the Closing Date, in each case, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, consolidation or amalgamation and were in existence on the date of such acquisition, merger, consolidation or amalgamation;

(o) salary advances, travel expense advances, advances against commissions and other similar advances to employees in the ordinary course of business;

(p) deposits with landlords in the ordinary course of business to secure or support obligations of the Lead Borrower or any Restricted Subsidiary under the lease of real property; and

(q) to the extent constituting Investments, any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

Section 6.6 **Transactions with Affiliates.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any officer, director, shareholder or Affiliate, to the extent that such transaction involves payments in excess of $1.0 million per fiscal year, other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an officer, director, shareholder or Affiliate, other than (a) transactions solely between or among Credit Parties (or any Person that becomes a Credit Party as a result of such transaction) to the extent not prohibited under this Agreement and transactions between or among the Credit Parties and their Restricted Subsidiaries to the extent not prohibited under this Agreement, (b) transactions solely between or among Restricted Subsidiaries that are not Credit Parties to the extent not prohibited under this Agreement, (c) payment of customary directors' fees, compensation arrangements, indemnification and expense reimbursement of officers, directors, employees and consultants (including the provision of directors and officers insurance), (d) the consummation of the Transactions on the Closing Date and the Acquisition Closing Date and, following the Acquisition Closing Date, the consummation of any transaction and the making of any payment required to be consummated or made after the Acquisition Closing Date pursuant to the terms of the Acquisition Agreement, (e) investments in Subsidiaries permitted by Section 6.5 and (f) any Restricted Payment permitted by Section 6.9.

Section 6.7 **Corporate Changes.**

The Lead Borrower will not, nor will it permit any of its Restricted Subsidiaries to, (a) change its fiscal year, (b) amend, modify or change its articles of incorporation, certificate of designation (or corporate charter or other similar organizational document) operating agreement or bylaws (or other similar document) in any respect materially adverse to the interests of the Lenders, (c) change its state of incorporation or organization or its registered legal name, without providing ten (10) days (or such shorter period as agreed to by the Administrative Agent) prior written notice to the Administrative Agent with respect to this clause (c) to allow the Administrative Agent to file such financing statements and amendments to any previously filed financing statements as the Administrative Agent may require or (d) change its accounting method (except in accordance with GAAP) in any manner materially adverse to the interests of the Lenders.

Section 6.8 **Limitation on Restricted Actions.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Person to (a) with respect to such Restricted Subsidiary, pay dividends or make any other distributions to any Credit Party on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (b) pay any Indebtedness or other obligation owed to any Credit Party, (c) make loans or advances to any Credit Party, or (d) act as a Guarantor and pledge its assets pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof or amend or otherwise modify the Credit Documents, except for such encumbrances or restrictions existing under or by reason of (i) this Agreement and the other Credit Documents, (ii) applicable law, (iii) any document or instrument governing Indebtedness incurred pursuant to Section 6.1; provided that any such restriction contained therein are customary for such Indebtedness as determined in the good faith judgment of the Lead Borrower, (iv) customary provisions in leases, licenses, sub-leases, sub-licenses and contracts restricting assignments thereof or restricting the grant of Liens in such lease, license, sub-lease, sub-license or other contract, (v) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (vi) customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary of the Lead Borrower or assets of the Lead Borrower or any Restricted Subsidiary of the Lead Borrower pending such sale; *provided* that such restrictions and conditions apply only to the Restricted Subsidiary or assets to be sold and such sale is not prohibited hereunder, (vii) any agreement or restriction or condition in effect at the time any Person becomes a Restricted Subsidiary of the Lead Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Restricted Subsidiary of the Lead Borrower, (viii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures, (ix) with respect to clause (d), restrictions or conditions imposed by any agreement relating to Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (x) restrictions on cash or other deposits (including escrowed funds) imposed under contracts entered into in the ordinary course of business.

Section 6.9 **Restricted Payments; Certain Payments of Indebtedness**

(a) The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, make or set apart any sum for or pay any Restricted Payment, except:

(i) to make dividends payable solely in the same class of Equity Interests of such Person;

(ii) to make dividends or other distributions payable to the Credit Parties (directly or indirectly through its Restricted Subsidiaries);

(iii) after an offering of Qualified Equity Interests completed after the Closing Date, an amount equal to 8% per annum of the Net Cash Proceeds received by (or contributed to) the Lead Borrower and its Restricted Subsidiaries from any such offering(s) completed after the Closing Date;

(iv) Restricted Payments in the form of cash dividends payable with respect to shares of the Lead Borrower's Series A Convertible Preferred Stock in an amount not to exceed $2,000,000 per annum;

(v) so long as no Event of Default under Section 7.1(a) has occurred and is continuing at the time of making such Restricted Payment or would immediately result therefrom, the Lead Borrower may make additional Restricted Payments in an aggregate amount not to exceed the Available Amount as of such date; provided that, solely to the extent that such Restricted Payment is made with any portion of the Available Amount described in clause (a) of the definition thereof, on a Pro Forma Basis, immediately after giving effect to such Restricted Payment, the use of proceeds thereof and all related pro forma adjustments, the Total Net Leverage Ratio, recomputed as of the last day of the most recent fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date and for the Test Period ending on such date, is less than or equal to 3.50:1.00;

(vi) so long as no Event of Default has occurred and is continuing at the time of making such Restricted Payment or would immediately result therefrom, the Lead Borrower may make additional unlimited Restricted Payments; provided that, on a Pro Forma Basis, immediately after giving effect to such Restricted Payment, the use of proceeds thereof and all related pro forma adjustments, the Total Net Leverage Ratio, recomputed as of the last day of the most recent fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date and for the Test Period ending on such date, is less than or equal to 2.75:1.00; and

(vii) so long as no Event of Default shall have occurred or would result therefrom, the Lead Borrower may make other Restricted Payments in an aggregate amount not to exceed the greater of $54,000,000 and 30.0% of Consolidated EBITDA for the most recently ended Test Period preceding the date of such Restricted Payment.

(b) The Lead Borrower will not, and will not permit any Restricted Subsidiary to make, directly or indirectly, any prepayment (including voluntary and mandatory prepayments), repurchase or redemption (whether in cash, securities or other property) of or in respect of principal or any interest, fees or other amounts of any Junior Financing, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of the principal of any Junior Financing that has a substantially similar effect to any of the foregoing, in each case, prior to the scheduled maturity thereof (excluding any payments of regularly scheduled principal, interest, fees, expenses and indemnification obligations in compliance with the terms of this Agreement) (any of the foregoing, a "Restricted Debt Payment"), except:

(i) mandatory prepayments of any Junior Financing (other than Subordinated Debt) not otherwise prohibited by the terms of this Agreement;

(ii) Permitted Refinancings of Indebtedness permitted by Section 6.1;

(iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of the Lead Borrower;

(iv) so long as no Event of Default pursuant to Section 7.1(a), (c) (solely with respect to a failure to comply with Section 5.9) or (f) has occurred and is continuing at the time of making such Restricted Debt Payment or would immediately result therefrom, additional Restricted Debt Payments in respect of any Junior Financings in an aggregate amount not to exceed the Available Amount as of such date; provided that, solely to the extent that such Restricted Debt Payment is made with any portion of the Available Amount described in clause (a) of the definition thereof, on a Pro Forma Basis, immediately after giving effect to such Restricted Debt Payment, the use of proceeds thereof and all related pro forma adjustments, the Total Net Leverage Ratio, recomputed as of the last day of the most recent fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) prior to such date and for the Test Period ending on such date, is less than or equal to 3.50:1.00;

(v) so long as no Event of Default has occurred and is continuing at the time of making such Restricted Debt Payment or would immediately result therefrom, additional unlimited Restricted Debt Payments; provided that, on a Pro Forma Basis, immediately after giving effect to such Restricted Debt Payment, the use of proceeds thereof and all related pro forma adjustments, the Total Net Leverage Ratio, recomputed as of the last day of the most recent fiscal quarter for which financial statements are required to be delivered (or are actually delivered, if earlier) and for the Test Period ending on such date, is less than or equal to 2.75:1.00;

(vi) additional Restricted Debt Payments in an aggregate amount not to exceed the greater of $18,000,000 and 10% of Consolidated EBITDA for the most recent Test Period preceding the date of such Restricted Debt Payment; and

(vii) (A) Restricted Debt Payments with Eligible Equity Proceeds, to the extent such Eligible Equity Proceeds have not otherwise been applied to make any Investment, Restricted Payment or Restricted Debt Payment hereunder and do not increase the Available Amount, (B) the conversion of all or any portion of any Junior Financing into Qualified Equity Interests of the Lead Borrower, (C) to the extent constituting a Restricted Debt Payment, payment-in-kind of interest with respect to any Junior Financing that is permitted under Section 6.1, and (D) Restricted Debt Payments as part of an "applicable high yield discount obligation" catch up payment with respect to Indebtedness permitted by Section 6.1.

Section 6.10 **Sale Leasebacks.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which the Lead Borrower or any Restricted Subsidiary has sold or transferred or is to sell or transfer to a Person which is not a Restricted Subsidiary or (b) which the Lead Borrower or any Restricted Subsidiary intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by the Lead Borrower or a Restricted Subsidiary to another Person which is not the Lead Borrower or a Restricted Subsidiary in connection with such lease.

Section 6.11 **Amendments to Junior Financing Documents.**

The Lead Borrower will not, nor will it permit any Restricted Subsidiary to, amend, modify, waive or extend or permit the amendment, modification, waiver or extension of any term of any document

governing or relating to any Junior Financing in a manner that is materially adverse to the interests of the Lenders, subject to any applicable subordination or intercreditor agreement.

Article VII

EVENTS OF DEFAULT

Section 7.1 **Events of Default.**

An Event of Default shall exist upon the occurrence of any of the following specified events (each an "Event of Default"):

(a) Payment. (i) Any Credit Party shall fail to pay any principal on any Loan or Note when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof or thereof; or (ii) any Credit Party shall fail to reimburse the Issuing Lender for any LOC Obligations when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof; or (iii) any Credit Party shall fail to pay any interest on any Loan or any fee or other amount payable hereunder when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof and such failure shall continue unremedied for five (5) Business Days; or (iv) any Guarantor shall fail to pay on the Guaranty in respect of any of the foregoing or in respect of any other Guaranty Obligations hereunder (after giving effect to the grace period in clause (iii)); or

(b) Misrepresentation. Any representation or warranty made or deemed made herein, in the Security Documents or in any of the other Credit Documents or which is contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement shall prove to have been (i) with respect to representations and warranties that contain a materiality qualification, incorrect or false on or as of the date made or deemed made and (ii) with respect to representations and warranties that do not contain a materiality qualification, incorrect or false in any material respect on or as of the date made or deemed made; or

(c) Covenant Default.

(i) Any Credit Party shall fail to perform, comply with or observe any term, covenant or agreement applicable to it contained in (A) Sections 5.4 (solely with respect to corporate or other formative existence), 5.7(a), 5.9 (provided that, notwithstanding the foregoing, any such breach or failure is subject to Section 5.9(c)), 5.11, 5.15(e), 5.16 or Article VI hereof or (B) Sections 5.1 or 5.2 and, with respect to this clause (B) only, such breach or failure to comply is not cured within ten (10) Business Days after notice thereof from the Administrative Agent to the Lead Borrower; or

(ii) Any Credit Party shall fail to comply with any other covenant contained in this Agreement or the other Credit Documents or any other agreement, document or instrument among any Credit Party, the Administrative Agent and the Lenders or executed by any Credit Party in favor of the Administrative Agent or the Lenders (other than as described in Sections 7.1(a) or 7.1(c)(i) above) and, with respect to this clause (ii) only, such breach or failure to comply is not cured within thirty (30) days after notice thereof from the Administrative Agent to the Lead Borrower; or

(d) Indebtedness Cross-Default. (i) The Lead Borrower or any of its Restricted Subsidiaries shall default in any payment of principal of or interest on any Indebtedness (other than the Loans, Reimbursement Obligations and the Guaranty) in a principal amount outstanding of at least $35,000,000

for the Lead Borrower and any of its Restricted Subsidiaries in the aggregate beyond any applicable grace period, if any, provided in the instrument or agreement under which such Indebtedness was created; or (ii) after giving effect to any applicable grace or cure periods, the Lead Borrower or any of its Restricted Subsidiaries shall default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans, Reimbursement Obligations and the Guaranty) in a principal amount outstanding of at least $35,000,000 in the aggregate for the Lead Borrower and its Restricted Subsidiaries or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to be repurchased, prepaid, deferred or redeemed (automatically or otherwise) (other than, in each case, (1) any event that permits holders of any Convertible Notes to convert or exchange such Indebtedness into common stock of the Lead Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Lead Borrower), cash or a combination thereof, (2) the conversion or exchange of any Convertible Notes into common stock of the Lead Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Lead Borrower), cash or a combination thereof, (3) any repurchase, prepayment, defeasance, redemption, conversion or settlement with respect to any Convertible Notes, or satisfaction of any condition giving rise to or permitting the foregoing, pursuant to its terms unless such repurchase, prepayment, defeasance, redemption, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default, or (4) the occurrence of any early termination, unwind or cancellation and payment (each howsoever defined) of any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction); or (iii) the Lead Borrower or any of its Restricted Subsidiaries shall breach or default any payment obligation under any Hedging Agreement that is a Bank Product; or

(e) [Reserved]; or

(f) Bankruptcy Default. (i) The Lead Borrower or any Material Subsidiary shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Lead Borrower or any Material Subsidiary shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Lead Borrower or any Material Subsidiary any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) the Lead Borrower or any Material Subsidiary shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i) or (ii) above; or (iv) the Lead Borrower or any of its Material Subsidiaries shall generally not, or shall be unable to, or shall admit in writing their inability to, pay its debts as they become due; or

(g) Judgment Default. (i) One or more monetary judgments or decrees shall be entered against the Lead Borrower or any of its Restricted Subsidiaries involving in the aggregate a liability (to the extent not covered by insurance) of $35,000,000 or more and all such judgments or decrees shall not have been paid and satisfied, vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof or (ii) any injunction, temporary restraining order or similar decree shall be issued against the Lead Borrower or any of its Restricted Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect; or

(h) ERISA Default. The occurrence of any of the following: (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any ERISA Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any ERISA Plan or any Lien in favor of the PBGC or an ERISA Plan (other than a Permitted Lien) shall arise on the assets of the Credit Parties or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such ERISA Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) a Credit Party, any of its Subsidiaries or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, any Multiemployer Plan or (vi) any other similar event or condition shall occur or exist with respect to an ERISA Plan, in each case of clauses (i) through (vi) above, which event or condition, together with all other such events or conditions, if any, could reasonably be expected to result in a direct obligation of the Lead Borrower or any of its Restricted Subsidiaries to pay money that could reasonably be expected to have a Material Adverse Effect; or

(i) Change of Control. There shall occur a Change of Control; or

(j) Invalidity of Guaranty. At any time after the execution and delivery thereof, the Guaranty, for any reason other than the satisfaction in full of all Credit Party Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, or any Credit Party shall contest the validity, enforceability, perfection or priority of the Guaranty, any Credit Document, or any Lien granted thereunder in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party (other than if in accordance with its terms or by reason of the satisfaction in full of all Credit Party Obligations (other than contingent obligations for which no claim has been made)); or

(k) Invalidity of Credit Documents. Any Credit Document shall fail to be in full force and effect or to give the Administrative Agent and/or the Lenders the security interests, liens, rights, powers, priority and privileges purported to be created thereby (except as such documents may be terminated or no longer in force and effect in accordance with the terms thereof, other than those indemnities and provisions which by their terms shall survive) or any Lien shall fail to be a first priority, perfected Lien (subject to Permitted Liens) on a material portion of the Collateral; or

(l) Classification as Senior Debt. The Credit Party Obligations shall cease to be classified as "Senior Indebtedness," "Designated Senior Indebtedness" or any similar designation under any Subordinated Debt instrument; or

If a Default shall have occurred under the Credit Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Credit Documents or is otherwise expressly waived by Administrative Agent (with the approval of requisite Lenders (in their sole and absolute discretion) as determined in accordance with Section 9.1); and once an Event of Default occurs under the Credit Documents, then such Event of Default will continue to exist until it is expressly waived by the requisite Lenders or by the Administrative Agent with the approval of the requisite Lenders, as required hereunder in Section 9.1.

Section 7.2 **Acceleration; Remedies.**

Upon the occurrence and during the continuance of an Event of Default, then, and in any such event, (a) if such event is a Bankruptcy Event, automatically the Commitments (other than the Initial Term Loan Commitments) shall immediately terminate and the Loans (with accrued interest thereon), and all other amounts under the Credit Documents (including, without limitation, the maximum amount of all contingent liabilities under Letters of Credit) shall immediately become due and payable, and (b) if such event is any other Event of Default, any or all of the following actions may be taken: (i) with the written consent of the Required Lenders, the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, declare the Commitments (other than the Initial Term Loan Commitments) to be terminated forthwith, whereupon such Commitments shall immediately terminate; (ii) the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the Notes to be due and payable forthwith and direct the Borrowers to pay to the Administrative Agent cash collateral as security for the LOC Obligations for subsequent drawings under then outstanding Letters of Credit an amount equal to the maximum amount of which may be drawn under Letters of Credit then outstanding, whereupon the same shall immediately become due and payable; and/or (iii) with the written consent of the Required Lenders, the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, exercise such other rights and remedies as provided under the Credit Documents and under applicable law.

Article VIII

THE ADMINISTRATIVE AGENT

Section 8.1 **Authorization and Action.**

(a) Each Lender and each Issuing Lender hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Credit Documents and each Lender and each Issuing Lender authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Credit Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each Issuing Lender hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Credit Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Credit Document.

(b) As to any matters not expressly provided for herein and in the other Credit Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms of the Credit Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Lender; *provided*, *however*, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Lenders with respect to such action or (ii) is contrary to this Agreement or any other Credit Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation

of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; *provided*, *further*, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Credit Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Lead Borrower, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Credit Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Lenders (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. The motivations of the Administrative Agent are commercial in nature and not to invest in the general performance or operations of the Lead Borrower. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Lender or any other holder of any Obligation other than as expressly set forth herein and in the other Credit Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Credit Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Credit Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) None of any Syndication Agent, Documentation Agent or Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Credit Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Credit Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any LOC Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LOC Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent allowed in such judicial proceeding;

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Lender and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Issuing Lenders or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Credit Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Lender in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and, except solely to the extent of the Borrowers' rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Lead Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guaranty of the Obligations provided under the Credit Documents, to have agreed to the provisions of this Article.

Section 8.2 **Administrative Agent's Reliance; Limitation of Liability, Etc.**

(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Credit Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Credit Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Credit Party or any officer thereof contained in this Agreement or any other Credit Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Credit Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Credit Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy,

emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Credit Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.7 unless and until written notice thereof stating that it is a "notice under Section 5.7" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Lead Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Lead Borrower, a Lender or an Issuing Lender. Further, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with any Credit Document, (B) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Credit Document or the occurrence of any Default or Event of Default, (D) the sufficiency, validity, enforceability, effectiveness or genuineness of any Credit Document or any other agreement, instrument or document, (E) the satisfaction of any condition set forth in **Error! Reference source not found.** or elsewhere in any Credit Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (F) the creation, perfection or priority of Liens on the Collateral. Notwithstanding anything herein to the contrary, the Administrative Agent shall not be liable for, or be responsible for any liabilities, costs or expenses suffered by the Borrowers, any Subsidiary, any Lender or any Issuing Lender as a result of, any determination of the Revolving Credit Exposure, any of the component amounts thereof or any portion thereof attributable to each Lender or Issuing Lender, or any exchange rate or currency equivalent.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.6, (ii) may rely on the Register to the extent set forth in **Error! Reference source not found.**, (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Lender and shall not be responsible to any Lender or Issuing Lender for any statements, warranties or representations made by or on behalf of any Credit Party in connection with this Agreement or any other Credit Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, may presume that such condition is satisfactory to such Lender or Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Lender sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Credit Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Credit Documents for being the maker thereof).

Section 8.3 **The Administrative Agent Individually.**

With respect to its Commitment, Loans, and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing

Lender, as the case may be. The terms "Issuing Lenders", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Lender or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, the Lead Borrower, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Lenders.

Section 8.4 **Acknowledgements of Lenders and Issuing Lenders.**

(a) Each Lender and each Issuing Lender represents and warrants that (i) the Credit Documents set forth the terms of a commercial lending facility, (ii) in participating as a Lender, it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Lender, in each case in the ordinary course of business, and not for the purpose of investing in the general performance or operations of the Borrowers, or for the purpose of purchasing, acquiring or holding any other type of financial instrument such as a security (and each Lender and each Issuing Lender agrees not to assert a claim in contravention of the foregoing, such as a claim under the federal or state securities law), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, Syndication Agent or Documentation Agent or any other Lender or Issuing Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, Syndication Agent or Documentation Agent or any other Lender or Issuing Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Lead Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, or delivering its signature page to an Assignment and Assumption or any other Credit Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Closing Date.

Section 8.5 **[Reserved].**

Section 8.6 **[Reserved].**

Section 8.7 **Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the written consent of the Lead Borrower (such consent not to be

unreasonably withheld and which consent shall not be required during any period in which an Event of Default exists), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lenders, with the written consent of the Lead Borrower (such consent not to be unreasonably withheld and which consent shall not be required during any period in which an Event of Default exists), appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Lead Borrower and such Person remove such Person as Administrative Agent and, with the written consent of the Lead Borrower (such consent not to be unreasonably withheld and which consent shall not be required during any period in which an Event of Default exists), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Lenders or the Issuing Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder and under the other Credit Documents. The fees payable by the Lead Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 9.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 8.8 **[Reserved].**

Section 8.9 **[Reserved].**

Section 8.10 **[Reserved].**

Section 8.11 **Collateral and Guaranty Matters.**

(a) The Lenders, the Issuing Lenders and the Bank Product Providers irrevocably authorize and direct the Administrative Agent:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Credit Document (A) upon termination of the Commitments and payment in full of all Credit Party Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Credit Documents, or (C) subject to Section 9.1, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such Collateral that is permitted by Section 6.2(c);

(iii) to release any Guarantor from its obligations under the applicable Guaranty if such Person ceases to be a Guarantor as a result of a transaction permitted hereunder; and

(iv) to release the Initial Subsidiary Borrower or any Additional Subsidiary Borrower from its obligations as a Borrower (but not a Guarantor unless clause (iii) above shall apply) hereunder upon the request of the Lead Borrower; provided that no such Borrower shall be released from its obligations under the Credit Documents unless (i) the Lead Borrower delivers to the Administrative Agent a notice of termination with respect to such Borrower and (ii) the Lead Borrower shall remain liable for the obligations of such Borrower outstanding hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section. In each case as specified in this Section, the Administrative Agent is authorized, at the Lead Borrower's expense, to execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Security Documents, or to release such Credit Party from its obligations under the applicable Security Documents, in each case in accordance with the terms of the Credit Documents and this Section.

(b) Notwithstanding the foregoing or anything to the contrary herein or in any other Credit Document, no Guarantor shall (x) be deemed to be an Excluded Subsidiary pursuant to clause (a) of the definition thereof or (y) automatically be released and no liens on Collateral of such Guarantor shall automatically be released, in each case, solely as a result of such Guarantor ceasing to be a Wholly Owned Subsidiary of the Lead Borrower if (i) the disposition of equity interests of such Guarantor pursuant to which it ceased to be a Wholly Owned Subsidiary of the Lead Borrower was undertaken for the purpose of causing such Guarantor to cease to be a Guarantor or (ii) such Guarantor remains a majority-owned Subsidiary of the Lead Borrower and the other owners of Equity Interests in such Guarantor are Affiliates (or Related Parties) of the Lead Borrower.

(c) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

Section 8.12 **[Reserved].**

Section 8.13 **Indemnification.**

The Lenders agree to indemnify the Administrative Agent, the Issuing Lender, and the Swingline Lender in its capacity hereunder and their Affiliates and their respective officers, directors, agents and employees (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), ratably according to their respective Commitment Percentages in effect on the date on which indemnification is sought under this Section, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Credit Party Obligations) be imposed on, incurred by or asserted against any such indemnitee in any way relating to or arising out of any Credit Document or any documents contemplated by or referred to herein or therein or the Transactions or any action taken or omitted by any such indemnitee under or in connection with any of the foregoing; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting from such indemnitee's gross negligence or willful misconduct, as determined by a court of competent jurisdiction. The agreements in this Section shall survive the termination of this Agreement and payment of the Notes, any Reimbursement Obligation and all other amounts payable hereunder.

Section 8.14 **Credit Bidding.**

(a) The Administrative Agent, on behalf of itself and the Secured Parties, shall have the right to credit bid and purchase for the benefit of the Administrative Agent and the Secured Parties all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable law.

(b) Each Lender hereby agrees that, except as otherwise provided in any Credit Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Credit Documents, or exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

Section 8.15 **Withholding Taxes.**

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 2.16, each Lender shall, and does hereby, indemnify the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the

Administrative Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due the Administrative Agent under this paragraph. For the avoidance of doubt, for purposes of this Section 8.15, the term "Lender" shall include any Issuing Lender. The agreements in this paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other obligations under any Credit Document.

Section 8.16 **[Reserved].**

Section 8.17 **[Reserved].**

Section 8.18 **Lender Actions.**

Anything contained in any of the Credit Documents to the contrary notwithstanding, the Borrowers, the Administrative Agent and each Lender hereby agree that the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 7.2 for the benefit of all the Lenders and Issuing Lenders; provided, however, that the foregoing shall not prohibit any Lender (a) from exercising setoff rights in accordance with Section 9.7 or (b) filing proofs of claims in any bankruptcy proceeding relative to any Credit Party under any Debtor Relief Law; and provided further, that in addition to the matters set forth in clauses (a) and (b) of the preceding proviso, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 8.19 **Secured Bank Product Obligations**

No Bank Product Provider that obtains the benefits of Section 2.11(b), the Security Documents or any Collateral by virtue of the provisions hereof or of any other Credit Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Article to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Debt unless the Administrative Agent has received written notice of such Credit Party Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Product Provider.

Section 8.20 **Erroneous Payments.**

(a) If the Administrative Agent notifies a Lender, Issuing Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender or Secured Party such Lender or Issuing Lender (any such Lender, Issuing Lender, Secured Party or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice

under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "Payment Notice"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Payment Recipient shall promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.20(b).

(c) Each Lender, Issuing Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Lender or Secured Party under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Lender or Secured Party under any Credit Document, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender or Issuing Lender that has received such Erroneous Payment (or portion thereof) (or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's request to such Lender or Issuing Lender at any time, (i)

such Lender or Issuing Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Lead Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuing Lender shall deliver any Notes evidencing such Loans to the Lead Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender or Issuing Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Lender shall cease to be a Lender or Issuing Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning Issuing Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender or Issuing Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender or Issuing Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Lender and such Commitments shall remain available in accordance with the terms of this Agreement. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Lender or Secured Party under the Credit Documents with respect to each Erroneous Payment Return Deficiency.

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Lead Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Lead Borrower or any other Credit Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine

(g) Each party's obligations, agreements and waivers under this Section 8.20 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Credit Document.

Article IX

MISCELLANEOUS

Section 9.1 **Amendments, Waivers, Consents and Release of Collateral.**

(a) Neither this Agreement nor any of the other Credit Documents, nor any terms hereof or thereof may be amended, modified, extended, restated, replaced, or supplemented (by amendment, waiver, consent or otherwise) except in accordance with the provisions of this Section, nor may Collateral be released except as specifically provided for herein or in the Security Documents. The Required Lenders may or, with the written consent of the Required Lenders, the Administrative Agent may, from time to time, (a) enter into with the Borrowers written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the other Credit Documents or changing in any manner the rights of the Lenders or of the Borrowers hereunder or thereunder or (b) waive or consent to the departure from, on such terms and conditions as the Required Lenders may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences; provided, however, that no such amendment, supplement, modification, release, waiver or consent shall:

(i) (A) reduce the amount or extend the scheduled date of maturity of any Loan or any installment thereon, or (B) reduce the stated rate of any interest or fee payable hereunder (except in connection with a waiver of the Default Rate, which shall be determined by a vote of the Required Lenders) or (C) extend the scheduled date of any payment of any Loan or any installment thereon or (D) increase the amount or extend the expiration date of any Lender's Commitment (or reinstate any Commitment terminated pursuant to Section 2.6), in each case without the written consent of each Lender directly affected thereby; provided that, it is understood and agreed that

(1) no waiver, reduction or deferral of a mandatory prepayment required pursuant to Section 2.7(b), nor any amendment of Section 2.7(b) or the definitions of Asset Disposition, Debt Issuance, Equity Issuance or Extraordinary Receipt, shall constitute a reduction of the amount of, or an extension of the scheduled date of, the scheduled date of maturity of, or any installment of, any Loan, (2) any reduction in the stated rate of interest on Revolving Loans shall only require the written consent of each Lender holding a Revolving Commitment and (3) any reduction in the stated rate of interest on the Term Loans of any Class shall only require the written consent of each Lender holding a portion of the outstanding Term Loans of such Class; or

(ii) amend, modify or waive any provision of this Section or reduce the percentage specified in the definition of (x) Required Lenders, without the written consent of all the Lenders or (y) Required Revolving Lenders without the written consent of all the Revolving Lenders; or

(iii) release any Borrower or all or substantially all of the value of the Guaranty, without the written consent of all of the Lenders; provided that the Administrative Agent may release any Guarantor permitted to be released pursuant to the terms of this Agreement; or

(iv) release all or substantially all of the value of the Collateral without the written consent of all of the Lenders; provided that the Administrative Agent may release any Collateral permitted to be released pursuant to the terms of this Agreement or the Security Documents; or

(v) except as permitted by Section 8.11, subordinate (i) the Liens on all or substantially all of the value of the Collateral to the Liens on such collateral securing any other Indebtedness or

(ii) the right of payment of the Obligations to the right of payment of any other Indebtedness without the written consent of all of the Lenders (other than any such subordination to the extent

that each directly and adversely affected Lender has been provided a right of first refusal to participate in such other Indebtedness on the same terms (other than arrangement or restructuring fees and reimbursement of fees and expenses) as offered to all other providers of such other Indebtedness); or

(vi) amend, modify or waive any condition precedent to any Extension of Credit under the Revolving Facility set forth in Section 4.2, without the written consent of the Required Revolving Lenders; or

(vii) permit any Borrower to assign or transfer any of its rights or obligations under this Agreement or other Credit Documents without the written consent of all of the Lenders; or

(viii) amend, modify or waive any provision of the Credit Documents requiring consent, approval or request of all Lenders without the written consent of all the Lenders; or

(ix) amend, modify or waive (A) the order in which Credit Party Obligations are paid or (B) the pro rata sharing of payments by and among the Lenders, in each case in accordance with Section 2.11(b), Section 2.11(c) or Section 9.7(b) without the written consent of each Lender directly affected thereby; or

(x) amend, modify or waive any provision of Article VIII without the written consent of the then Administrative Agent; or

(xi) amend or modify the definition of Credit Party Obligations to delete or exclude any obligation or liability described therein without the written consent of each Lender directly affected thereby;

provided, further, that no amendment, waiver or consent affecting the rights or duties of the Administrative Agent, any Issuing Lender or any Swingline Lender under any Credit Document shall in any event be effective, unless in writing and signed by the Administrative Agent, such Issuing Lender and/or such Swingline Lender, as applicable, in addition to the Lenders required hereinabove to take such action.

(b) Any such waiver, any such amendment, supplement or modification and any such release shall apply equally to each of the Lenders and shall be binding upon the Borrowers, the other Credit Parties, the Lenders, the Administrative Agent and all future holders of the Notes. In the case of any waiver, the Borrowers, the other Credit Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the outstanding Loans and Notes and other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(c) Notwithstanding any of the foregoing to the contrary, the consent of the Borrowers and the other Credit Parties shall not be required for any amendment, modification or waiver of the provisions of Article VIII (other than the provisions of Section 8.7).

(d) Notwithstanding any of the foregoing to the contrary, the Credit Parties and the Administrative Agent, without the consent of any Lender, may enter into any amendment, modification or waiver of (x) any Credit Document, or enter into any new agreement or instrument, to (i) effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the

security interests therein comply with applicable law or (ii) correct any error or omission of a technical or administrative nature, in each case that is immaterial (as determined by the Administrative Agent), in any provision of any Credit Document, if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof or (y) the Fee Letter.

(e) Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (a) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein,

(b) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and (c) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except (i) that the Commitment of such Lender may not be increased or extended without the consent of such Lender and (ii) to the extent such amendment, waiver or consent impacts such Defaulting Lender more than the other Lenders.

(f) In connection with any proposed amendment, modification, waiver or termination (a "Proposed Change") requiring the consent of all Lenders or all directly and adversely affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained being referred to as a "Non-Consenting Lender"), then, the Borrowers may, at their sole expense, upon notice to such Non-Consenting Lender and the Administrative Agent from the Lead Borrower, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.6(b)), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which Eligible Assignee may be another Lender, if a Lender accepts such assignment), provided that (i) the Lead Borrower shall have received the prior written consent of the Administrative Agent to the extent such consent would be required under Section 9.6(b) for an assignment of Loans or Commitments, as applicable (and, if a Revolving Commitment is being assigned, each Swingline Lender and each Issuing Lender), which consents shall not unreasonably be withheld or delayed, (ii) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding par principal amount of its Loans and participations in LOC Obligations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the Eligible Assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts), and (iii) unless waived by the Administrative Agent, the Borrowers or such Eligible Assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.6(b)(iv). In the event that a Non-Consenting Lender does not comply with the requirements of the immediately-preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs the Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 9.6(b) on behalf of a Non-Consenting Lender and any such documentation so executed by the Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 9.6.

(g) Notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Revolving Commitments, Term Loans and Revolving Credit Exposure of any Lender that is at the time a Defaulting Lender shall not have any voting or approval rights under the Credit Documents and shall be excluded in determining whether all Lenders (or all Lenders of a Class), all affected Lenders (or all affected Lenders of a Class), Required Lenders of any Class or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.2); provided that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(h) Notwithstanding anything in this Agreement or the other Credit Documents to the contrary, this Agreement may be amended and restated without the consent of any Lender (but with the consent of each Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.5), such Lender shall have no other commitment or other obligation hereunder and such Lender shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement (other than contingent indemnification obligations for which no claim has been made).

(i) For the avoidance of doubt and notwithstanding any provision to the contrary contained in this Section 9.1, this Agreement may be amended (or amended and restated) with the written consent of the Credit Parties and the Administrative Agent in accordance with Sections 2.13, 2.22 or 2.23.

Section 9.2 **Notices.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) If to the Lead Borrower or any other Credit Party:

ANI Pharmaceuticals, Inc.
210 Main Street West
Baudette, MN 56623
Attention: Stephen Carey
Telephone: 218-634-3614
Fax: 218-634-3540
Email: Stephen.carey@anipharmaceuticals.com

(ii) if to the Administrative Agent, to its address most recently provided in writing to the Lead Borrower and the Lenders,

(iii) if to any Issuing Lender, to its address most recently provided in writing to the Lead Borrower and the Administrative Agent, and

(iv) if to a Lender, to it at its address (or facsimile number or email) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders, the Swingline Lender and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender, the Swingline

Lender or the Issuing Lender pursuant to Article II if such Lender, the Swingline Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent and/or each Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number or email for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lenders and the other Lenders by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications other than any liabilities arising from the gross negligence, bad faith or willful misconduct of such Agent Party as determined in a final and non-appealable judgment by a court of competent jurisdiction. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower or the other Credit Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any Credit Party's or the Administrative Agent's transmission of communications through the Platform other than any liabilities arising from the gross negligence, bad faith or willful misconduct of such Agent Party as determined in a final and non-appealable judgment by a court of competent jurisdiction (it being understood and agreed that all communications so transmitted shall continue to be subject to the terms of the confidentiality provisions set forth herein). "Communications" shall mean, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Credit Party pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or any Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

(e) Reliance by Administrative Agent, Issuing Lenders and Lenders. The Administrative Agent, the Issuing Lenders and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Lead Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall, jointly and severally, indemnify the Administrative Agent, each Issuing Lender, each Lender and the Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Lead Borrower in the absence of gross negligence, bad faith or willful misconduct of such Person as determined in a final and non-appealable judgment by a court of competent jurisdiction. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent and each of the parties hereto hereby consents to such recording.

Section 9.3 **No Waiver; Cumulative Remedies.**

No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 9.4 **Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Extensions of Credit; provided that all such representations and warranties shall terminate on the date upon which the Commitments have been terminated and all Credit Party Obligations have been paid in full (other than contingent indemnification obligations for which no claim has been made).

Section 9.5 **Payment of Expenses and Taxes; Indemnity.**

(a) Costs and Expenses .. The Borrowers shall, jointly and severally, pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including, but not limited to, reasonable and documented consultant's fees (to the extent any such consultant has been retained with the Lead Borrower's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed))), reasonable and documented travel expenses and reasonable and documented or invoiced out-of -pocket legal expenses of one firm of outside counsel for the Administrative Agent or its Affiliates, and, if necessary, of a single local counsel for the Administrative Agent or its Affiliates in each appropriate jurisdiction, but excluding the allocated costs of internal counsel, in each case, incurred in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof, (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lenders and the Swingline Lenders in connection with the issuance, amendment, renewal or extension of any Letter of Credit or Swingline Loan or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender, any Issuing Lender or any Swingline Lender (including the reasonable and documented out-of -pocket fees, charges and disbursements of any counsel for the Administrative Agent, any Lender, any Swingline Lender or any Issuing Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit

Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrowers. The Borrowers shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Documentation Agent, each Syndication Agent, each Lender, each Issuing Lender and each Swingline Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, penalties, damages, liabilities and related expenses, joint or several, to which any such Indemnitee may become subject, or any claim, litigation, investigation or proceeding (including any inquiry or investigation) (any of the foregoing, a "Proceeding"), regardless of whether any such Indemnitee is a party thereto, whether or not such Proceedings are brought by a Borrower, the Company or their respective equity holders, Affiliates, creditors or any other third person, and reimburse each such Indemnitee for any reasonable and documented or invoiced out-of-pocket legal expenses of one firm of counsel for all such Indemnitees, taken as a whole, and, if necessary, of a single local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all such Indemnitees, taken as a whole, and, solely in the case of an actual or reasonably perceived conflict of interest where the Indemnitee affected by such conflict has informed you in writing of such conflict and thereafter retains separate counsel, one additional counsel in each applicable jurisdiction to each group of similarly affected Indemnitees, but in each and every case excluding the allocated costs of internal counsel, and other reasonable and documented or invoiced out-of-pocket fees and expenses, in each case, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by an Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Lead Borrower or any of its Restricted Subsidiaries, or any liability under Environmental Law related in any way to the Lead Borrower or any of its Restricted Subsidiaries, or (iv) any actual or prospective Proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Lead Borrower or any Restricted Subsidiary, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (i) the bad faith, gross negligence or willful misconduct of such Indemnitee or any of its Related Parties or (ii) a material breach in bad faith of the obligations of such Indemnitee under this Agreement or any other Credit Document, (B) disputes solely between or among Indemnitees that does not result from any act or omission by the Borrowers; provided that, if such a dispute involves a claim or proceeding brought against any of the Administrative Agent or Arrangers in their capacities as such by other Indemnitees, the Administrative Agent or such Arranger shall be entitled, subject to the other limitations and exceptions set forth in this Section 9.5(b), to the benefits of the indemnifications provided for in this Section 9.5(b) or (C) result from a claim brought by the Lead Borrower or any Restricted Subsidiary against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if the Lead Borrower or such Restricted Subsidiary has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 9.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Notwithstanding the foregoing, the Borrowers shall only be responsible to indemnify the Indemnitees for one external counsel and one external local counsel in each applicable jurisdiction if required and as selected by the Administrative Agent (and to the extent an Indemnitee determines, after consultation with legal counsel, that an actual or potential conflict may exist,

one separate legal counsel for each group of similarly affected Indemnitees, taken as a whole in each applicable jurisdiction).

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, Swingline Lender or such Related Party, as the case may be, such Lender's Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), Issuing Lender or Swingline Lender in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against any Indemnitee or other party hereto, on any theory of liability, for special, indirect, exemplary, consequential (including, without limitation, any loss of profits, business or anticipated savings) or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing in this Section 9.5(d) shall relieve any Borrower of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.5(d) against any special, indirect, exemplary, consequential or punitive damages asserted against such Indemnitee by a third party. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the Transactions other than any liabilities arising from the gross negligence, bad faith or willful misconduct of such Indemnitee as determined in a final and non-appealable judgment by a court of competent jurisdiction (it being understood and agreed that information so transmitted shall continue to be subject to the terms of the confidentiality provisions set forth herein).

(e) Payments. All amounts due under this Section shall be payable promptly, and in any event within thirty (30) days after demand therefor.

(f) Survival. The agreements in this Section 9.5 shall survive the resignation or removal of the Administrative Agent, the replacement of any Lender, the termination of this Agreement and the repayment, satisfaction or discharge of the Credit Party Obligations (other than contingent indemnification obligations for which no claim has been made).

Section 9.6 **Successors and Assigns; Participations.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to

confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Borrowing) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Borrowing) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignment) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $2,500,000, in the case of any assignment in respect of the Revolving Facility, or $1,000,000, in the case of any assignment in respect of the Term Loan Facility, unless (x) each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed) or, (y) if less, all of such Lender's remaining Loans and commitments of the applicable Class.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Borrowings on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (w) a Specified Event of Default has occurred and is continuing at the time of such assignment, (x) with respect to any Term Loans, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or

(y) with respect to any Revolving Loans, such assignment is to a Revolving Lender or an Affiliate of a Revolving Lender; provided that (other than in the case of clause (x) or (y) above) the Lead Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10)

Business Days after having received notice thereof and provided, further, that any assignment by a Lender of an Initial Term Loan Commitment (other than an assignment by a Lender to its Affiliate) shall require the consent of the Lead Borrower which may be withheld in its sole discretion;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments to any Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of each Issuing Lender and Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Revolving Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Lead Borrower or the Lead Borrower's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof or (C) any Disqualified Lender.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Lead Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each Issuing Lender, each Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be

released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.14 and 9.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Lead Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, the Lead Borrower or any of the Lead Borrower's Affiliates or Subsidiaries or any Disqualified Lender) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that

(i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing Lenders and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.5(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 9 .1 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 (subject to the requirements and limitations therein, including the requirements under Section 2.16(g) (it being understood that the documentation required under Section 2.16(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.14 or Section 2.16, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Lead Borrower's request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 9.7 as though

it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations or Section 1.163-5(b) of the Proposed United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Disqualified Lenders.

(i) Any assignment or participation by a Lender without the Lead Borrower's prior written consent (which shall not be subject to the deemed consent provisions set forth above) to a Disqualified Lender shall not be permitted; provided that no supplement to the list of Disqualified Lenders shall have retroactive effect with respect to any Person that holds any Loans and/or Commitments or participations. The Administrative Agent may provide the list of Disqualified Lenders to any Lender that requests to see the list and may inform any potential assignee that it is included on the list of Disqualified Lenders, as applicable; provided that the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans to, or the restrictions on any exercise of rights or remedies of, any Disqualified Lender.

(ii) If any assignment or participation is made to any Disqualified Lender without the Lead Borrower's prior written consent in violation of this clause (e), or if any Person becomes a Disqualified Lender after the date (the "Trade Date") on which the assigning Lender enters into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person, the Borrowers may, at their sole expense, upon notice to the applicable Disqualified Lender and the Administrative Agent, (1) in the case of outstanding Revolving Commitments or Revolving Loans held by such Disqualified Lender, terminate such Revolving Commitment and repay all obligations of the Borrowers owing to such Disqualified Lender in connection with such Revolving Commitment, (2) in the case of outstanding Term Loans held by Disqualified Lenders, purchase or prepay such Term Loans by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such Term Loans, in each case, plus accrued interest thereon, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.6), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations under this Agreement, in each case plus accrued interest thereon, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (A) will not, and will not have the right to, (x) receive information, reports or other materials provided to Lenders by the Lead Borrower, any Subsidiary, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the other Lenders and the Administrative Agent, or (z) access any electronic site established for the other Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any other Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Credit Document, the Loans and Commitments held by each such Disqualified Lender shall be deemed not to be outstanding, and (y) for purposes of voting on any plan of reorganization or similar plan, each Disqualified Lender party hereto hereby agrees (1) not to vote on such plan, (2) if such Disqualified Lender does vote on such plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the applicable bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.7 **Right of Set-off; Sharing of Payments.**

(a) If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, each Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing, by such Lender, such Issuing Lender, such Swingline Lender or any such Affiliate, to or for the credit or the account of any Credit Party against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Credit Document to such Lender, Swingline Lender or Issuing Lender, irrespective of whether or not such Lender, Swingline Lender or Issuing Lender shall have made any demand under this Agreement or any other Credit Document and although such obligations of such Credit Party may be contingent or unmatured or are owed to a branch, office or affiliate of such Lender, Swingline Lender or Issuing Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender, the Swingline Lender and the other Lenders, and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Credit Party Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, Swingline Lender, Issuing Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, Swingline Lender, Issuing Lender or their respective Affiliates may have. Each Lender, Swingline Lender and Issuing Lender agrees to notify the

Lead Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(B) the provisions of this paragraph shall not be construed to apply to (x) any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Letters of Credit to any assignee or participant, other than to a Borrower or any Affiliate thereof (as to which the provisions of this paragraph shall apply).

(c) Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 9.8 **Table of Contents and Section Headings.**

The table of contents and the Section and subsection headings herein are intended for convenience only and shall be ignored in construing this Agreement.

Section 9.9 **Counterparts; Integration; Effectiveness; Electronic Execution.**

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Credit Document and/or (z) any document, amendment, approval,

consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement, any other Credit Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Credit Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Credit Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Credit Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each other Credit Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Issuing Lenders, the Borrowers and the other Credit Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Credit Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders and Issuing Lenders may, at its option, create one or more copies of this Agreement, any other Credit Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Credit Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Credit Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against the Administrative Agent and any Lender, Issuing Lender or any of their Related Parties for any liabilities arising solely from the Administrative Agent's and/or any Lender's or Issuing Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of any Borrower and/or any other Credit Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.10 **Severability.**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.11 **Integration.**

This Agreement and the other Credit Documents represent the agreement of the Borrowers, the other Credit Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, the Borrowers, the other Credit Parties, or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or therein.

Section 9.12 **[Reserved].**

Section 9.13 **Governing Law; Consent to Jurisdiction; Service of Process and Venue.**

(a) Governing Law. This Agreement and the other Credit Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Credit Document (except, as to any other Credit Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York; PROVIDED, HOWEVER, THAT (A) THE INTERPRETATION OF THE DEFINITION OF "COMPANY MATERIAL ADVERSE EFFECT" (AND WHETHER OR NOT A COMPANY MATERIAL ADVERSE EFFECT HAS OCCURRED), (B) THE DETERMINATION OF THE ACCURACY OF ANY SPECIFIED ACQUISITION AGREEMENT REPRESENTATION AND WHETHER AS A RESULT OF ANY INACCURACY THEREOF THE LEAD BORROWER AND ANY OF ITS AFFILIATES HAVE THE RIGHT TO TERMINATE THE LEAD BORROWER'S AND SUCH AFFILIATE'S OBLIGATIONS THEREUNDER, (C) THE DETERMINATION OF WHETHER THE ACQUISITION HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THE ACQUISITION AGREEMENT AND (D) ALL ISSUES, CLAIMS AND DISPUTES CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND ENFORCEABILITY OF THE ACQUISITION AGREEMENT SHALL, IN EACH CASE, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE GOVERNING LAW OF THE ACQUISITION AGREEMENT AS IN EFFECT ON JUNE 21, 2024.

(b) Consent to Jurisdiction. Each Borrower and each other Credit Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, any Issuing Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Credit Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Document shall affect any right that the Administrative Agent, any Lender or any Issuing Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against any Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(c) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.2. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

(d) Waiver of Venue. Each Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 9.14 **Treatment of Certain Information; Confidentiality.**

Each of the Administrative Agent, the Lenders and the Issuing Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties with a reasonable need to know such information in connection with the Transactions and who are informed of the confidential nature of such information and have been advised of their obligation to keep information of this type confidential (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), provided that the applicable Lender, Issuing Lender or Administrative Agent, shall be responsible for its Affiliates' and its and their respective Related Parties' compliance with this paragraph; (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), in which case the Administrative Agent, the Lenders and the Issuing Lenders agree (except with respect to any audit or examination conducted by bank accountants or any regulatory or self-regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, to inform the Lead Borrower promptly thereof prior to such disclosure and to reasonably cooperate with the Lead Borrower, at the Borrowers' expense, in seeking a protective order or other appropriate remedy; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process based on the reasonable advice of counsel, in which case the Administrative Agent, the Lenders and the Issuing Lenders agree (except with respect to any audit or examination conducted by bank accountants or any regulatory or self-regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, to inform the Lead Borrower promptly thereof prior to such disclosure and to reasonably cooperate with the Lead Borrower, at the Borrowers' expense, in seeking a protective order or other appropriate remedy; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder; (f) subject to being bound by the terms of this Section or to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to any Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) S&P and Moody's in connection with obtaining any ratings in respect of the Borrowers and the Loans and to any rating agency in connection with obtaining shadow ratings required by any financing source or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, in each case, subject to such Person being bound by the terms of this Section or to an agreement containing provisions substantially the same as those of this Section; (h) with the written consent of the Lead Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender, any Issuing Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Credit Documents, and the Commitments.

For purposes of this Section, "Information" shall mean all information received from the Lead Borrower or any of its Restricted Subsidiaries relating to the Lead Borrower, any of its Restricted Subsidiaries, the Company or any of its subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender, the Swingline Lender or the Issuing Lender on a nonconfidential basis prior to disclosure by the Lead Borrower or any of its Restricted Subsidiaries; provided that, in the case of Information received from the Lead Borrower or any of its Restricted Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 9.15 **Acknowledgments.**

Each Borrower and the other Credit Parties each hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of each Credit Document;

(b) neither the Administrative Agent, nor any Arranger, Documentation Agent, Syndication Agent or Lender has any fiduciary relationship with or duty to any Borrower or any other Credit Party arising out of or in connection with this Agreement and the relationship between the Administrative Agent, Arrangers, Documentation Agents, Syndication Agents and the Lenders, on one hand, and any Borrower and the other Credit Parties, on the other hand, in connection herewith is solely that of creditor and debtor; and

(c) no joint venture exists among the Lenders, Arrangers, Documentation Agents, Syndication Agents and the Administrative Agent, on the one hand, and the Credit Parties, on the other hand.

Section 9.16 **Waivers of Jury Trial.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.17 **Patriot Act Notice.**

Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Credit Party in accordance with the Patriot Act. In addition, each Lender and

the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the Beneficial Ownership Regulation, it may be required to obtain a Beneficial Ownership Certification. This notice is given in accordance with the requirements of the Patriot Act and the Beneficial Ownership Regulation and is effective for each Lender and the Administrative Agent. Each Credit Party hereby agrees that the Administrative Agent shall be permitted to share all such information delivered by such Credit Party pursuant to this Section 9.17 with the Lenders.

Section 9.18 **Resolution of Drafting Ambiguities.**

Each Credit Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of this Agreement and the other Credit Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

Section 9.19 **[Reserved.]**

Section 9.20 **Continuing Agreement.**

This Agreement shall be a continuing agreement and shall remain in full force and effect until all Credit Party Obligations (other than those obligations that expressly survive the termination of this Agreement) have been paid in full (other than contingent indemnification obligations for which no claim has been made) and all Commitments and Letters of Credit have been terminated. Upon termination, the Credit Parties shall have no further obligations (other than those obligations that expressly survive the termination of this Agreement) under the Credit Documents and the Administrative Agent shall, at the request and expense of the Borrowers, deliver all the Collateral in its possession to the Borrowers and release all Liens on the Collateral.

Section 9.21 **[Reserved.]**

Section 9.22 **Appointment of Borrower.**

Each of the Borrowers (other than the Lead Borrower) and the Guarantors hereby appoints the Lead Borrower to act as its agent for all purposes under this Agreement and agrees that (a) the Lead Borrower may execute such documents on behalf of such Borrower or Guarantor as the Lead Borrower deems appropriate in its sole discretion and each other Borrower and Guarantor shall be obligated by all of the terms of any such document executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or the Lender to the Lead Borrower shall be deemed delivered to each other Borrower or Guarantor and (c) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Lead Borrower on behalf of each other Borrower or Guarantor.

Section 9.23 **No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each Transaction, each of the Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between the Credit Parties and their Affiliates, on the one hand, and the Administrative Agent, Arrangers, Documentation Agents, Syndication Agents and Lenders (the "Covered Parties") on the other hand, and the Credit Parties are capable of evaluating and understanding and

understands and accepts the terms, risks and conditions of the Transactions and by the other Credit Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, the Covered Parties are and have been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any Credit Party or any of their Affiliates, stockholders, creditors or employees or any other Person; (c) the Covered Parties have not assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Credit Party with respect to any of the Transactions or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether any of the Covered Parties have advised or are currently advising any Credit Party or any of its Affiliates on other matters) and the Covered Parties do not have any obligation to any Credit Party or any of their Affiliates with respect to the Transactions except those obligations expressly set forth herein and in the other Credit Documents; (d) the Covered Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Credit Parties and their Affiliates, and each of the Covered Parties has no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) each of the Covered Parties has not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the Transactions (including any amendment, waiver or other modification hereof or of any other Credit Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Credit Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Covered Parties with respect to any breach or alleged breach of agency or fiduciary duty.

Section 9.24 **Responsible Officers and Authorized Officers.**

The Administrative Agent and each of the Lenders are authorized to rely upon the continuing authority of the Responsible Officers and the Authorized Officers with respect to all matters pertaining to the Credit Documents including, but not limited to, the selection of interest rates, the submission of requests for Extensions of Credit and certificates with regard thereto.

Section 9.25 **Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 9.26 **Certain ERISA Matters**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through

(g) of Part I of PTE 84- 14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrowers, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender

involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any other Credit Document or any documents related hereto or thereto).

Section 9.27 **Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): in the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.28 **Interest Rate Limitation.**

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which may be treated as interest on such Loan under applicable law (collectively, the "Charges "), shall exceed the maximum lawful rate of interest (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by a Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment (to the extent permitted by applicable law), shall have been received by such Lender.

Article X

GUARANTY

Section 10.1 **The Guaranty.**

In order to induce the Lenders to enter into this Agreement and any Bank Product Provider to enter into any Bank Product and to extend credit hereunder and thereunder and in recognition of the direct benefits to be received by the Guarantors from the Extensions of Credit hereunder and any Bank Product, each of the Guarantors hereby agrees with the Administrative Agent, the Lenders and the Bank Product Provider as follows: each Guarantor hereby unconditionally and irrevocably jointly and severally guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, by acceleration or otherwise, of any and all Credit Party Obligations. If any or all of the indebtedness becomes due and payable hereunder or under any Bank Product, each Guarantor unconditionally promises to pay such indebtedness to the Administrative Agent, the Lenders, the Bank Product Providers, or their respective order, on demand, together with any and all reasonable and documented out-of-pocket expenses which may be incurred by the Administrative Agent or the Lenders in collecting any of the Credit Party Obligations. The Guaranty set forth in this Article X is a guaranty of timely payment and not of collection. The word "indebtedness" is used in this Article X in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of the Borrowers, including specifically all Credit Party Obligations, arising in connection with this Agreement, the other Credit Documents or any Bank Product, in each case, heretofore, now, or hereafter made, incurred or created, whether voluntarily or involuntarily, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether or not such indebtedness is from time to time reduced, or extinguished and thereafter increased or incurred, whether any Borrower may be liable individually or jointly with others, whether or not recovery upon such indebtedness may be or hereafter become barred by any statute of limitations, and whether or not such indebtedness may be or hereafter become otherwise unenforceable.

Notwithstanding any provision to the contrary contained herein or in any other of the Credit Documents, to the extent the obligations of a Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of each such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the Bankruptcy Code).

Section 10.2 **Bankruptcy.**

Additionally, each of the Guarantors unconditionally and irrevocably guarantees jointly and severally the payment of any and all Credit Party Obligations of the Borrowers to the Lenders and any Bank Product Provider whether or not due or payable by the Borrowers upon the occurrence of any Bankruptcy Event and unconditionally promises to pay such Credit Party Obligations to the Administrative Agent for the account of the Lenders and to any such Bank Product Provider, or order, on demand, in lawful money of the United States. Each of the Guarantors further agrees that to the extent that a Borrower or a Guarantor shall make a payment or a transfer of an interest in any property to the Administrative Agent, any Lender or any Bank Product Provider, which payment or transfer or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, or otherwise is avoided, and/or required to be repaid to a Borrower or a Guarantor, the estate of a Borrower or a Guarantor, a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such avoidance or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

Section 10.3 **Nature of Liability.**

The liability of each Guarantor hereunder is exclusive and independent of any security for or other guaranty of the Credit Party Obligations of the Borrowers whether executed by any such Guarantor, any other guarantor or by any other party, and no Guarantor's liability hereunder shall be affected or impaired by (a) any direction as to application of payment by a Borrower or by any other party, or (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Credit Party Obligations of the Borrowers, or (c) any payment on or in reduction of any such other guaranty or undertaking, or (d) any dissolution, termination or increase, decrease or change in personnel by a Borrower, or (e) any payment made to the Administrative Agent, the Lenders or any Bank Product Provider on the Credit Party Obligations which the Administrative Agent, such Lenders or such Bank Product Provider receive pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each of the Guarantors waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

Section 10.4 **Independent Obligation.**

The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor or Borrower and whether or not any other Guarantor or Borrower is joined in any such action or actions.

Section 10.5 **Authorization.**

Each of the Guarantors authorizes the Administrative Agent, each Lender and each Bank Product Provider without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to (a) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Credit Party Obligations or any part thereof in accordance with this Agreement and any Bank Product, as applicable, including any increase or decrease of the rate of interest thereon, (b) take and hold security from any Guarantor or any other party for the payment of this Guaranty or the Credit Party Obligations and exchange, enforce waive and release any such security, (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their discretion may determine, (d) release or substitute any one or more endorsers, Guarantors, the Borrowers or other obligors and (e) to the extent otherwise permitted herein, release or substitute any Collateral.

Section 10.6 **Reliance.**

It is not necessary for the Administrative Agent, the Lenders or any Bank Product Provider to inquire into the capacity or powers of the Borrowers or the officers, directors, members, partners or agents acting or purporting to act on its behalf, and any Credit Party Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

Section 10.7 **Waiver.**

(a) Each of the Guarantors waives any right (except as shall be required by applicable statute and cannot be waived) to require the Administrative Agent, any Lender or any Bank Product Provider to

(i) proceed against any Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any security held from any Borrower, any other guarantor or any other party, or (iii) pursue any other remedy in the Administrative Agent's, any Lender's or any Bank Product Provider's whatsoever. Each of the Guarantors waives any defense based on or arising out of any defense of any Borrower, any other

guarantor or any other party other than payment in full of the Credit Party Obligations (other than contingent indemnification obligations for which no claim has been made or cannot be reasonably identified by an Indemnitee based on the then- known facts and circumstances), including, without limitation, any defense based on or arising out of the disability of any Borrower, any other guarantor or any other party, or the unenforceability of the Credit Party Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment in full of the Credit Party Obligations. The Administrative Agent may, at its election, foreclose on any security held by the Administrative Agent or a Lender by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Administrative Agent or any Lender may have against any Borrower or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Credit Party Obligations (other than contingent indemnification obligations for which no claim has been made) have been paid in full and the Commitments have been terminated. Each of the Guarantors waives any defense arising out of any such election by the Administrative Agent or any of the Lenders, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of the Guarantors against any Borrower or any other party or any security.

(b) Each of the Guarantors waives all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notice of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation or incurring of new or additional Credit Party Obligations. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Credit Party Obligations and the nature, scope and extent of the risks which such Guarantor assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any Lender shall have any duty to advise such Guarantor of information known to it regarding such circumstances or risks.

(c) Each of the Guarantors hereby agrees it will not exercise any rights of subrogation which it may at any time otherwise have as a result of this Guaranty (whether contractual, under Section 509 of the Bankruptcy Code, or otherwise) to the claims of the Lenders or any Bank Product Provider against any Borrower or any other guarantor of the Credit Party Obligations of any Borrower owing to the Lenders or such Bank Product Provider (collectively, the "Other Parties") and all contractual, statutory or common law rights of reimbursement, contribution or indemnity from any Other Party which it may at any time otherwise have as a result of this Guaranty until such time as the Credit Party Obligations (other than contingent indemnification obligations for which no claim has been made) shall have been paid in full and the Commitments have been terminated. Each of the Guarantors hereby further agrees not to exercise any right to enforce any other remedy which the Administrative Agent, the Lenders or any Bank Product Provider now have or may hereafter have against any Other Party, any endorser or any other guarantor of all or any part of the Credit Party Obligations of the Borrowers and any benefit of, and any right to participate in, any security or collateral given to or for the benefit of the Lenders and/or the Bank Product Providers to secure payment of the Credit Party Obligations of the Borrowers until such time as the Credit Party Obligations (other than contingent indemnification obligations for which no claim has been made) shall have been paid in full and the Commitments have been terminated.

Section 10.8 **Limitation on Enforcement.**

The Lenders and the Bank Product Providers agree that this Guaranty may be enforced only by the action of the Administrative Agent acting upon the instructions of the Required Lenders or such Bank Product Provider (only with respect to obligations under the applicable Bank Product) and that no Lender or Bank Product Provider shall have any right individually to seek to enforce or to enforce this Guaranty,

it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Lenders under the terms of this Agreement and for the benefit of any Bank Product Provider under any Bank Product.

Section 10.9 **Confirmation of Payment.**

The Administrative Agent and the Lenders will, upon request after payment of the Credit Party Obligations which are the subject of this Guaranty and termination of the Commitments relating thereto, confirm to the Borrowers, the Guarantors or any other Person that such indebtedness and obligations have been paid and the Commitments relating thereto terminated, subject to the provisions of Section 10.2.

Section 10.10 **Eligible Contract Participant.**

Notwithstanding anything to the contrary in any Credit Document, no Guarantor shall be deemed under this Article X to be a guarantor of any Swap Obligations if such Guarantor was not an "eligible contract participant" as defined in § 1a(18) of the Commodity Exchange Act, at the time the guarantee under this Article X becomes effective with respect to such Swap Obligation and to the extent that the providing of such guarantee by such Guarantor would violate the Commodity Exchange Act; provided however that in determining whether any Guarantor is an "eligible contract participant" under the Commodity Exchange Act, the guarantee of the Credit Party Obligations of such Guarantor under this Article X by a Guarantor that is also a Qualified ECP Guarantor shall be taken into account.

Section 10.11 **Keepwell.**

Without limiting anything in this Article X , each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time to each Guarantor that is not an "eligible contract participant" under the Commodity Exchange Act at the time the guarantee under this Article X becomes effective with respect to any Swap Obligation, to honor all of the Obligations of such Guarantor under this Article X in respect of such Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10. 11 for the maximum amount of such liability that can be hereby incurred without rendering its undertaking under this Section 10.11, or otherwise under this Article X, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The undertaking of each Qualified ECP Guarantor under this Section 10 .11 shall remain in full force and effect until termination of the Commitments and payment in full of all Loans and other Credit Party Obligations. Each Qualified ECP Guarantor intends that this Section 10.11 constitute, and this Section 10.11 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Guarantor that would otherwise not constitute an "eligible contract participant" under the Commodity Exchange Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by its proper and duly authorized officers as of the day and year first above written.

BORROWERS:

ANI PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Stephen Carey
Name: Stephen Carey
Title: Chief Financial Officer

ANIP ACQUISITION COMPANY,
a Delaware corporation

By: /s/ Stephen Carey
Name: Stephen Carey
Title: Chief Financial Officer

GUARANTORS:

NOVITIUM PHARMA LLC,
a Delaware limited liability company

By: /s/ Stephen Carey
Name: Stephen Carey
Title: Chief Financial Officer

NEW CASTLE PHARMA LLC,
a Delaware limited liability company

By: /s/ Stephen Carey
Name: Stephen Carey
Title: Chief Financial Officer

NEW CASTLE PHARMA REAL ESTATE LLC,
a Delaware limited liability company

By: /s/ Stephen Carey
Name: Stephen Carey
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:

JPMORGAN CHASE BANK, N.A., as a Lender, Swingline Lender, Issuing Lender and as Administrative Agent on behalf of the Lenders

By: /s/ Erik Barragan
Name: Erik Barragan
Title: Authorized Officer

LENDERS:

REGIONS BANK, as a Lender and an Issuing Lender

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

LENDERS:

THE HUNTINGTON NATIONAL BANK, as a Lender and an Issuing Lender

By: /s/ Joseph A. Miller
Name: Joseph A. Miller
Title: Managing Director

LENDERS:

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

By: /s/ Said Saffari
Name: Said Saffari
Title: Senior Vice President

LENDERS:

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

By: /s/ Brandon Moss
Name: Brandon Moss
Title: Executive Director

LENDERS:

U.S. Bank National Association, as a Lender

By: /s/ David Rofsky
Name: David Rofsky
Title: Senior Vice President

LENDERS:

Capital One, N.A., as a Lender

By: /s/ Jay Patel
Name: Jay Patel
Title: Duly Authorized Signatory

LENDERS:

PNC Bank, National Association, as a Lender

By: /s/ Matthew Bronczyk
Name: Matthew Bronczyk
Title: SVP

LENDERS:

Fifth Third Bank, National Association, as a Lender

By: /s/ Andy Reidell
Name: Andy Reidell
Title: Executive Director

LENDERS:

CITY NATIONAL BANK, as a Lender

By: /s/ Eric Rezai
Name: Eric Rezai
Title: Vice President

FOR IMMEDIATE RELEASE

ANI Pharmaceuticals, Inc. Closes $316.25 Million Convertible Senior Notes Offering Including Full Exercise of Initial Purchasers' Option to Purchase Additional Notes

PRINCETON, N.J., August 13, 2024 (GLOBE NEWSWIRE)—ANI Pharmaceuticals, Inc. (ANI or the Company) (Nasdaq: ANIP) today announced the closing of its offering of $316,250,000 aggregate principal amount of 2.25% convertible senior notes due 2029 (the "notes") in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). In response to investor demand, ANI upsized the initial offering of $250,000,000 aggregate principal amount of notes to $275,000,000 and the initial purchasers fully exercised their option to purchase an additional $41,250,000 aggregate principal amount of the notes. The notes were issued pursuant to, and are governed by, an indenture, dated as of August 13, 2024, between the Company and U.S. Bank Trust Company, National Association, as trustee.

The net proceeds from the offering are approximately $306.8 million, after deducting the initial purchasers' discounts and commissions but before deducting ANI's estimated offering expenses. ANI intends to use approximately $40.6 million of the net proceeds to fund the cost of entering into the capped call transactions described below. ANI intends to use the remainder of the net proceeds from the offering, together with cash on hand, to repay in full ANI's existing senior secured term loan facility. Substantially concurrently with repayment of the existing senior secured term loan facility, the commitments under the existing senior secured credit agreement (which includes the senior secured term loan facility and a revolving facility) were terminated and the Company entered into a new senior secured credit agreement consisting of a $325,000,000 delayed draw term loan facility and a $75,000,000 revolving facility.

In connection with the pricing of the notes and the exercise by the initial purchasers of their option to purchase additional notes, ANI entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions cover, subject to anti-dilution adjustments substantially similar to those applicable to the notes, the number of shares of ANI's common stock underlying the notes. The cap price of the capped call transactions is initially $114.02 per share, which represents a premium of 100% over the last reported sale price of ANI's common stock of $57.01 per share on the date the notes offering was priced, and is subject to certain adjustments under the terms of the capped call transactions. The capped call transactions are expected generally to reduce the potential dilution to ANI's common stock upon any conversion of the notes and/or offset any potential cash payments ANI is required to make in excess of the principal amount of converted notes, as the case may be, upon conversion of the notes. If, however, the market price per share of ANI's common stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, there would nevertheless be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that such market price exceeds the cap price of the capped call transactions.

The notes were only offered and sold to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A under the Securities Act. The offer and sale of the notes and any shares of common stock issuable upon conversion of the notes have not been, and will not be, registered under the Securities Act or any other securities laws, and the notes and any 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. This press release does not constitute an offer to sell, or the solicitation of an offer to buy, the notes or any shares of common stock issuable upon conversion of the notes, nor will there be any sale of the notes or any such shares, in any state or other jurisdiction in which such offer, sale or solicitation would be unlawful.

About ANI Pharmaceuticals, Inc.

ANI Pharmaceuticals, Inc. (Nasdaq: ANIP) is a diversified biopharmaceutical company serving patients in need by developing, manufacturing, and marketing high-quality branded and generic prescription pharmaceutical products, including for diseases with high unmet medical need. ANI is focused on delivering sustainable growth by scaling up its Rare Disease business through its lead asset Purified Cortrophin® Gel, strengthening its Generics business with enhanced research and development capabilities, delivering innovation in Established Brands, and leveraging its U.S. based manufacturing footprint.

Forward-Looking Statements

This press release contains forward-looking statements. All statements other than statements of historical facts contained herein, including, without limitation, statements regarding the effects of entering into the capped call transactions described above, are forward-looking statements reflecting the current beliefs and expectations of management made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties, and other important factors that may cause ANI's actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. Such risks and uncertainties include, among others, the risks and uncertainties related to market conditions and satisfaction of customary closing conditions related to the offering and risks relating to ANI's business, including those described in periodic reports that ANI files from time to time with the SEC. ANI may not consummate the offering described in this press release and, if the offering is consummated, cannot provide any assurances regarding its ability to effectively apply the net proceeds as described above. Any risks and uncertainties could materially and adversely affect ANI's results of operations, which would, in turn, have a significant and adverse impact on ANI's stock price. Any forward-looking statements contained in this press release speak only as of the date hereof, and ANI specifically disclaims any obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise.

Investor Relations:

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