
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): June 1, 2018

TELIGENT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-08568
(Commission File Number)

01-0355758
(IRS Employer
Identification No.)

105 Lincoln Avenue
Buena, New Jersey 08310
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (856) 697-1441

(Former Name or Former Address, if Changed Since Last Report)

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 a Material Definitive Agreement

Credit Agreement

On June 1, 2018, Teligent, Inc., a Delaware corporation (the “Company”), entered into a Credit Agreement (the “Credit Agreement”), by and among the Company, as the borrower, the guarantors party thereto from time to time, each lender from time to time party thereto and Cantor Fitzgerald Securities as the administrative agent. The Credit Agreement provides for new senior-secured, first-lien term loans in an aggregate principal amount of \$25 million, of which \$15 million was borrowed at closing and the remaining \$10 million may be borrowed within 45 days of the closing date upon the satisfaction of certain conditions thereto, including the grant of a mortgage with respect to the Company’s Buena, New Jersey property. Additional term loans under the Credit Agreement may be made on or before September 15, 2018, at the discretion of the lenders, in an aggregate amount of \$50 million. The term loans have an original issue discount of 2.5%, the entirety of which was funded out of the initial borrowing of \$15 million. The term loans mature on June 1, 2021, and generally bear interest at a rate of LIBOR plus 9.00% (subject to a 2.00% LIBOR floor).

All obligations of the Company under the Credit Agreement are unconditionally guaranteed by the Company’s now owned and hereafter existing domestic subsidiaries (other than certain inactive subsidiaries). All obligations under the Credit Agreement are secured by substantially all of the assets of the Company and the guarantors.

The Credit Agreement contains customary covenants including, without limitation and subject to certain exceptions, restrictions on the Company’s and the guarantors’ ability to (i) create liens on their respective assets; (ii) incur indebtedness; (iii) make or hold investments; (iv) engage in mergers and consolidations; (v) dispose of assets; and (vi) pay certain dividends and other restricted payments. In addition, the Credit Agreement requires the Company to maintain an aggregate of at least \$5 million of “liquidity” in the form of unrestricted cash and cash equivalents.

The Credit Agreement also provides for customary events of default which include, without limitation, the following: (i) default in the payment of principal of any loan when due and payable; (ii) default in any payment of interest which continues for a period of 5 days; (iii) any representation or warranty proving to have been incorrect in any material respect when made or deemed made; (iv) certain defaults by the Company or any of its subsidiaries with respect to certain indebtedness in excess of \$2.5 million; (v) certain events of bankruptcy, insolvency, or reorganization with respect to the Company or any of its subsidiaries; and (vi) a “change of control.”

The foregoing description of the Credit Agreement is qualified in its entirety by reference to the Credit Agreement, attached hereto as Exhibit 10.1.

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

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

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

The exhibits listed in the following Exhibit Index are filed as part of this Current Report on Form 8-K.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Credit Agreement, dated June 1, 2018, by and among Teligent, Inc., the guarantors party thereto from time to time, each lender from time to time party thereto and Cantor Fitzgerald Securities, as the administrative agent.
99.1	Press Release, dated June 5, 2018.

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.

TELIGENT, INC.

Date: June 5, 2018

By: /s/ Jason Grenfell-Gardner
Name: Jason Grenfell-Gardner
Title: Chief Executive Officer

CREDIT AGREEMENT

Dated as of June 1, 2018

among

TELIGENT, INC.,
as the Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER PARTY HERETO,
as the Guarantors,

THE LENDERS PARTY HERETO

and

CANTOR FITZGERALD SECURITIES,
as Administrative Agent

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EXHIBITS

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Exhibit B	Form of Joinder Agreement
Exhibit C	Form of Solvency Certificate
Exhibit D	Form of Notice of Loan Prepayment
Exhibit E	Form of Assignment and Assumption
Exhibit F	Form of Notice of Borrowing
Exhibit G	Administrative Questionnaire

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of June 1, 2018, among TELIGENT, INC., a Delaware corporation (the “Borrower”), the Guarantors (as defined herein) party hereto from time to time, each of the Lenders (as defined herein) from time to time party hereto and Cantor Fitzgerald Securities as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the “Administrative Agent”).

PRELIMINARY STATEMENTS

WHEREAS, the Borrower has requested that the Lenders make term loans to the Borrower on the Closing Date in an aggregate principal amount of \$25,000,000.

WHEREAS, the Lenders have agreed to make such term loans to the Borrower and to provide the term loan facility evidenced by this Agreement as of the Closing Date, in each case on the terms and subject to the conditions set forth herein.

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

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.1 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“2019 Convertible Notes Documents” means that certain Indenture between the Borrower f/k/a IGI Laboratories, Inc. and Wilmington Trust, National Association, as trustee, dated as of December 16, 2014 and all other agreements, instruments and other documents pursuant to which the 2019 Convertible Senior Notes have been issued or otherwise setting forth the terms of the 2019 Convertible Senior Notes.

“2019 Convertible Senior Notes” means the “3.75% Convertible Senior Notes due 2019” of the Borrower f/k/a IGI Laboratories, Inc. due December 15, 2019 issued and sold on December 16, 2014 pursuant to the 2019 Convertible Notes Documents.

“2023 Convertible Notes Documents” means that certain Indenture between the Borrower and Wilmington Trust, National Association, as trustee, dated as of May 1, 2018 and all other agreements, instruments and other documents pursuant to which the 2023 Convertible Senior Notes have been issued or otherwise setting forth the terms of the 2023 Convertible Senior Notes.

“2023 Convertible Senior Notes” the “4.75% Convertible Senior Notes due 2023” of the Borrower due May 1, 2023 issued and sold on May 1, 2018 pursuant to the 2023 Convertible Notes Documents.

“ABL Credit Agreement” means any credit agreement providing for an asset-based revolving credit facility for the Borrower, and entered into by the Borrower and/or any other Loan Party or Loan Parties (and not any Subsidiary that is not a Loan Party), the availability of borrowings under which is based on a borrowing base consisting of accounts receivable and/or inventory of the Loan Parties party thereto; provided that such credit agreement shall be on terms satisfactory to the Initial Lenders and Required Lenders.

“ABL Facility” means the asset-based revolving credit facility governed by any ABL Credit Agreement.

“ABL Facility Cap” means \$25,000,000.

“ABL Intercreditor Agreement” means a customary ABL/Term intercreditor agreement that is satisfactory to the Administrative Agent, Initial Lenders and Required Lenders, which intercreditor agreement may provide that the liens securing the ABL Facility on assets constituting ABL Priority Collateral (but not on any other assets) shall be senior to the liens on such assets securing the Secured Obligations.

“ABL Loan Documents” means any ABL Credit Agreement and all other agreements, instruments and other documents pursuant to which the ABL Facility has been or will be made available or otherwise setting forth the terms of, or securing obligations under, any ABL Facility.

“ABL Priority Collateral” has the meaning set forth in the ABL Intercreditor Agreement; provided that no assets shall constitute ABL Priority Collateral at any time that an ABL Credit Agreement is not in effect.

“Acquisition” means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

“Additional Lender” has the meaning specified in Section 2.6(d).

“Administrative Agent” has the meaning specified in the introductory paragraph hereto.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 1.1(b), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders, which office may include any Affiliate of the Administrative Agent or any domestic or foreign branch of the Administrative Agent or such Affiliate.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit G or any other form approved by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affiliate Transaction” has the meaning specified in Section 7.8.

“Agents” means the Administrative Agent and the Collateral Agent.

“Agreement” means this Credit Agreement.

“Applicable Rate” means, for any day, (i) in the case of Eurodollar Rate Loans, 9.00% per annum and (ii) in the case of Base Rate Loans, 8.00% per annum.

“Approved Fund” means, with respect to any Lender, any Fund that is administered or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers or manages such Lender.

“Assignment and Assumption” means an Assignment and Assumption Agreement substantially in the form of Exhibit E.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of such Person, the capitalized amount thereof with respect to any Person that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease, (c) all Synthetic Debt of such Person, (d) in respect of any Securitization Transaction, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Required Lenders in their reasonable judgment and (e) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2017, and the related Consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

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

“Bail-In Legislation” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” shall mean the provisions of Title 11 of the United States Code, 11 USC §§ 101 et seq., as amended, or any similar federal or state law for the relief of debtors.

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate plus one-half of one percent (0.50%), (b) the rate last quoted by The Wall Street Journal (or another national publication selected by the Administrative Agent and approved by the Required Lenders) as the U.S. “Prime Rate” and (c) the Eurodollar Rate plus 1.00%; provided, that, notwithstanding the foregoing, for purposes of this Agreement, the Base Rate shall in no event be less than 3.00% at any time.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrowing” means the borrowing of the Loans pursuant to Section 2.1.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York and, if such day relates to a Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than three hundred sixty (360) days from the date of acquisition thereof and having one of the two highest ratings obtainable from either S&P or Moody’s;

(c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (d) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof;

(d) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof; and

(e) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b), (c) and (d) of this definition.

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; 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” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of more than 50% of the Equity Interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right);

(b) the Borrower shall dispose of all or substantially all of its assets and its Subsidiaries’ assets;

(c) the Borrower ceases to own and control, directly or indirectly, free and clear of all Liens (other than Permitted Liens) 100% of the Equity Interests of (x) each Subsidiary that is a Guarantor on the Closing Date and (y) each other Subsidiary that becomes a Guarantor following the Closing Date (in each case, other than directors' qualifying shares, as may be required by applicable Law, and other than as a result of a transaction permitted by Section 7.4 or 7.5);

(d) the closing of an exchange of the Equity Interests of the Borrower for the Equity Interests of any other Person or Persons (but excluding any such exchange pursuant to which the Persons that "beneficially owned" (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, the Equity Interests of the Borrower immediately prior to such transaction are substantially identical to the Persons that "beneficially own", directly or indirectly, more than 50% of the Equity Interests of such surviving Person immediately after such transaction) or any liquidation or dissolution, or the merger or consolidation of, any Loan Party with or into another Person unless permitted by Section 7.4; or

(e) a "fundamental change", "change of control" or any comparable term under, and as defined in, the 2019 Convertible Senior Notes, the 2023 Convertible Senior Notes or other Indebtedness in excess of the Threshold Amount (including any ABL Facility).

"Closing Date" means the date hereof.

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

"Collateral" means all of the "Collateral" and "Mortgaged Property" referred to in the Collateral Documents and all of the other property that is under the terms of the Collateral Documents subject or purported to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties, in each case, expressly excluding Excluded Property.

"Collateral Agent" means Cantor Fitzgerald Securities in its capacity as collateral agent for the benefit of the Secured Parties under the Collateral Documents.

"Collateral Documents" means, collectively, the U.S. Security Agreement, each Mortgage, each Qualifying Control Agreement, each Joinder Agreement, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Collateral Agent pursuant to Section 6.13 or Article IV, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make term loans hereunder, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule 1.1(a), in the Assignment and Assumption pursuant to which such Lender became a Lender under this Agreement or, in the case of any Incremental Term Loan, the Incremental Term Commitment of such Lender set forth in the applicable Increase Joinder, in each case as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with this Agreement. The aggregate Commitments of the Lenders on the Closing Date shall be \$25,000,000.

“Compliance Certificate” means a certificate substantially in the form of Exhibit A.

“Consolidated” means, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Contingent Obligation” means, with respect to any Person, any contingent obligation of such Person calculated in conformity with GAAP, and in any event shall include any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take or pay contract or the obligations of any such Person as general partner of a partnership with respect to the liabilities of the partnership.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, contract, indenture, mortgage, deed of trust, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

“Debtor Relief Laws” means the Bankruptcy Code of the United States, 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” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to three percent (3.00%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate plus three percent (3.00%), in each case to the fullest extent permitted by applicable Law.

“Delayed Draw Date” has the meaning assigned to such term in Section 2.1.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, conveyance, assignment, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by any Loan Party or Subsidiary or the sale or issuance of Equity Interests in the Borrower or any Subsidiary, but excluding any (a) Involuntary Disposition and (b) the disposition of cash and Cash Equivalents in the ordinary course of business.

“Disposition Prepayment Amount” has the meaning specified in Section 2.5(b).

“Disposition Prepayment Percentage” means (a) with respect to the first \$2,000,000 of Net Cash Proceeds received by the Loan Parties or their Subsidiaries from Disposition Prepayment Events following the Closing Date, 0%, (b) with respect to the aggregate amount of Net Cash Proceeds received by the Loan Parties or their Subsidiaries from Disposition Prepayment Events following the Closing Date that is in excess of \$2,000,000 but is less than or equal to \$5,000,000, 50%, (c) with respect to the aggregate amount of Net Cash Proceeds received by the Loan Parties or their Subsidiaries from Disposition Prepayment Events following the Closing Date that is in excess of \$5,000,000 but is less than or equal to \$20,000,000, 75% and (d) with respect to the aggregate amount of Net Cash Proceeds received by the Loan Parties or their Subsidiaries from Disposition Prepayment Events following the Closing Date that is in excess of \$20,000,000, 100%, in each case after giving effect to the applicable transaction.

“Disposition Prepayment Event” has the meaning specified in Section 2.5(b).

“Disqualified Lender” means those competitors of the Borrower, set forth in a list provided to the Administrative Agent and the Initial Lenders.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

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

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

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“Eurodollar Rate” means for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is selected by the Administrative Agent and approved by the Required Lenders, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent and approved by the Required Lenders from time to time) at or about 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; provided that (i) to the extent a comparable or successor rate is approved by the Required Lenders in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) notwithstanding the foregoing, for purposes of this Agreement, the Eurodollar Rate shall in no event be less than 2.00% at any time.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based the Eurodollar Rate.

“Event of Default” has the meaning specified in Section 8.1.

“Excess Amount” has the meaning specified in Section 2.5(b).

“Excluded Property” means, with respect to any Loan Party, (a) any Real Estate other than Material Real Estate, (b) any United States intent-to-use trademark applications prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral, (c) any rights or interest in any General Intangible, Instrument, contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party if under the terms of such General Intangible, Instrument, contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such General Intangible, Instrument, contract, lease, permit, license, or license agreement, and the Equipment and Goods, if any, which are the subject thereof, and such prohibition or restriction has not been waived or the consent of the other party to such General Intangible, Instrument, contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (c) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is unenforceable under the UCC or other applicable Law (including Debtor Relief Laws) or principles of equity, (2) to apply to the extent that any consent or waiver has been obtained that would permit the Collateral Agent’s security interest or lien notwithstanding the prohibition or restriction on the pledge of such General Intangible, Instrument, contract, lease, permit, license, or license agreement or to the extent the Person in whose favor the applicable contractual restriction runs is to the Borrower or any Subsidiary or (3) to limit, impair, or otherwise affect any of the Collateral Agent’s continuing security interests in and liens upon any rights or interests of the Borrower in or to (x) monies due or to become due under or in connection with any described General Intangible, Instrument, contract, lease, permit, license, license agreement, or stock (including any accounts or stock), or (y) any proceeds from the sale, license, lease, or other dispositions of any such General Intangible, Instrument, contract, lease, permit, license, license agreement, or stock), (d) any Equity Interests issued by any Inactive Subsidiary, (e) any property or assets of any Excluded Subsidiary, (f) voting capital stock of any CFC that is owned by the Borrower or a Domestic Subsidiary in excess of sixty-five percent (65%) of the total outstanding voting capital stock of such CFC and (g) any capital stock of any Subsidiary owned by a CFC.

“Excluded Subsidiary” means (i) any CFC or any Subsidiary of a CFC or (ii) any Inactive Subsidiary.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.1, 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 3.1(e), and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including, but not limited to, tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings and proceeds of Involuntary Dispositions), non-ordinary course proceeds from settlements, arbitral awards and judgments, indemnity payments and any purchase price adjustments; provided, however, that an Extraordinary Receipt shall not include cash receipts from proceeds or payments of any of the foregoing to the extent that such are received by any Person (i) and applied to pay (or to reimburse such Person for its prior payment of) the reasonable and documented costs and expenses paid in cash by such Person with respect thereto or (ii) in connection with collection actions instituted by such Person against a third party in connection with accounts receivable owed to such Person; provided further that any cash received by or paid to the Borrower or any of its Subsidiaries from the sale or issuance of common Equity Interests of the Borrower shall not constitute an “Extraordinary Receipt” hereunder.

“Facility” means at any time, (a) on or prior to the Closing Date, the aggregate amount of the Commitments at such time and (b) thereafter, the aggregate principal amount of the Loans outstanding at such time.

“Facility Termination Date” means the date as of which (a) the Commitments have terminated and (b) all Secured Obligations have been paid in full in cash (other than contingent indemnification obligations for which no claim has been made).

“Fair Market Value” shall mean, with respect to any asset on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Borrower in good faith; provided that with respect to any such asset with a Fair Market Value determined in accordance with this definition to be at least equal to the Threshold Amount, the Administrative Agent shall have received (for distribution to the Lenders) a certificate from a Responsible Officer setting forth in reasonable detail the basis for such determination in form and substance reasonably satisfactory to the Required Lenders.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreement, treaty, regulations, guidance or any other agreement entered into in order to comply with, facilitate, supplement or implement the foregoing.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means that certain Fee Letter, dated as of the date hereof, between the Borrower and the Administrative Agent.

“Flood Hazard Property” means any Mortgaged Property with buildings or other structures in an area designated by the Federal Emergency Management Agency as having special flood hazards.

“Flood Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto (the “Flood Disaster Protection Act”), (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004, and any regulations promulgated thereunder, as now or hereafter in effect or any successor statute or regulations thereto.

“Flood Notice” has the meaning set forth in Section 6.13(b).

“Flood Requirements” has the meaning set forth in Section 6.13(b).

“Foreign Plan” means any retirement benefit or pension plan maintained or contributed to by, or entered into with, any Loan Party or any of its Subsidiaries with respect to any employees employed outside the United States other than a retirement benefit or pension plan maintained exclusively by a Governmental Authority.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

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

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.3.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 9.1.

“Guarantors” means, collectively, the Subsidiaries of the Borrower as are or may from time to time become parties to this Agreement pursuant to Section 6.12 or Article IV.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article IX in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

“Highbridge Approved Lender” means (a) each Initial Lender as of the Closing Date and (b) any fund or similar investment vehicle the investments decisions with respect to which are made by (i) an Initial Lender or (ii) an investment manager or other Person that manages an Initial Lender or any Affiliates of each of the foregoing to the extent that the investment decisions with respect to which are made as specified in clauses (i) and (ii).

“Inactive Subsidiary” means each of Blood Cells Inc., Flavorsome Ltd. and Microburst Energy Inc. for so long as such Subsidiaries do not (i) commence any material activities or operations or (ii) own any material assets.

“Increase Effective Date” has the meaning specified in Section 2.6(a).

“Increase Joinder” has the meaning specified in Section 2.6(e).

“Incremental Amount” means, at any time, such amount of Incremental Term Loans such that the aggregate principal amount of all Incremental Term Loans borrowed following the Closing Date does not exceed \$50,000,000.

“Incremental Request” has the meaning specified in Section 2.6(a).

“Incremental Term Commitments” has the meaning specified in Section 2.6(a).

“Incremental Term Loans” means, any loans made pursuant to any Incremental Term Commitments.

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or Contingent Obligations of such Person arising under letters of credit, bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations (including, without limitation, earnout obligations to the extent due and payable) of such Person to pay the deferred purchase price of property or services (other than accounts payable arising in the ordinary course of such Person’s business payable on terms customary in the trade);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person;
- (g) all obligations of such Person to, prior to September 1, 2021, purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of a Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.4(b).

“Information” has the meaning specified in Section 10.7.

“Initial Lenders” means, collectively (a) 1992 MSF International Ltd., (b) 1992 Tactical Credit Master Fund, L.P. each in its capacity as a Lender hereunder as of the Closing Date and (c) each other Highbridge Approved Lender that becomes a Lender hereunder (but expressly excluding any assignee of the foregoing that is not a Highbridge Approved Lender).

“Intellectual Property” has the meaning set forth in the U.S. Security Agreement.

“Intercompany Debt” has the meaning specified in Section 7.2(d).

“Interest Payment Date” means, the last Business Day of each calendar month and the Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or continued as a Eurodollar Rate Loan and ending on the date three (3) months thereafter; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guaranties Indebtedness of such other Person), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but decreased to the extent of any dividends received in relation to, or repayments of, such Investments.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit B executed and delivered in accordance with the provisions of Section 6.12.

“Laws” means, collectively, all applicable international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, governmental licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lenders” means, collectively (a) each Initial Lender, (b) any other Person that shall have become a party hereto after the Closing Date pursuant to an Assignment and Assumption and (c) each Additional Lender that shall have become party hereto after the Closing Date pursuant to an Increase Joinder, in each case, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

“Liquidity” means (i) unrestricted cash and Cash Equivalents of the Loan Parties that are (a) held in an account that is the subject of a Qualifying Control Agreement; provided Liquidity shall be determined without regard to the requirements in this clause (a) (x) on the Closing Date and for a period of 30 days thereafter and (y) thereafter and until the date that is 120 days from the Closing Date, but only if the Loan Parties have used commercially reasonable efforts during such initial 30 day period (or longer period as to which Required Lenders shall agree), and continue to use commercially reasonable efforts, to obtain such Qualifying Control Agreement but despite such efforts have been unable to obtain the same, (b) not subject to any Lien senior to the Liens of the Collateral Agent (other than (x) any Liens granted under the ABL Loan Documents on cash and Cash Equivalents constituting ABL Priority Collateral and (y)) Liens (including rights of set-off) in favor a bank or other depository institution arising as a matter of law with respect thereto) and (c) not held in a restricted account, a payroll account, tax account, trust account, pension account, royalty account or similar type of account plus (ii) borrowing availability under the ABL Facility.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Guaranty, (c) the Collateral Documents, (d) each Joinder Agreement, (e) the Perfection Certificate, (f) the Fee Letter and (g) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Loan Payment Date” shall mean (a) any date that all or a portion of the Loans are prepaid or repaid by the Borrower pursuant to Section 2.5 or 2.7 or otherwise in accordance with this Agreement (other than in accordance with the last proviso to Section 10.1 and with Section 10.15) and (b) any other date on which all or a portion of the Loans become due and payable in accordance with Section 8.2, in each case other than the Maturity Date.

“Loans” means the term loans made by the Lenders to the Borrower pursuant to this Agreement, including for the avoidance of doubt, Loans made pursuant to Section 2.1 and the Incremental Term Loans.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Master Agreement” has the meaning set forth in the definition of “Swap Contract”.

“Material Adverse Effect” means, individually or in the aggregate, (a) a material adverse change in, or a material adverse effect upon, the operations (including results of operation), business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights, remedies or benefits of any Agent or any of the Lenders under any Loan Document (including a material adverse effect upon a significant portion of the Collateral or the validity, perfection or priority of the Collateral Agent’s Liens on such Collateral), or of the ability of the Loan Parties to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect, rights, remedies, benefits or enforceability against the Loan Parties of the Loan Documents.

“Material Real Estate” means any Real Estate that has a Fair Market Value in excess of \$2,500,000, as reasonably determined by the Borrower based on available information including book value, assessed value, existing title policy amounts and existing appraisals.

“Maturity Date” means June 1, 2021; provided that the Maturity Date with respect to any Incremental Term Loan shall mean the Incremental Term Loan Maturity Date specified with respect thereto in the applicable Increase Joinder.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” or “Mortgages” means, individually and collectively, as the context requires, each of the fee mortgages, leasehold mortgages, deeds of trust or similar instruments executed by a Loan Party that purports to grant a Lien to the Collateral Agent for the benefit of the Secured Parties in any Mortgaged Properties, in form and substance satisfactory to the Collateral Agent and the Required Lenders.

“Mortgage Condition” means the Loan Parties obligation to deliver the documents or take the actions specified on paragraph (c) of Schedule 6.17 within the time period specified therein.

“Mortgaged Property” means any owned real property of a Loan Party that is or will become encumbered by a Mortgage in favor of the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Agreement.

“Multemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds received (including any cash received in respect of any non-cash proceeds (including, without limitation, the monetization of notes receivables), but only as and when received), directly or indirectly, by any Loan Party or any Subsidiary in respect of any Disposition or Involuntary Disposition, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees and sales commissions), (b) taxes paid or payable as a result thereof, in each case to the extent, but only to the extent, that the amounts so deducted are actually paid or payable to a Person that is not an Affiliate of such Loan Party, and are properly attributable to such transaction and (c) the amount actually used to repay any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Collateral Agent) on the related property to the extent (x) required by the terms of such Indebtedness to be so repaid or (y) failure to so repay such Indebtedness would result in a default thereunder; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition or Involuntary Disposition.

“NFIP” means the National Flood Insurance Program.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.1 and (ii) has been approved by the Required Lenders.

“Notice of Borrowing” means a notice of the Borrowing on the Closing Date, which shall be substantially in the form of Exhibit F or such other form as may be approved by the Administrative Agent and the Initial Lenders, appropriately completed and signed by a Responsible Officer.

“Notice of Loan Prepayment” means a notice of prepayment with respect to the Loans, which shall be substantially in the form of Exhibit D or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means, in each case, whether now in existence or hereafter arising (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such advances to, and debts, liabilities, obligations, covenants and duties of such Loan Party are allowed or allowable claims in such proceeding and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, and including interest, expenses (including attorneys’ fees), charges, commissions and fees that accrue in respect of the Loans, the Prepayment Fee and the other obligations under the Loan Documents after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses, charges, commissions and fees are allowed or allowable claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of the Loans after giving effect to any prepayments or repayments thereof occurring on such date.

“Patent Collateral” means all of the right, title and interest of the Borrower or any of its Subsidiaries in any and all patents and patent applications (along with inventions and improvements described therein) and all reissues, divisions, continuations, renewals, extensions and continuations-in-part of such patents and patent applications, including all rights to sue and collect damages and payments for past, present and future infringements of any and all of such patents and patent applications.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Perfection Certificate” means the information certificate of the Borrower and the other Loan Parties dated as of the date hereof, as the same may be supplemented or modified from time to time.

“Permitted Liens” has the meaning set forth in Section 7.1.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; 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 Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other amounts paid, and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.2(c), the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) the Weighted Average Life to Maturity of the Indebtedness resulting from such modification, refinancing, refunding, renewal or extension shall be no shorter than the Weighted Average Life to Maturity of the Indebtedness being modified, refinanced, refunded, renewed or extended, (d) immediately after giving effect thereto, no Event of Default shall have occurred and be continuing, (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Secured Obligations, Indebtedness resulting from such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Secured Obligations on terms at least as favorable to the Secured Parties as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended and (f) in the case of any Permitted Refinancing of the 2019 Convertible Senior Notes or the 2023 Convertible Senior Notes, such Indebtedness shall be unsecured and shall require no scheduled prepayments of principal prior to the maturity date of thereof. 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 7.2.

“Permitted Transfers” means (a) Dispositions of inventory in the ordinary course of business; (b) Dispositions of property to the Borrower or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof, (d) the sale or disposition of Cash Equivalents, and (e) lease, sublease, non-exclusive license and non-exclusive sublicenses of property of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practice.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Pledged Equity” means all of the “Pledged Equity” referred to in the U.S. Security Agreement and all of the Equity Interests that are or are intended under the terms of the U.S. Security Agreement to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties.

“Prepayment Fee” shall mean a fee due and payable to each Lender on each Loan Payment Date in an amount equal to the applicable amount set forth below:

(a) if such Loan Payment Date occurs after the Closing Date and prior to the first anniversary of the Closing Date, 2.00% of the principal balance of the Loans of such Lender being repaid or prepaid;

(b) if such Loan Payment Date occurs on or after the first anniversary of the Closing Date and before the second anniversary of the Closing Date, 1.50% of the principal balance of the Loans of such Lender being repaid or prepaid; and

(c) if such Loan Payment Date occurs on or after the second anniversary of the Closing Date and before the Maturity Date, 1.00% of the principal balance of the Loans of such Lender being repaid or prepaid;

provided that if all of the Loans, together with accrued and unpaid interest thereon, are prepaid by the Borrower in a single transaction on such Loan Payment Date solely with the proceeds of Indebtedness provided by one or more Highbridge Approved Lenders, then, unless the Loans have become due and payable in accordance with Section 8.2, the amount of the Prepayment Fee payable to each Lender shall be 0.00% of the principal balance of the Loans prepaid.

“Qualifying Control Agreement” means an agreement, among a Loan Party, a depository institution or securities intermediary and the Collateral Agent, which agreement is in form and substance acceptable to the Collateral Agent and the Required Lenders and which provides the Collateral Agent, for the benefit of the Secured Parties, with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

“Real Estate” means all real property at any time owned by the Borrower or any Subsidiary in the United States.

“Real Estate Collateral Requirements” has the meaning set forth in Section 6.13(b).

“Recipient” means (a) the Administrative Agent and (b) any Lender.

“Related Parties” means, 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.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Required Lenders” means, at any time, Lenders having or holding more than 50% of the Outstanding Amount.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Article IV, the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent or the Required Lenders, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent or the Required Lenders, appropriate authorization documentation, in form and substance satisfactory to the Administrative Agent.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its 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 Borrower or any of its Subsidiaries, now or hereafter outstanding and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

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

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Obligations” means (a) in the case of the Borrower, all Obligations and (b) in the case of any Guarantor, such Guarantor’s Guaranteed Obligations.

“Secured Parties” means, collectively, the Agents, the Lenders and the Indemnitees.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Securitization Transaction” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“Solvency Certificate” means a solvency certificate in substantially in the form of Exhibit C.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the present fair saleable value of the assets of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person will not have an unreasonably small amount of capital with which to conduct business, and (e) such Person will be able to pay its debts when they mature. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender or any Affiliate of such Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds but are not otherwise included in the definition of “Indebtedness” or as a liability on the Consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Threshold Amount” means \$2,500,000.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“United States” and “U.S.” mean the United States of America.

“USAC” has the meaning specified in Section 5.24(b).

“U.S. Security Agreement” means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Collateral Agent by each of the Loan Parties that is a Domestic Subsidiary.

“Voting Stock” means, 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 if the right to so vote has been suspended by the happening of such contingency.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by (b) the then outstanding principal amount of such Indebtedness.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, 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.

1.2 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) 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, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) 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.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

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 Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Required Lenders and the Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

1.4 Reserved.

1.5 Times of Day; Rates.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

No Agent or Lender warrants or accepts responsibility, neither shall any Agent or Lender have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any comparable or successor rate thereto.

1.6 UCC Terms.

Terms defined in the UCC and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions.

**ARTICLE II
COMMITMENTS AND BORROWINGS**

2.1 The Loans. Subject to the terms and conditions set forth herein each Initial Lender, severally and not jointly, agrees to make Loans to the Borrower, in Dollars, (x) on the Closing Date and (y) on up to one additional date that is the date on which the conditions set forth in Section 4.2 are satisfied (such date, the "Delayed Draw Date"), in an aggregate amount for clauses (x) and (y) not to exceed the Commitment of such Initial Lender to make such Loans and as provided further in Section 2.3 below; provided, that (i) the aggregate principal amount of Loans made on the Closing Date shall be equal to \$15,000,000, (ii) the aggregate principal amount of Loans made on the Delayed Draw Date shall not exceed \$10,000,000 and (iii) any unfunded Commitment in existence on the date that is the earlier of (x) the fourth Business Day following the date on which the Mortgage Condition is satisfied and (y) 45 days following the Closing Date, shall automatically terminate and shall no longer be available to be borrowed. The Loans made on the Closing Date shall constitute Eurodollar Rate Loans made by the Initial Lenders on a ratable basis in accordance with their respective Commitments. The Loans made on the Delayed Draw Date shall constitute Eurodollar Rate Loans made by the Initial Lenders on a ratable basis in accordance with their respective Commitments and shall constitute and increase in, and shall be added to, the Loans made on the Closing Date. Once repaid or prepaid, the Loans may not be reborrowed.

2.2 Advance and Eurodollar Rate Loan.

(a) Advances. Subject to the borrowing procedures set forth in Section 2.3, (i) in the case of Loans to be made on the Closing Date, upon satisfaction of the conditions set forth in Section 4.1, each Initial Lender shall make the requested funds according to their pro rata share of Commitments available to the Borrower on the Closing Date in an aggregate principal amount of \$15,000,000 and (ii) in the case of Loans to be made on the Delayed Draw Date, upon satisfaction of the conditions set forth in Section 4.2, each Initial Lender shall make the requested funds according to their pro rata share of Commitments available to the Borrower on the Closing Date in an aggregate amount not to exceed \$10,000,000, in each case by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) such Initial Lender by the Borrower.

(b) Eurodollar Rate Loan. Except as otherwise provided herein, a Eurodollar Rate Loan shall automatically be continued only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, at the option of the Required Lenders and upon notice to the Borrower, the Loans may not be continued as a Eurodollar Rate Loan, and the Required Lenders may require that any or all of the outstanding Eurodollar Rate Loan be converted immediately to a Base Rate Loan. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for a Eurodollar Rate Loan upon determination of such interest rate.

2 . 3 Borrowing Procedures: Closing Date Mechanics. The Borrowing shall be made (a) in the case of Loans to be made on the Closing Date, by a Notice of Borrowing delivered to the Administrative Agent (for distribution to the Initial Lenders) and received by Administrative Agent on the Closing Date and (b) in the case of Loans to be made on the Delayed Draw Date, by a Notice of Borrowing delivered to the Administrative Agent (for distribution to the Initial Lenders) and received by Administrative Agent no later than 12:00 p.m. two (2) Business Days prior to the Delayed Draw Date. After receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify the Initial Lenders by telecopy, telephone, email, or other electronic form of transmission acceptable to the Initial Lenders, of the requested Borrowing. Each Initial Lender shall make such Loans to be made by it hereunder on the Closing Date or the Delayed Draw Date (as applicable) to the Borrower by wire transfer of immediately available funds to the account set forth in such Notice of Borrowing. Nothing herein shall be deemed to obligate any Lender to obtain the funds for its 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 its Loan in any particular place or manner. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), (x) the funded portion of each Loan to be made on the Closing Date shall be equal to 97.5% of the principal amount of such Loan (it being agreed that the full principal amount of each such Loan shall be the "initial" principal amount of such Loan and deemed outstanding on the Closing Date and the Borrower shall be obligated to repay 100% of the principal amount of each such Loan as provided hereunder) and (y) the funded portion of each Loan to be made on the Delayed Draw Date shall be equal to 100% of the principal amount of such Loan. Notwithstanding the foregoing, (i) no Initial Lender shall have an obligation to make any Loan on the Closing Date if one or more of the applicable conditions precedent set forth in Section 4.1 have not been or will not be satisfied on the Closing Date unless such condition has been waived in accordance with the applicable provisions of Article IV and (ii) no Initial Lender shall have an obligation to make any Loan on the Delayed Draw Date if the conditions set forth in Section 4.2 have not been or will not be satisfied on the Delayed Draw Date unless such condition has been waived in accordance with the applicable provisions of Article IV.

2.4 [Reserved].

2.5 Prepayments.

(a) Optional. Subject to the last sentence of this Section 2.5(a), the Borrower may, by delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time on or after the Closing Date, voluntarily prepay the Loans in whole or in part; provided that, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) one (1) Business Day prior to any date of prepayment of a Eurodollar Rate Loan and (2) on the date of prepayment of a Base Rate Loan; and (B) any prepayment of the Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; or if less, the entire principal amount thereof then outstanding. Each such notice shall contain the information required by the form attached hereto as Exhibit D. The Administrative Agent will promptly notify each Lender of its receipt of any such Notice of Loan Prepayment, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such Notice of Loan Prepayment shall be due and payable on the date specified therein. Any such prepayment shall be accompanied by all accrued interest on the amount prepaid and the applicable Prepayment Fee and any amounts due pursuant to Section 3.5.

(b) Mandatory.

(i) Dispositions. Subject to the last two paragraphs of this Section 2.5(b), if the Loan Parties and their Subsidiaries Dispose of any property (other than ABL Priority Collateral) in any transaction or series of related transactions resulting in Net Cash Proceeds, other than (x) any Disposition that constitutes a sale or issuance of Equity Interests of the Borrower, (y) any Permitted Transfer or (z) any Disposition under Section 7.5(d), (e), (f) or (h) (any such Disposition, a "Disposition Prepayment Event"), within five (5) Business Days after any such Disposition Prepayment Event, the Borrower shall prepay the Loans in an aggregate amount equal to the Disposition Prepayment Percentage of the Net Cash Proceeds received in respect of such Disposition Prepayment Event (such amount, the "Disposition Prepayment Amount"); provided that all or a portion of the Net Cash Proceeds received in respect of such Disposition Prepayment Event in excess of the Disposition Prepayment Amount (the "Excess Amount") may be reinvested at the option of the Borrower in property that is useful for the Borrower's business within one hundred eighty (180) days following receipt of such Net Cash Proceeds; provided, however, that if all or a portion of such Excess Amount will not or cannot be so reinvested within one hundred eighty (180) days after receipt thereof, an amount equal to all of the Excess Amount that shall not be so reinvested shall be applied within five (5) Business Days after the Borrower reasonably determines that such portion of such Excess Amount will not be or cannot be so reinvested or is not reinvested (as applicable), to the prepayment of the Loans as set forth under this clause (b)(i).

(i i) Debt Issuance. Promptly upon the receipt by any Loan Party or any Subsidiary of the Net Cash Proceeds of any issuance of Indebtedness not permitted under Section 7.2, the Borrower shall prepay the Loans in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(iii) Extraordinary Receipts. Promptly upon receipt by any Loan Party or any Subsidiary of any Extraordinary Receipt received by or paid to or for the account of any Loan Party or any of its Subsidiaries, and not otherwise included in this Section 2.5(b), the Borrower shall prepay the Loans in an aggregate principal amount equal to 100% of all Net Cash Proceeds received therefrom; provided that all or a portion of Extraordinary Receipts may be reinvested at the option of the Borrower in property that is useful for the Borrower's business within one hundred eighty (180) days following receipt thereof; provided, however, that if all or a portion of such Extraordinary Receipts will not or cannot be so reinvested within one hundred eighty (180) after receipt thereof, an amount equal to all of such Extraordinary Receipts that shall not be so reinvested shall be applied within five (5) Business Days after the Borrower reasonably determines that the applicable portion of such Extraordinary Receipts will not be or cannot be so reinvested or is not reinvested (as applicable), to the prepayment of the Loans as set forth under this clause (b)(iii).

(iv) [Reserved].

(v) Loan Prepayment Fees. All prepayments under this Section 2.5(b) shall be accompanied by interest on the principal amount prepaid through the date of prepayment and the applicable Prepayment Fee due as of such date.

If the Borrower determines in good faith that any prepayment described under this clause (b) (1) in the case of any prepayment attributable to any Foreign Subsidiary would violate any local law (e.g., financial assistance, corporate benefit, thin capitalization, capital maintenance and similar legal principles, restrictions on upstreaming of cash intra group and the fiduciary and statutory duties of the directors of the relevant subsidiaries) or (2) would require any Loan Party or any Subsidiary thereof to incur a material and adverse tax liability (including any withholding tax), in each case, if the amount subject to the relevant prepayment were upstreamed or transferred as a distribution or dividend (any amount limited as set forth in clauses (1) and (2) of this paragraph, a "Restricted Amount"), the amount of the relevant prepayment shall be reduced by the Restricted Amount; provided that (x) any such determination shall be set forth in a certificate from a Responsible Officer to the Administrative Agent (for distribution to the Lenders) setting forth in reasonable detail the basis for such good faith determination and (y) if the circumstance giving rise to any Restricted Amount ceases to exist, the relevant Subsidiary shall repatriate or distribute the amount that no longer constitutes a Restricted Amount to the Borrower for application to the Loans as required above promptly following the date on which the relevant circumstance ceases to exist.

2.6 Incremental Term Loans.

(a) The Borrower may on or prior to the date that is 10 Business Days prior to September 15, 2018, by written notice (each, an “Incremental Request”) to the Administrative Agent (whereupon the Administrative Agent shall promptly make such notice available to each of the Lenders), request from time to time the establishment of one or more new term loan commitments (each, an “Incremental Term Commitment”) in an aggregate amount not to exceed the Incremental Amount from Lenders or additional banks, financial institutions or other institutional lenders subject to compliance with, and as provided for in, clauses (b)(ii) and (d) below. Each such notice shall specify (i) the amount of the Incremental Term Commitments being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$10,000,000 or such lesser amount equal to the remaining Incremental Amount), and (ii) the date (each, an “Increase Effective Date”) on which the Borrower proposes that the Incremental Term Commitments shall be effective, which shall be a date on or prior to September 15, 2018 but not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent.

(b) The requested Incremental Term Commitments shall become effective as of the applicable Increase Effective Date; provided that:

(i) no Lender shall be obligated to provide any Incremental Term Commitment unless it shall have separately agreed to do so, and the determination to provide such commitments shall be within the sole and absolute discretion of such Lender;

(ii) the creation or provision of any Incremental Term Commitment or Incremental Term Loan shall require the approval of each Initial Lender in its sole discretion (which approval shall be separate and distinct from such Lender’s discretionary right to agree to provide any portion of any Incremental Term Commitment and any such approval of the Borrower’s incurrence of any Incremental Term Commitment shall not, in and of itself, require or imply that such Lender agrees to provide any portion of such Incremental Term Commitment);

(iii) no Default or Event of Default shall have occurred and be continuing or would exist after giving effect to such Incremental Term Commitments;

(iv) after giving effect to such Incremental Term Commitments, the representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects (without duplication of materiality qualifiers set forth in such representations and warranties) on and as of the Increase Effective Date with the same effect as though such representations and warranties had been made on and as of such; provided that to the extent that a representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or period, as the case may be; and

(v) if requested by the Initial Lenders, the Lenders shall have received an opinion or opinions of counsel for the Loan Parties, dated the Increase Effective Date and addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Initial Lenders.

(c) The terms and provisions of the Incremental Term Loans made pursuant to Incremental Term Commitments shall be as follows:

(i) except as otherwise set forth herein or in the Increase Joinder, identical to the Loans (it being understood that Incremental Term Loans may be a part of the Loans) except as to maturity and amortization (which shall be subject to the following clauses (ii) and (iii));

(ii) the Weighted Average Life to Maturity of any Incremental Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the then existing Loans; and

(iii) the maturity date of Incremental Term Loans (the "Incremental Term Loan Maturity Date") shall not be earlier than the Maturity Date of the Loans then in effect.

(d) Incremental Term Commitments may be provided by any Lender or any other Person (such other Person, an "Additional Lender"); provided that, each Initial Lender (in its sole discretion) shall have consented to such Additional Lender's providing such Incremental Term Commitments; provided, that (subject to Section 2.6(b)(ii)) the opportunity to commit to provide all or a portion of any Incremental Term Commitments shall be offered by the Borrower first to the Initial Lenders (to the extent they remain Lenders at such time) on a pro rata basis and, to the extent any of such existing Initial Lenders have not agreed or declined to provide any portion of such Incremental Term Commitments, after being provided a bona fide opportunity to do so, the other existing Lenders shall be provided an opportunity to provide all or any portion of such declined portion and to the extent any portion of the Incremental Term Commitments are not accepted by the then-existing Lenders, the Borrower may then offer such opportunity to Additional Lenders.

(e) The Incremental Term Commitments shall be effected by a joinder agreement (the "Increase Joinder") executed by the Borrower, each other Loan Party, the Administrative Agent, each Initial Lender (in its sole discretion) and, if applicable, each Additional Lender providing all or any portion of such Incremental Term Commitments, in form and substance reasonably satisfactory to each of them; provided that, in the event the Administrative Agent shall not have received a fully executed Increase Joinder on or before the earlier of (x) the date that is 30 Business Days after the date on which the associated Incremental Request was delivered to Administrative Agent and (y) September 15, 2018, then such Incremental Request shall be deemed to have been revoked (unless otherwise agreed by the Initial Lenders in their sole discretion). In addition, unless otherwise specifically provided herein or the applicable Increase Joinder, all references in Loan Documents to the Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans made pursuant to Incremental Term Commitments made pursuant to this Agreement.

(f) Unless otherwise agreed in the applicable Increase Joinder, on any Increase Effective Date on which new Commitments for Loans are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Commitment shall make a Loan to the Borrower in an amount equal to its new Commitment.

(g) The Incremental Term Loans and Commitments established pursuant to this Section 2.6 shall constitute a part of the "Loan" and "Commitments" under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guaranty hereunder and the security interests created by the Collateral Documents. The Loan Parties shall take any actions reasonably required by the Lenders to ensure and/or demonstrate that the Guaranty made hereunder and the Lien and security interests granted hereby and by the other Collateral Documents continue to be valid and perfected under the UCC after giving effect to the establishment of any such class of Incremental Term Loans or any such new Commitments.

2.7 Repayment of the Loans.

The Borrower hereby unconditionally promises to pay to the Administrative Agent, for the account of each Lender, the aggregate principal amount of the Loans outstanding on the Maturity Date, or if earlier, the date of acceleration of the Loans pursuant to Section 8.2. Any repayment pursuant to this Section 2.7 following an acceleration shall be accompanied by the applicable Prepayment Fee.

2.8 Interest and Default Rate.

(a) Interest. Subject to the provisions of Section 2.8(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a rate that is less than zero, such rate shall be deemed zero for purposes of this Agreement.

(b) Default Rate.

(i) If any amount of principal of the Loans is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of the Loans) payable by the Borrower under any Loan Document is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter, until paid, bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, all other outstanding Obligations may bear interest, until paid, at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) Interest Payments. Interest on the Loans shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.9 Fees.

(a) [Reserved.]

(b) Administrative Agent Fees. The Borrower shall pay to the Administrative Agent, for its own account, such fees as shall have been separately agreed upon in the Fee Letter or otherwise in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees.

All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). Interest shall accrue on each Loan for the day on which the Loans is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loans or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.11, bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Payments; Pro Rata Treatment; Sharing Set-Offs Generally.

(a) Borrower Payments.

(i) All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein; provided that payments pursuant to Sections 3.1, 3.4, 3.5 and 10.4 shall be made directly to the Persons entitled thereto. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Administrative Agent shall distribute any such payments received by it for the account of any Lender to such Lender promptly following receipt thereof. Except as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(ii) Unless the Administrative Agent receives notice from the Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, the Administrative Agent may assume that the Borrower has made (or will make) such payment in full to the Administrative Agent on such date in immediately available funds and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower does not make such payment in full to the Administrative Agent on the date when due, each Lender severally shall repay to the Administrative Agent on demand such amount distributed to such Lender, together with interest thereon at the Default Rate for each day from the date such amount is distributed to such Lender until the date repaid; provided that such interest shall be an obligation of the Borrower and shall be payable by the Borrower upon demand.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied in accordance with Section 8.3.

(c) Sharing of Payments. If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Secured Obligations, except for any such proceeds or payments received by such Lender from the Administrative Agent pursuant to the terms of this Agreement, or (ii) payments from the Administrative Agent in excess of such Lender's pro rata share of all such distributions by the Administrative Agent, such Lender promptly shall (A) turn the same over to the Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Secured Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Secured Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their pro rata shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

**ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY**

3.1 Taxes.

(a) For purposes of this Section 3.1, the term “applicable law” includes FATCA. Any and all payments by or on account of any obligation of the Loan Parties under any Loan Document shall be made without deduction or withholding for any Taxes except as required by applicable law. If any such Taxes are imposed (as determined in the good faith discretion of the applicable Withholding Agent) on any payments made by a Withholding Agent (including payments under this paragraph), then such Withholding Agent will pay the Taxes and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary to preserve the after-tax yield each of the Lenders would have received if such Taxes had not been imposed.

(b) The Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of such Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.1, the Loan Party will deliver to the Administrative Agent, for distribution to the Lenders, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. Each Loan Party will confirm that it has paid the Taxes required under this Section 3.1 by giving the Administrative Agent official tax receipts (or notarized copies) within thirty (30) days after the due date.

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. Without limiting the generality of the foregoing:

(i) Prior to the date that any Lender that is not a “U.S. Person” within the meaning of Section 7701(a)(30) of the Code (a “Foreign Lender”) becomes a party hereto, such Lender shall deliver to Borrower and the Administrative Agent such certificates, documents or other evidence, as required by the Code (including IRS Forms W-8ECI, W-8BEN-E, or W-8IMY as applicable, or appropriate successor forms), properly completed, currently effective and duly executed by such Lender, along with any applicable attachments, to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made, if any. Without limitation of the foregoing, in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, such Foreign Lender shall deliver to the Borrower and the Administrative Agent, prior to the date that such Foreign Lender becomes a party hereto, a certificate to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code.

(ii) Any Lender that is not a Foreign Lender shall deliver to 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 Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax.

(iii) Each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iv) Each Lender shall promptly deliver further copies of such forms or other appropriate certifications if any such forms expire or become obsolete and after the occurrence of any event requiring a change in the most recent form delivered to Borrower or the Administrative Agent.

(v) Each Lender shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Administrative Agent such documentation required under FATCA (including as prescribed by Section 1471(b)(3)(C) (i) of the Code) and such additional documentation reasonably requested by Borrower or the Administrative Agent as may be necessary for 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.

For purposes of this Section 3.1(e), a reference to a “Lender” shall include any participant to whom such Lender has sold a participation (it being understood that the documentation required under this Section 3.1(e) shall be delivered to the participating Lender). Notwithstanding anything to the contrary, the completion, execution and submission of the documentation described in Section 3.1(e)(iii) shall not be required if in a 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.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.1 (including by the payment of additional amounts pursuant to this Section 3.1), 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 (f) (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 (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) 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 Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to a Loan Party or any other Person.

(g) Each party's obligation under this Section 3.1 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 Loan Document.

3.2 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its lending office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to the Loans of such Lender or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower, any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to the Loans of such Lender or continue Eurodollar Rate Loans shall be suspended until such Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender, prepay or, if applicable, convert the Eurodollar Rate Loan of such Lender to a Base Rate Loan, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loan. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.3 Inability to Determine Rates.

(a) If in connection with any request for a Eurodollar Rate Loan or a continuation thereof, any Lender determines that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, such Lender will promptly so notify the Borrower. Thereafter, the obligation of such Lender to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), in each case until such Lender revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) or (ii) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) or (ii) have not arisen but the supervisor for the administrator of LIBOR or a Governmental Authority has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans, then the Administrative Agent, the Initial Lenders and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 10.1, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b), the Borrower may revoke any pending request for a Borrowing of, or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

3.4 Increased Costs; Reserves on Eurodollar Rate Loans.

In the event any permitted assignee of any Lender is a bank:

(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, such Lender (except any reserve requirement contemplated by Section 3.4(d));

(ii) subject any Recipient to any taxes (other than Indemnified Taxes and Excluded 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 such Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender; 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 the Loans (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient for such additional costs incurred or reduction suffered, provided, that the Borrower shall not be required to so compensate any Lender for any such amounts incurred more than one hundred eighty (180) days prior to the date such Lender notifies the Borrower in writing thereof and its intention to claim compensation.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or its lending office or such 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 capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered, provided, that the Borrower shall not be required to so compensate any Lender for any such amounts incurred more than one hundred eighty (180) days prior to the date such Lender notifies the Borrower in writing thereof and its intention to claim compensation.

(c) Certificates for Reimbursement. A certificate of any Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as “Eurocurrency liabilities”), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least ten (10) days’ prior notice of such additional interest or costs from such Lender. If such Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(e) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.4 shall not constitute a waiver of such Lender’s right to demand such compensation, provided that the Borrower shall not be required to compensate such Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

3.5 Compensation for Losses.

In the event any permitted assignee of any Lender is a bank:

Upon demand of such Lender from time to time, the Borrower shall 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 payment or prepayment of the Loans to the extent it is a Eurodollar Rate Loan on a day other than the last day of the Interest Period for the Loans (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

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 Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to any Lender under this Section 3.5, such Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.6 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Commitments and repayment of all other Obligations hereunder.

**ARTICLE IV
CONDITIONS PRECEDENT TO BORROWING**

4 . 1 Conditions Precedent to Closing Date. The obligation of the Initial Lenders to make the Loans hereunder on the Closing Date is subject to satisfaction or waiver by all the Initial Lenders of the following conditions precedent; provided that any matters addressed in Section 6.17 shall not be deemed closing conditions hereunder:

(a) Execution of Credit Agreement; Loan Documents. The Initial Lenders shall have received (i) counterparts of this Agreement, executed by the Administrative Agent, each Initial Lender and a Responsible Officer of each Loan Party, (ii) counterparts of the U.S. Security Agreement, and each other Collateral Document, executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable and (iii) counterparts of any other Loan Document, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.

(b) Officer's Certificate. The Initial Lenders shall have received a certificate of a Responsible Officer dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing, existence or its equivalent of each Loan Party and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.

(c) Legal Opinions of Counsel. The Initial Lenders shall have received an opinion or opinions (including, if requested by the Initial Lenders, local counsel opinions) of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Initial Lenders, in form and substance acceptable to the Initial Lenders.

(d) Personal Property Collateral. The Initial Lenders shall have received, in form and substance satisfactory to the Initial Lenders:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where a filing would need to be made in order to perfect the Collateral 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, judgment and bankruptcy searches;

(ii) searches of ownership of Intellectual Property in the appropriate governmental offices and such patent, trademark and copyright filings as requested by the Initial Lenders in order to perfect the Collateral Agent's security interest in the Intellectual Property;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Initial Lenders' sole discretion, to perfect the Collateral Agent's security interest in the applicable Collateral;

(iv) stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank; in each case to the extent such Pledged Equity is certificated;

(v) to the extent required to be delivered, filed, registered or recorded pursuant to the terms and conditions of the Collateral Documents, all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to create and perfect the Collateral Agent's security interest in the Collateral; and

(vi) Qualifying Control Agreements satisfactory to the Initial Lenders to the extent required to be delivered pursuant to Section 6.13.

(e) Insurance. The Initial Lenders shall have received copies of insurance certificates and endorsements evidencing the insurance required by Section 6.7 of this Agreement or otherwise acceptable to the Initial Lenders.

(f) Solvency Certificate. The Initial Lenders shall have received a Solvency Certificate signed by a Responsible Officer of the Borrower that, after giving effect to the initial borrowings under the Loan Documents and the other transactions contemplated hereby, the Borrower is individually, and together with its Subsidiaries on a consolidated basis, Solvent.

(g) Notice of Borrowing. The Administrative Agent and the Initial Lenders shall have received a duly completed Notice of Borrowing delivered in accordance with Section 2.3 and including therein an instruction of direction with respect to the Loans to be made on the Closing Date.

(h) Existing Indebtedness of the Loan Parties. All existing Indebtedness for borrowed money of the Borrower and its Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.2) shall be repaid in full and all security interests related thereto shall be terminated on or prior to the Closing Date.

(i) Fees and Expenses. The Administrative Agent and the Initial Lenders shall have received all fees and expenses, if any, owing pursuant to this Agreement and the Fee Letter, including the fees and expenses of Davis Polk & Wardwell LLP and Crowell & Moring LLP.

- (j) Other Documents. All other documents provided for herein or which the Initial Lenders may reasonably request or require.
- (k) Additional Information. Such additional information and materials which the Initial Lenders shall reasonably request or require.
- (l) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document 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.
- (m) Default. No Default or Event of Default shall exist or would result from the making of the Loans or from the application of the proceeds thereof.
- (n) Liquidity. As of the Closing Date, and after giving effect to the Loans, the Liquidity shall not be less than \$5,000,000.
- (o) Closing Certificate. The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower certifying that the conditions set forth in clauses (l), (m) and (n) of this Section have been satisfied.

4 . 2 Conditions Precedent to Delayed Draw Date. The obligation of the Initial Lenders to make the Loans hereunder on the Delayed Draw Date is subject to satisfaction or waiver of the following conditions precedent; provided that any matters addressed in Section 6.17 shall not be deemed conditions hereunder:

- (a) Closing Date. The Closing Date has occurred.
- (b) Mortgage Condition. The Mortgage Condition is satisfied.
- (c) Fees and Expenses. The Administrative Agent and the Initial Lenders shall have received all fees and expenses, if any, owing pursuant to this Agreement and the Fee Letter, including the fees and expenses of Davis Polk & Wardwell LLP and Crowell & Moring LLP.
- (d) Notice of Borrowing. The Administrative Agent and the Initial Lenders shall have received a duly completed Notice of Borrowing delivered in accordance with Section 2.3 and including therein an instruction of direction with respect to the Loans to be made on the Delayed Draw Date.
- (e) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document 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.

(f) Default. No Default or Event of Default shall exist or would result from the making of the Loans or from the application of the proceeds thereof.

(g) Liquidity. As of the Delayed Draw Date, and after giving effect to the Loans, the Liquidity shall not be less than \$5,000,000

(h) Legal Opinions of Counsel. The Initial Lenders shall have received supplementary customary opinion or opinions (including, if requested by the Initial Lenders, local counsel opinions) of counsel for the Loan Parties, dated the Delayed Draw Date and addressed to the Administrative Agent and the Initial Lenders, in form and substance acceptable to the Initial Lenders.

(i) Closing Certificate. The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower certifying that the conditions set forth in clauses (e), (f) and (g) of this Section have been satisfied.

(j) Delayed Draw Date. The Delayed Draw Date shall have occurred not later than the earlier of (x) the third Business Day following the date on which the Mortgage Condition is satisfied and (y) the date that is 45 days after the Closing Date.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the Closing Date that:

5.1 Existence, Qualification and Power.

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The copy of the Organization Documents of each Loan Party provided to the Initial Lenders pursuant to the terms of this Agreement is a true and correct copy of each such document as in effect on the Closing Date, each of which is valid and in full force and effect.

5.2 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) materially conflict with or result in any material breach or contravention of, or the creation of any Lien (other than Liens created pursuant to the Collateral Documents) under, or require any payment to be made under (i) any Contractual Obligation (including pursuant to the 2019 Convertible Notes Documents or the 2023 Convertible Notes Documents) to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law in any material respect.

5.3 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Agents and the Lenders of their respective rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained and (ii) filings to perfect the Liens created by the Collateral Documents.

5.4 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

5.5 Financial Statements; No Material Adverse Effect.

(a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, commitments and Indebtedness.

(b) Unaudited Financial Statements. The unaudited Consolidated balance sheet of the Borrower and its Subsidiaries dated March 31, 2018, and the related condensed Consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, commitments and Indebtedness, subject, in each case, to the absence of footnotes and to normal year-end audit adjustments.

(c) Material Adverse Effect. Since the date of the balance sheet included in the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) No Undisclosed Liabilities. Except for the Indebtedness incurred under this Agreement and the Indebtedness permitted by Section 7.2, (i) as of the Closing Date (and after giving effect to the Loans), there are no liabilities or obligations (excluding current obligations incurred in the ordinary course of business) of the Borrower or its Subsidiaries of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due and including obligations or liabilities for taxes, long-term leases and unusual forward or other long-term commitments), and (ii) the Borrower does not have knowledge of any basis for the assertion against any the Borrower or its Subsidiaries of any such liability or obligation which, in the case of clause (i) or (ii), either individually or in the aggregate, could reasonably be expected to have, a Material Adverse Effect.

5.6 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.7 No Default.

Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.8 Ownership of Property; Liens.

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than as permitted by Section 7.1.

5.9 Environmental Compliance.

(a) The Loan Parties have no knowledge of any claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each Loan Party and its Subsidiaries are in compliance with all Environmental Permits and all Environmental Laws in all jurisdictions in which each Loan Party and its Subsidiaries, as the case may be, is currently doing business.

(c) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not in the year prior to the Closing Date completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

5.10 Maintenance of Insurance.

The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates.

5.11 Taxes.

Each Loan Party and its Subsidiaries have timely filed all federal and other material Tax returns and reports required to be filed, and have paid all federal, state and other material Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect, nor is there any Tax sharing agreement applicable to the Borrower or any Subsidiary.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is sixty percent (60%) or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Except where noncompliance or the incurrence of an obligation could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable Laws.

5.13 Margin Regulations; Investment Company Act.

(a) Margin Regulations. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of the Borrowing on the Closing Date, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.1 or Section 7.5 or subject to any restriction contained in any agreement or instrument between the Borrower and the Initial Lenders or any Affiliate of the Initial Lenders relating to Indebtedness and within the scope of Section 8.1(e), will be margin stock.

(b) Investment Company Act. No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.14 Disclosure.

The Borrower has disclosed to the Initial Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Initial Lenders (other than projections and general economic or specific industry information developed by or obtained from third party sources) in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of material fact at the time furnished or omits to state any material fact at the time furnished necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date made; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, it being acknowledged and agreed by Agent and Lenders that projections as to future events are not to be viewed as facts, that such projections are not a guarantee of financial performance and that the actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

5.15 Solvency.

The Borrower is, individually and together with its Subsidiaries on a Consolidated basis, Solvent.

5.16 Casualty, Etc.

Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.17 Sanctions Concerns and Anti-Corruption Laws.

(a) Sanctions Concerns. No Loan Party nor any of its Subsidiaries is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions.

5.18 Subsidiaries; Joint Ventures, Partnerships and Equity Investments.

(a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 1 to the Perfection Certificate, is the following information which is true and complete as of the Closing Date (subject, in the case of Foreign Subsidiaries, to Schedule 6.17) or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13, 6.14 and 6.17: (i) a list of all Subsidiaries, joint ventures and partnerships and other equity investments of the Loan Parties, (ii) the number of outstanding shares of each class of Equity Interests in each Subsidiary, (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries, (iv) the class or nature of such Equity Interests (i.e. common, preferred, etc.), (v) ownership information (e.g. publicly held or if private or partnership, the owners and partners of each of the Loan Parties), (vi) all subscriptions, options, warrants or calls relating to such Equity Interests, including any right of conversion or exchange and (vii) each stockholders' agreement, restrictive agreement, voting agreement or similar agreement relating to any such Equity Interests. The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens. 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 the Equity Interests of any Loan Party (other than Borrower) or any Subsidiary thereof, except as set forth in the Perfection Certificate or contemplated in connection with the Loan Documents.

(b) Loan Parties. Set forth on Schedule 2 to the Perfection Certificate is a complete and accurate list of all Loan Parties, showing as of the Closing Date, or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14 (as to each Loan Party) (i) the exact legal name, (ii) any former legal names of such Loan Party in the five (5) years prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the address of its chief executive office, (vi) its U.S. federal taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation or organization, and (vii) the organization identification number.

5.19 Collateral Representations.

(a) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

(b) Intellectual Property. Set forth on Schedule 7 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of all Intellectual Property registered or pending for registration with the United States Copyright Office or the United States Patent and Trademark Office, or the foreign equivalents thereof, owned by the Borrower or any of its Subsidiaries or exclusively licensed to the Borrower or any of its Subsidiaries (in each case, including the name/title, current owner, registration or application number).

(c) Documents, Instruments, and Tangible Chattel Paper. Set forth on Schedule 6 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of all Documents, Instruments, and Tangible Chattel Paper of the Loan Parties (including the Loan Party owning such Document, Instrument and Tangible Chattel Paper).

(d) Deposit Accounts, Electronic Chattel Paper, Letter-of-Credit Rights, and Securities Accounts.

(i) Set forth on Schedule 4 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of all deposit accounts and securities Accounts of the Loan Parties, including the name of (A) the applicable Loan Party, (B) in the case of a deposit account, the depository institution, the account number and the purpose of the account, and (C) in the case of a securities account, the Securities Intermediary or issuer, the account number and the type of investments held in such account.

(ii) Set forth on Schedule 6 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of all Electronic Chattel Paper (as defined in the UCC) and Letter-of-Credit Rights (as defined in the UCC) of the Loan Parties, including the name of (A) the applicable Loan Party, (B) in the case of Electronic Chattel Paper, the account debtor and (C) in the case of Letter-of-Credit Rights, the issuer or nominated person, as applicable.

(e) Commercial Tort Claims. Set forth on Schedule 3 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a description of all Commercial Tort Claims of the Loan Parties (detailing such Commercial Tort Claim in reasonable detail).

(f) Pledged Equity Interests. Set forth on Schedule 9 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of all Pledged Equity and in each case, detailing the Grantor (as defined in the U.S. Security Agreement), the Person whose Equity Interests are pledged, the number of shares of each class of Equity Interests pledged, the certificate number, if any, of such Equity Interests and percentage ownership of outstanding shares of each class of Equity Interests pledged.

(g) Properties. Set forth on Schedule 8 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of all Mortgaged Properties (including (i) the name of the Loan Party owning such Mortgaged Property, (ii) the property address, (iii) the country, city, county, state and zip code which such Mortgaged Property is located and (iv) an indication if such location is leased or owned, and if leased, the name of the lessee). Set forth on Schedule 10 to the Perfection Certificate, as of the Closing Date or as of the last date such Schedule was required to be updated in accordance with Sections 6.2, 6.13 and 6.14, is a list of (A) each headquarter location of the Loan Parties, and (B) each location where any inventory is located at any premises owned or leased by a Loan Party with a Collateral value in excess of \$100,000 (in each case, including (1) an indication if such location is leased or owned, (2) if leased, the name of the lessor, and if owned, the name of the Loan Party owning such property, (3) the address of such property (including, the country, city, county, state and zip code) and (4) to the extent owned, the approximate Fair Market Value of such property).

5.20 EEA Financial Institutions.

No Loan Party is an EEA Financial Institution.

5.21 [Reserved].

5.22 Intellectual Property; Licenses, Etc.

The Borrower and each of its Subsidiaries own, or possess the valid and enforceable right to use, any and all intellectual property or other similar proprietary rights throughout the world, including any and all trademarks, service marks, trade names, domain names, copyrights, design rights, patents, patent rights, licenses, technology, software, trade secrets, know-how, database rights and all related documentation, registrations, additions, improvements or accessions, and all goodwill associated with the foregoing (collectively, "IP Rights") that are used in, held for use in or otherwise necessary for the operation of their respective businesses, without conflict with the rights of any other Person except for those the failure to own or possess a valid and enforceable right to use, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. All IP Rights owned by the Borrower or any of its Subsidiaries are owned solely and exclusively by the Borrower or any of its Subsidiaries, free and clear of all Liens, other than Permitted Liens, other than as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The IP Rights owned by, or exclusively licensed to, the Borrower or its Subsidiaries are valid, subsisting and enforceable and are not subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the ownership, use, validity or enforceability thereof, other than as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The operation of the respective businesses of the Borrower or any of its Subsidiaries does not infringe upon, dilute, misappropriate or violate any rights held by any other Person, other than as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The Borrower and its Subsidiaries have taken all actions necessary to maintain, protect and enforce the IP Rights owned by, or exclusively licensed to, the Borrower or its Subsidiaries, including, as applicable, payment of applicable maintenance fees and filing of applicable statements of use, other than as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

5.23 Labor Matters.

There are no (i) Multiemployer Plans covering the employees of the Loan Parties as of the Closing Date or (ii) collective bargaining agreements covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date. Neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years preceding the Closing Date. To the Borrower's knowledge, the Borrower has not utilized nor does it currently utilize employees or contractors who fail to comply in all material respects with Form I-9, Employment Eligibility Verification, obligations relating to the employees of the Borrower or any of its Subsidiaries or who otherwise fail to comply in all material respects with U.S. immigration Laws. To the Borrower's knowledge, neither the Borrower nor any of its Subsidiaries has received any written notices from the Social Security Administration or the U.S. Department of Homeland Security regarding a "mismatch" of employee names and Social Security Numbers or employee names and immigration-related documents.

5.24 Compliance with Laws.

Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.25 Affiliated Agreements.

Except as set forth on Schedule 5.25, (i) neither the Borrower nor any of its Subsidiaries is party to an existing material Affiliate Transaction and (ii) there are no Affiliate Transactions which have been approved by the Board of Directors of the Borrower involving aggregate consideration in excess of \$2,000,000.

5.26 Passive Foreign Investment Company.

To the knowledge of the Loan Parties, no Loan Party is, or has been, a "passive foreign investment company", as defined in Section 1297 of the Code, during any tax year.

**ARTICLE VI
AFFIRMATIVE COVENANTS**

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

6.1 Financial Statements.

Deliver to the Administrative Agent, for distribution to the Lenders (or, in the case, clauses (c) and (d) below, to be made available to the Lenders) in form and detail satisfactory to the Required Lenders:

(a) Audited Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than an exception or explanatory paragraph with respect to the maturity of any Indebtedness for an opinion delivered in the fiscal year in which such Indebtedness matures or any impending Default with respect thereto) together with a management discussion and analysis of operating results inclusive of operating metrics in comparative form.

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended June 30, 2018), a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP and including a management discussion and analysis of operating results inclusive of operating metrics in comparative form, such Consolidated statements to be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Monthly Financial Statements. To the extent requested by any Initial Lender, as soon as available, but in any event within thirty (30) days after the end of each of the months of each fiscal year of the Borrower (commencing with the month ending June 30, 2018), a Consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such month, and the related Consolidated statements of income or operations and cash flows for such month and for the portion of the Borrower's fiscal year then ended setting forth in each case in comparative form for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and duly certified by a Responsible Officer as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

(d) Business Plan and Budget. To the extent requested by any Initial Lender, as soon as available, but in any event within thirty (30) days after the end of each fiscal year of the Borrower, an annual business plan and budget of the Borrower and its Subsidiaries on a Consolidated basis, including forecasts prepared by management of the Borrower, in form satisfactory to such Lender, of Consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries on a monthly basis for the immediately following fiscal year.

As to any information contained in materials filed with the SEC or furnished pursuant to Section 6.2(f), the Borrower shall not be separately required to furnish such information under Section 6.1(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.1(a) and (b) above at the times specified therein.

6.2 Certificates; Other Information.

Deliver to the Administrative Agent, to be made available to the Lenders:

(a) [Reserved].

(b) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.1(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended June 30, 2018), (i) a duly completed Compliance Certificate signed by the chief financial officer or Responsible Officer of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if necessary for the determination of compliance with Section 7.11, a statement of reconciliation conforming such financial statements to GAAP, and (ii) a copy of a customary management's discussion and analysis with respect to such financial statements. Unless the applicable Lender requests executed originals, delivery of the Compliance Certificate may be by electronic communication including fax or email and shall be deemed to be an original and authentic counterpart thereof for all purposes.

(c) Updated Schedules to Perfection Certificate. Updated Schedules to (i) the Perfection Certificate to the extent required thereunder concurrently with the delivery of, and as set forth in, the Compliance Certificate referred to in Section 6.2(b) (or, alternatively, a certification from a Responsible Officer that there has been no changes to the Schedules to the Perfection Certificate previously delivered to the Agents and the Initial Lenders) and (ii) the Perfection Certificate as of the date required to be delivered pursuant to Section 6.13.

(d) [Reserved].

(e) Audit Reports; Management Letters; Recommendations. Copies of any material detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.

(f) Annual Reports; Etc. Copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to Administrative Agent pursuant hereto.

(g) Debt Securities Statements and Reports. Copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to Administrative Agent pursuant to Section 6.1 or any other clause of this Section.

(h) SEC Notices. Copies of each notice or other material correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof.

(i) Notices. Copies of all material notices and other material documents (including amendments, waivers and other modifications) so given or received under or pursuant to any indenture, loan, credit or similar agreement governing Indebtedness in the aggregate principal amount in excess of the Threshold Amount and, from time to time upon reasonable request by such Lender, such information and reports regarding such indentures, loan, credit and similar agreements as such Lender may reasonably request.

(j) Environmental Notice. Notice of any action or proceeding filed against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(k) Additional Information. Such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as such Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.1(a) or (b) or Section 6.2(f) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 1.1(b); or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which the Administrative Agent and the Lenders have access (whether a commercial, third- party website or whether sponsored by the Administrative Agent).

6.3 Notices.

Promptly, but in any event within two (2) Business Days, notify the Administrative Agent (which shall make such notice available to the Lenders):

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including, but not limited to, (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;
- (c) of the occurrence of any ERISA Event;
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof; and
- (e) of any (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.5(b)(i), (ii) issuance of Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.5(b)(ii), and (iii) receipt of any Extraordinary Receipt for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.5(b)(iii).

Each notice pursuant to this Section 6.3 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.4 Payment of Obligations.

Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (i) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; provided that such payment and discharge under the foregoing clauses (i), (ii) and (iii) shall not be required where failure to make such payment would not reasonably be expected to have a Material Adverse Effect.

6.5 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.4 or 7.5;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable to the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) preserve, protect, renew and maintain and enforce all of the IP Rights owned by, or exclusively licensed to, the Borrower or any of its Subsidiaries and material to the business of the Borrower and its Subsidiaries, taken as a whole.

6.6 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material tangible properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and transactions permitted under Section 7.5 excepted; and

(b) make all necessary repairs thereto and renewals and replacements thereof,

in each case of the foregoing clauses (a) and (b) except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.7 Maintenance of Insurance.

(a) Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates.

(b) Evidence of Insurance. Cause the Collateral Agent to be named as loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral, and cause, unless otherwise agreed to by the Required Lenders, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent that it will give the Collateral Agent thirty (30) days prior written notice (which notice shall be promptly delivered to the Lenders) before any such policy or policies shall be altered or cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). Promptly following request by Required Lenders, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent, for distribution to the Lenders, such evidence of insurance as required by the Lenders, including, but not limited to: (i) copies of such insurance policies, (ii) declaration pages for each insurance policy and (iii) lender's loss payable endorsement if the Collateral Agent, for the benefit of the Secured Parties, is not on the declarations page for such policy. The Collateral Agent shall, upon receipt of any proceeds from any such insurance, deliver such proceeds to the Borrower unless an Event of Default shall exist.

(c) Redesignation. Promptly notify the Collateral Agent and the Lenders of any Mortgaged Property that is, or becomes, a Flood Hazard Property.

6.8 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.9 Books and Records.

Maintain proper books of record and account, in which full, true and correct in all material respects entries shall be made of all material financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

6.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent or any Initial Lender, no more than once per calendar year during the term of this Agreement unless an Event of Default has occurred and is continuing, to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent (or any of its respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 Use of Proceeds.

Use the proceeds of the Loans to pay the fees and expenses under the Loan Documents and for other general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Covenant to Guarantee Obligations.

The Loan Parties will cause each of their Domestic Subsidiaries (other than Excluded Subsidiaries) whether newly formed, after acquired or otherwise existing (within thirty (30) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Required Lenders in their reasonable discretion)) to become a Guarantor hereunder by way of execution of a Joinder Agreement. In connection therewith, the Loan Parties shall give notice to the Administrative Agent (for prompt distribution to the Lenders) not less than ten (10) days prior to creating a Subsidiary (or such shorter period of time as agreed to by the Required Lenders in their reasonable discretion), or acquiring the Equity Interests of any other Person. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, for prompt distribution to the Lenders, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to clauses (b)-(e) and (j) of Section 4.1 and 6.13 and such other documents or agreements as the Lenders may reasonably request, including without limitation, updated schedules to the Perfection Certificate.

6.13 Covenant to Give Security.

Except with respect to Excluded Property:

(a) Equity Interests and Personal Property. Each Loan Party will cause the Pledged Equity and all of its other Collateral now owned or hereafter acquired by it to be subject at all times to a first priority (subject to the ABL Intercreditor Agreement in the case of ABL Priority Collateral), perfected Lien (subject to Permitted Liens) in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents. Each Loan Party shall provide opinions of counsel to the extent requested by Required Lenders and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders.

(b) Real Property. If any Loan Party acquires any Real Estate after the Closing Date constituting Material Real Estate, it shall promptly provide to the Administrative Agent and the Lenders notice of such acquisition with details as to such Material Real Estate and within sixty (60) days thereafter, shall execute and deliver to the Collateral Agent a Mortgage and such other documentation as the Required Lenders may request to cause such Material Real Estate to be subject at all times to a first priority, perfected Lien (subject in each case to Permitted Liens) in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents together with (i) a policy or policies of title insurance insuring the Lien of such Mortgage in an amount equal to 110% of the Fair Market Value as reasonably estimated by the Borrower in consultation with the Lenders, naming the Collateral Agent as the insured for the benefit of the Secured Parties, issued by a nationally recognized title insurance company reasonably acceptable to the Collateral Agent insuring the Lien of each such Mortgage as a valid and enforceable Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Liens, together with such endorsements, coinsurance and reinsurance as the Collateral Agent may reasonably request (ii) if requested by the Required Lenders, an American Land Title Association/American Congress of Surveying and Mapping (ALTA/ACSM) form of survey by a duly registered and licensed land surveyor for which all necessary fees have been paid dated a date reasonably acceptable to the Collateral Agent, certified to the Collateral Agent and the title insurance company in a manner satisfactory to the Collateral Agent, (iii) a legal opinion relating to such Mortgage, which opinion shall be in form and substance, and from counsel, reasonably satisfactory to the Required Lenders (clauses (i) through (iii) in this Section 6.13(b) are collectively referred to as the "Real Estate Collateral Requirements"). In connection with the foregoing, no later than twenty (20) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.13, in order to comply with the Flood Laws, the Administrative Agent and the Lenders shall have received the following documents: (A) a completed standard "life of loan" flood hazard determination form and such other documents as the Collateral Agent and any Lender may reasonably request to complete its flood due diligence, (B) if the Material Real Estate is a Flood Hazard Property, a notification to the applicable Loan Party (if applicable) (a "Flood Notice") that flood insurance coverage under the NFIP is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of any such Flood Notice (e.g., countersigned Flood Notice), and (D) if the Flood Notice is required to be given and, to the extent flood insurance is required by the Flood Laws or the Collateral Agent's written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with the Flood Laws reasonably satisfactory to the Collateral Agent and the Required Lenders (clauses (A) through (D) above are collectively referred to as the "Flood Requirements").

(c) [Reserved].

(d) Account Control Agreements. Subject to Section 6.17, each of the Loan Parties shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (a) deposit accounts that are maintained at all times with depository institutions as to which the Collateral Agent shall have received a Qualifying Control Agreement, (b) securities accounts that are maintained at all times with financial institutions as to which the Collateral Agent shall have received a Qualifying Control Agreement, (c) deposit accounts established solely as payroll and other zero balance accounts, (d) deposit accounts and securities accounts constituting ABL Priority Collateral and (e) other deposit accounts, so long as at any time the aggregate balance in all such accounts does not exceed \$100,000.

(e) Updated Schedules. Concurrently with the delivery of any Collateral pursuant to the terms of this Section, the Borrower shall provide the Administrative Agent with the applicable updated Schedules to the Perfection Certificate.

(f) Further Assurances. At any time upon request of the Collateral Agent or the Required Lenders through the Collateral Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Required Lenders may deem necessary or desirable to maintain in favor of the Collateral Agent, for the benefit of the Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all applicable Laws.

6.14 Further Assurances.

Promptly upon request by the Collateral Agent, or the Required Lenders through the Collateral Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Collateral Agent or the Required Lenders may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document.

6.15 Compliance with Environmental Laws.

Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.16 Anti-Corruption Laws.

Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

6.17 Post-Closing Obligations.

As promptly as practicable, and in any event within the time periods after the Closing Date specified in Schedule 6.17 (or such later date as the Required Lenders may agree) the Loan Parties shall deliver the documents or take the actions specified on Schedule 6.17 that would have been required to be delivered or taken on the Closing Date but for the application of this Section.

6.18 Patent Collateral.

(a) Each Loan Party shall (and shall cause each of its Subsidiaries to) take all necessary steps in any proceeding before the United States Patent and Trademark Office (or any similar office or agency in any other country or any political subdivision of that country) or in any court to (i) maintain and pursue any patent application included in the Patent Collateral that is material to the business of the Borrower and its Subsidiaries, taken as a whole and (ii) maintain each patent included in the Patent Collateral that is material to the business of the Borrower and its Subsidiaries, taken as a whole, including the filing of divisional, continuation, continuation-in-part and substitute applications; the filing of applications for reissue, renewal, or extensions; the payment of maintenance fees, and the participation in reexamination, opposition, interference and infringement proceedings or the foreign equivalents thereof. Any expenses incurred in connection with such activities shall be borne by the Loan Parties.

(b) Each of the Loan Parties will notify the Administrative Agent and the Initial Lenders in writing of any information which such Loan Party has received which such Loan Party determine in its reasonable discretion may have a material adverse effect on the value of the Patent Collateral or the rights of the Lenders with respect thereto.

**ARTICLE VII
NEGATIVE COVENANTS**

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.1 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.1 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby to the extent constituting Indebtedness is not increased except as contemplated by Section 7.2(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.2(b);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) Statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlord's, supplier's, laborer'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 and by appropriate proceedings diligently conducted; provided adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts (including with suppliers) and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, including reimbursement and indemnification obligations, incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens on the Collateral (or any portion thereof) securing the Indebtedness permitted under Section 7.2(a)(ii); provided that such Liens are subject to the terms of an ABL Intercreditor Agreement;

(i) Liens securing Indebtedness permitted under Section 7.2(c); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens arising out of judgments or awards not resulting in an Event of Default; provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;

(l) any interest or title of a lessor, licensor, sublicensor or sublessor under any lease, license, sublicense or sublease entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business, consistent with past practice and covering only the assets so leased, licensed, sublicensed or subleased;

(m) [reserved];

(n) Liens on property of a Person existing at the time of an Acquisition permitted under the provisions of Section 7.3 or such Person is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower in a transaction permitted under Section 7.4; provided that such Liens were not created in contemplation of such Acquisition, merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 7.2(f);

(o) [reserved];

(p) Liens securing obligations in respect of any customary fees, costs and expenses associated with or arising from legal fees, deposit accounts, securities accounts, credit, purchase or debit cards and treasury management products; provided that in no event shall the obligations secured by this clause (p) exceed \$350,000 any one time outstanding;

(q) Liens securing the Indebtedness permitted under Section 7.2(p) in an amount not to exceed 110.00% of the amount of such Indebtedness;

(r) [reserved];

(s) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and

(t) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed \$1,000,000.

7.2 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under (i) the Loan Documents and (ii) any ABL Facility in an aggregate principal amount not to exceed the ABL Facility Cap; provided that Indebtedness under this clause (ii) (A) is secured only by Liens permitted under Section 7.1(h) and (B) shall not be incurred prior to the date that the Mortgage Condition is satisfied;

(b) the Indebtedness outstanding on the Closing Date (and the commitments therefor in an aggregate amount not to exceed the amount of such commitments as of the Closing Date) and listed on Schedule 7.2 and any Permitted Refinancing thereof;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.1(i) and Permitted Refinancings thereof; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$3,000,000 (inclusive of Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations listed on Schedule 7.2);

(d) unsecured Indebtedness of the Borrower or a Subsidiary of the Borrower owed to the Borrower or a Subsidiary of the Borrower, which Indebtedness shall (i) in the case of Indebtedness owed to a Loan Party in an amount in excess of \$1,000,000 individually, be evidenced by promissory notes which shall be pledged to the Collateral Agent as Collateral for the Secured Obligations in accordance with the terms of the U.S. Security Agreement, (ii) be on terms (including subordination terms) reasonably acceptable to the Required Lenders and (iii) be otherwise permitted under the provisions of Section 7.3 (“Intercompany Debt”);

(e) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor;

(f) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof in a transaction permitted hereunder in an aggregate principal amount not to exceed \$1,000,000; provided that such Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower and was not incurred solely in contemplation of such Person’s becoming a Subsidiary of the Borrower);

(g) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party; provided that the aggregate Swap Termination Value thereof shall not exceed \$500,000 at any time outstanding;

(h) Subordinated Indebtedness incurred in the ordinary course of business for borrowed money, maturing on or after the date that is 91 days following the latest Maturity Date then in effect not to exceed \$1,000,000 at any time outstanding;

(i) Indebtedness incurred by Subsidiaries not to exceed \$1,000,000 at any one time outstanding;

(j) obligations under corporate credit cards, netting services and similar services incurred in the ordinary course of business;

(k) unsecured Indebtedness (including, but not limited to, earnouts) of the Borrower or any Guarantor in an aggregate principal amount not to exceed \$2,500,000 that is incurred on the date of the consummation of an Acquisition permitted under the provisions of Section 7.3 and solely for the purpose of consummating such Acquisition so long as (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) such unsecured Indebtedness is not incurred for working capital purposes, (iii) such unsecured Indebtedness does not mature prior to September 1, 2021, and (iv) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to the Initial Lenders;

(l) (i) Indebtedness evidenced by the 2019 Convertible Senior Notes in an aggregate principal amount at any time outstanding not to exceed \$68,660,000 and (ii) any Permitted Refinancing of the Indebtedness described in clause (i); provided that any Indebtedness incurred under this clause (ii) shall reduce the amount of Indebtedness available to be incurred under clause (i);

(m) (i) Indebtedness evidenced by the 2023 Convertible Senior Notes in an aggregate principal amount at any time outstanding not to exceed \$75,090,000 and (ii) any Permitted Refinancing of the Indebtedness described in clause (i); provided that any Indebtedness incurred under this clause (ii) shall reduce the amount of Indebtedness available to be incurred under clause (i);

(n) other unsecured Indebtedness in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding;

(o) [reserved]; and

(p) letters of credit outstanding in favor of suppliers and landlords in an amount at any one time outstanding not to exceed \$3,000,000, including any Permitted Refinancing thereof.

7.3 Investments.

Make or hold any Investments, except:

(a) Investments held by the Borrower and its Subsidiaries in the form of cash or Cash Equivalents, bank deposits in the ordinary course of business, negotiable instruments deposited in the ordinary course of business;

(b) advances made in connection with the purchase of goods or services in the ordinary course of business;

(c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested after the date hereof not to exceed \$1,000,000;

(d) [reserved];

(e) Guarantees permitted by Section 7.2 and Liens permitted by Section 7.1 to the extent constituting an Investment;

(f) [reserved];

(g) [reserved];

(h) 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; and

(i) other Investments in an aggregate principal amount not to exceed \$1,000,000 at any time outstanding.

7.4 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Subsidiary may merge, dissolve or liquidate into or consolidate with (i) the Borrower; provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of any of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

(c) any Subsidiary that is not a Loan Party may dispose any of its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) so long as no Default exists or would result therefrom, in connection with any Acquisition permitted under the provisions of Section 7.3, any Subsidiary of the Borrower may merge, dissolve or liquidate into or consolidate with any other Person (other than the Borrower) or permit any other Person (other than the Borrower) to merge, liquidate or dissolve into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of the Borrower and (ii) in the case of any such merger, dissolution, liquidation or consolidation to which any Subsidiary of the Borrower that is a Loan Party is a party, such Loan Party is the surviving Person; and

(e) so long as no Default has occurred and is continuing or would result therefrom, each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving Person and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person.

7.5 Dispositions.

Make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Permitted Transfers;
- (b) Dispositions of obsolete, damaged or worn out property or property that is no longer used or useful in the ordinary course of business, whether now owned or hereafter acquired, in the ordinary course of business;
- (c) Dispositions of equipment or real property for Fair Market Value to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) non-exclusive licenses, non-exclusive sublicenses, leases or subleases for Fair Market Value granted to third parties in the ordinary course of business and consistent with past practice;
- (e) the lapse, abandonment or other dispositions of intellectual property, in the ordinary course of business and consistent with past practice, that is, in the reasonable good faith judgment of a Loan Party, no longer economically practicable or commercially desirable to maintain or necessary for the conduct of the business of the Loan Parties or any of their Subsidiaries;
- (f) Dispositions permitted by Sections 7.1, 7.3, 7.4 or 7.6;
- (g) [reserved];
- (h) the sale or issuance of Equity Interests (i) of the Borrower to any Person and (ii) of any Subsidiary of the Borrower to the Borrower or any other wholly-owned Subsidiary of the Borrower; and
- (i) other Dispositions for Fair Market Value so long as (x) at least seventy-five percent (75%) of the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneously with consummation of such Disposition and (y) such transaction does not involve the sale or other Disposition of a minority Equity Interest in any Subsidiary.

7.6 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) each Subsidiary may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;

(c) payments to redeem or otherwise acquire existing stock of the Borrower so long as any consideration used to make such payments is delivered solely from the issuance of new common Equity Interests by the Borrower after the Closing Date;

(d) payments of regularly scheduled interest on the 2019 Convertible Senior Notes and the 2023 Convertible Senior Notes, in accordance with the terms thereof;

(e) Borrower may issue common Equity Interests in connection with the conversion of the 2019 Convertible Senior Notes and 2023 Convertible Senior Notes and make payment of cash in lieu of fractional shares in connection therewith;

(f) so long as no Event of Default shall have occurred and be continuing at the time of any of the following actions or would result therefrom, (i) refinancings of the 2019 Convertible Senior Notes and the 2023 Convertible Senior Notes with the proceeds of Indebtedness that constitutes a Permitted Refinancing thereof incurred pursuant to Section 7.2(l)(ii) or Section 7.2(m)(ii), as applicable, and (ii) refinancings of the 2019 Convertible Senior Notes with the Net Cash Proceeds received by the Borrower from the issuance of its common Equity interests following the Closing Date; and

(g) so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom, other prepayments of the outstanding principal amount of the 2019 Convertible Senior Notes; provided that the aggregate amount of all such prepayments shall not exceed \$25,000,000.

7.7 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto. Without limitation of the foregoing, neither the Borrower nor any of its Subsidiaries will become a “passive foreign investment company” as such term is defined in Section 1297 of the Code.

7.8 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person (each, an “Affiliate Transaction”) other than (a) advances of working capital to any Loan Party, (b) transfers of cash and assets to any Loan Party, (c) intercompany transactions expressly permitted by this Agreement, (d) reasonable compensation and reimbursement of expenses of officers and directors and (e) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person’s business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate; provided that for purposes of this clause (e), any such Affiliate Transaction involving aggregate consideration in excess of \$2,000,000 shall have been approved by the board of directors or equivalent governing body of the Borrower.

7.9 Burdensome Agreements.

With respect to the Loan Parties, enter into, or permit to exist, any Contractual Obligation (except for this Agreement, the other Loan Documents and any ABL Loan Documents) that (a) encumbers or restricts the ability of any such Person to (i) to act as a Loan Party; (ii) make Restricted Payments to any Loan Party, (iii) pay any Indebtedness or other obligation owed to any Loan Party, (iv) make loans or advances to any Loan Party, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, except, in the case of any of the foregoing, for (A) any document or instrument governing Indebtedness incurred pursuant to Section 7.2(c), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (B) any Permitted Lien, (C) customary restrictions and conditions contained in any agreement related to a disposition permitted by this Agreement, (D) applicable Laws, or (E) customary provisions in contracts prohibiting assignment or (b) requires the grant of any Lien on property or securities for any obligation if a Lien on such property is given as security for the Secured Obligations.

7.10 Use of Proceeds.

Use the proceeds of the Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenant.

Minimum Liquidity: At any time, permit Liquidity to be less than \$5,000,000.

7.12 [Reserved].

7.13 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.

- (a) Amend any of its Organization Documents in a manner materially adverse to the Agents or the Lenders;
- (b) change its fiscal year;
- (c) without providing ten (10) days prior written notice to the Collateral Agent for distribution to the Lenders (or such shorter period of time as may be agreed to by the Required Lenders), change its name, state of formation, form of organization or principal place of business; or
- (d) make any change in accounting policies or reporting practices, except as required by GAAP.

7.14 [Reserved].

7.15 Payments, Etc. of Indebtedness.

Prepay, redeem, purchase, pay, defease or otherwise satisfy or obligate itself to do so any Indebtedness prior to the scheduled maturity thereof in any manner (including by the exercise of any right of setoff), or make any payment in violation of any subordination, standstill or collateral sharing terms of or governing, such Indebtedness except, (a) the prepayment of the Loans in accordance with the terms of this Agreement or, subject to the terms of any ABL Intercreditor Agreement, any ABL Credit Agreement, (b) regularly scheduled or required repayments or redemptions of Indebtedness under the Indebtedness set forth in Schedule 7.2 and any Permitted Refinancing thereof and (c) prepayments of the 2019 Senior Convertible Notes or the 2023 Senior Convertible Notes permitted under Section 7.6(f) or 7.6(g).

7.16 Amendment, Etc. of Indebtedness.

(a) Amend, modify or change in any manner any term or condition of any 2019 Convertible Notes Document, 2023 Convertible Notes Document or ABL Loan Document or any documentation related to the Permitted Refinancing of any of the foregoing or give any consent, waiver or approval thereunder; provided that the 2019 Convertible Notes Documents, the 2023 Convertible Notes Documents and the ABL Loan Documents and the 2019 Convertible Senior Notes, the 2023 Convertible Senior Notes and the ABL Facility and any Permitted Refinancing of any of the foregoing may be amended or modified to extend the amortization or maturity of the indebtedness evidenced thereby, reduce the interest rate thereon, or otherwise amend or modify the terms thereof so long as the terms of any such amendment or modification are not materially more restrictive on the Loan Parties than the terms of such documents as in effect on the date hereof (or, in the case of the ABL Loan Documents, as in effect on the date of initial effectiveness thereof);

(b) take any other action in connection with any 2019 Convertible Notes Document, 2023 Convertible Notes Document or ABL Loan Document that would materially impair the interests or rights of any Loan Party thereunder or that would materially impair the rights or interests of any Agent or the Lenders; or

(c) amend, modify or change in any manner any term or condition of any Indebtedness (other than Indebtedness arising under the Loan Documents) in an aggregate principal amount in excess of the Threshold Amount if such amendment or modification would be materially more restrictive on any Loan Party or any Subsidiary, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto.

7.17 [Reserved].

7.18 Sanctions.

Directly or indirectly, use the Loans or the proceeds of the Loans, or lend, contribute or otherwise make available the Loans or the proceeds of the Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person of Sanctions.

7.19 Anti-Corruption Laws.

Directly or indirectly, use any proceeds of the Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions.

**ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES**

8.1 Events of Default.

Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) days after the same becomes due, any interest on any Loan, or any fee due hereunder or any other amount payable hereunder or any amount payable under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.1, 6.2(b), 6.3(a), 6.5, 6.10, 6.11, 6.12, 6.13 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.1(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount and such failure continues after the applicable grace or notice period, if any, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (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 be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or require a Loan Party or any Subsidiary thereof to make an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or Subsidiary thereof as a result thereof is greater than the Threshold Amount provided that with respect to a default under clause (i)(B), notwithstanding anything to the contrary herein, if at any time such default is cured or waived prior to the Agents or the Lenders exercising any remedies under Section 8.02, and such third party no longer has any right to exercise any rights or remedies in connection with such default at such time, then, as of such time, there shall be no Event of Default under such clause (i)(B) with respect to such default; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party or any of its Subsidiaries and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party contests in writing in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any provision of any Loan Document, or purports in writing to revoke, terminate or rescind any provision of any Loan Document or it is or becomes unlawful for a Loan Party to perform any of its obligations under the Loan Documents; or

(k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on a material portion of the Collateral purported to be covered thereby, or any Loan Party shall assert the invalidity of such Liens; or

(l) Change of Control. There occurs any Change of Control.

If a Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by Required Lenders as determined in accordance with Section 10.1; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is expressly waived by the Required Lenders, as required hereunder in Section 10.1.

8.2 Remedies upon Event of Default.

If any Event of Default occurs and is continuing, the Agents shall, at the request of, or may, with the consent of, the Required Lenders take any or all of the following actions:

(a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document, including the applicable Prepayment Fee, to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(b) exercise all rights and remedies available to it under the Loan Documents or applicable Law or equity; provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States the unpaid principal amount of the Loans and all interest and other amounts as aforesaid, including the applicable Prepayment Fee, shall automatically become due and payable without further act of any Person.

8.3 Application of Funds.

After the exercise of remedies provided for in Section 8.2 (or after the Loans have automatically become immediately due and payable) or if at any time insufficient funds are received by and available to the Agents to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall be applied:

(a) first, to payment or reimbursement of that portion of the Secured Obligations constituting fees, expenses and indemnities (including legal fees and expenses) payable to the Agents in their capacities as such;

(b) second, pro rata to payment or reimbursement of that portion of the Secured Obligations constituting fees (other than the Prepayment Fee), expenses and indemnities payable to the Lenders;

(c) third, pro rata to payment of accrued and unpaid interest on the Loans and the Prepayment Fee;

(d) fourth, pro rata to payment of principal outstanding on the Loans;

(e) fifth, pro rata to any other Secured Obligations; and

(f) sixth, any excess, after all of the Secured Obligations shall have been paid in full in cash, shall be paid to the Borrower or as otherwise required by applicable Law.

**ARTICLE IX
CONTINUING GUARANTY**

9.1 Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally, guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Secured Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof to the extent not the result of any dispute among the parties hereto in which the Loan Parties are the prevailing party) (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. The Administrative Agent's and the Lenders' books and records showing the amount of the Secured Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive, absent manifest error, for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

9.2 Rights of Lenders.

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

9.3 Certain Waivers.

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

9.4 Obligations Independent.

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

9.5 Subrogation.

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Facility is terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

9.6 Termination; Reinstatement.

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, if any, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

9.7 Stay of Acceleration.

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

9.8 Condition of Borrower.

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

9.9 Appointment of Borrower.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provided such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by any Agent or any Lender to the Borrower shall be deemed delivered to each Loan Party and (c) any Agent or any Lender may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

9.10 Right of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law.

**ARTICLE X
MISCELLANEOUS**

10.1 Amendments, Etc.

Subject to Section 3.3(b), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent or the Collateral Agent, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Article IV without the written consent of each Initial Lender;
- (b) extend or increase the Commitment of any Lender without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees (including the Prepayment Fee) or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, the Loans or any fees (including the Prepayment Fee) or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to (i) amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate and (ii) approve a comparable or successor rate in accordance with the definition of “Eurodollar Rate”;

(e) change (i) Section 8.3 or 2.11(c) or (ii) the order of application of any prepayment of the Loans from the application thereof set forth in the applicable provisions of Section 2.11 in any manner that adversely affects any Lender without the written consent of such Lender;

(f) change any provision of this Section 10.1 or the definition of “Required Lenders”, “Initial Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (or, if applicable, each Initial Lender);

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(h) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Article XI (in which case such release may be made by the Administrative Agent acting alone);

(i) amend or modify Section 2.6 or any condition precedent to the incurrence of any Incremental Term Commitments or Incremental Term Loans, or otherwise amend this Agreement in any manner that would permit the incurrence of any additional Indebtedness hereunder, in each case without the consent of each Lender;

(j) amend or modify this Agreement in any manner that would permit the incurrence by any Loan Party or its Subsidiaries of any additional Indebtedness for borrowed money that is secured by Liens that are not expressly subordinated to the Liens securing the Secured Obligations without the consent of each Initial Lender; or

(k) amend, modify or waive any provision under this Agreement that expressly requires the consent or other agreement of the Initial Lenders, in each case without the consent of each Initial Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable Agent in addition to the Lenders required above, affect the rights or duties of such Agent under this Agreement or any other Loan Document; (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; and (iii) if any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender or all affected Lenders and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 10.15 so long as such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section.

10.2 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, to the address, fax number, e-mail address or telephone number specified for the Borrower or any other Loan Party, the Agents or the Lenders on Schedule 1.1(b) or in the applicable Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission or e-mail transmission shall be deemed to have been 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).

(b) Change of Address, Etc. Each of the Loan Parties, the Agents and the Lenders may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

10.3 No Waiver; Cumulative Remedies; Enforcement.

No failure by any Lender or Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan 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 Agents in accordance with Article XI for the benefit of all the Lenders and the Secured Parties; provided, however, that the foregoing shall not prohibit (a) any Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with this Agreement (subject to the terms of Section 2.11(c)) or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; provided, further, that if at any time there is no Person acting as Administrative Agent or Collateral Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agents pursuant to Article XI and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.11(c), 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.

10.4 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Initial Lenders, the Agents and their respective Affiliates (including the reasonable fees, charges and disbursements of (w) one primary firm of counsel for the Initial Lenders, (x) one primary firm of counsel to the Agents, (y) one firm of local counsel to the Initial Lenders and the Agents in each applicable jurisdiction and (z) one special regulatory counsel to the Initial Lenders), in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Lenders, the Agents and their respective Affiliates (including the fees, charges and disbursements of one counsel for the Lenders, the Agents and their respective Affiliates), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loans; provided that nothing herein shall require any Loan Party to pay any of the foregoing in connection with a dispute solely among the Initial Lenders, the Agents and their respective Affiliates (other than such disputes involving claims against an Agent in its capacity as such) that does not involve an act or omission by the Borrower or any of its Subsidiaries.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify each Agent, the Lenders and each Related Party of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument executed in connection herewith, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.1), (ii) the Loans or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, 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 (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) arise from a dispute solely among Indemnitees (other than such disputes involving claims against an Agent in its capacity as such) that does not involve an act or omission by the Borrower or any of its Subsidiaries). This Section 10.4(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties 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), each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the unused Commitments or outstanding Loans at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); 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) 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) in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no party to this Agreement shall assert, and each such party hereby waives, and acknowledges that no other Person shall have, any claim against any other party to this Agreement, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loans or the use of the proceeds thereof.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the termination of the Commitments and the repayment, satisfaction or discharge of all the other Secured Obligations.

10.5 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or such Agent or such Lender exercises its right of setoff, if any, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

10.6 Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assignees. Each Loan Party agrees that it may not assign this Agreement without each Lender's prior consent. Each 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 the Loans owing to it) and the other Loan Documents to another Person (other than to the Borrower or any of its Subsidiaries or to any Disqualified Lender unless otherwise agreed by the Borrower in its sole discretion); provided that (i) the principal outstanding balance of the Loans of the assigning Lender subject to any assignment (other than (i) the assignment of the entire remaining amount of the assigning Lender's Loans at the time owing to it or (ii) assignments to another Lender, an Affiliate of such assigning Lender or an Approved Fund), determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent, or, if a "Trade Date" is specified in such Assignment and Assumption, as of such Trade Date, shall not be less than \$1,000,000 (or such lesser amount as represents the entire remaining amount of the assigning Lender's Loans at the time owing to it) and (ii) the parties deliver to the Administrative Agent together with any Assignment and Assumption, a processing and recordation fee of \$3,500 (which fee may be waived by the Administrative Agent in its sole discretion).

(b) Each Lender may at any time, without the consent of, or notice to, the Borrower, 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 in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Loans); 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 Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(c) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a 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 Borrower, 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 Borrower, each Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligations to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. This Section 10.6(c) shall be construed so that the Commitment and/or the Loans are at all times maintained in “registered form” within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any Treasury Regulations (and any successor provisions) promulgated thereunder, including, without limitation, Treasury Regulations Sections 5f.103-1(c) and 1.871-14.

(d) The Administrative Agent (i) shall have no obligation with respect to, and shall bear no responsibility or liability for, the ascertaining, monitoring, inquiring or enforcing of the list of Persons who are Disqualified Lenders (or any provisions relating thereto) at any time, and shall have, and shall have no liability with respect to or arising out of any assignment or participation of any Loans to any Disqualified Lender and (ii) may share a list of Persons who are Disqualified Lenders with any Lender or any prospective assignee, upon request.

10.7 Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, its auditors and to its Related Parties on a “need to know” basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case such parties agree, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process (in which case such parties agree, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights and obligations under this Agreement, (vii) on a confidential basis to any rating agency in connection with rating any Loan Party or its Subsidiaries or the credit facilities provided hereunder, (viii) with the written consent of the Borrower or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary relating to any Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent and the Lenders on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary.

10.8 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender and each of its 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 (in whatever currency) against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to the Lender. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify the Borrower 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.

10.9 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, the Administrative Agent or such Lender may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness.

This Agreement and each of the other Loan Documents 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, the other Loan Documents, the Fee Letter, and any separate letter agreements with respect to fees payable to the Agents or the Lenders, 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 Article IV, this Agreement shall become effective when it shall have been executed by each Initial Lender and when the Initial Lenders 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 or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

10.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf, and shall continue in full force until the Facility Termination Date.

10.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.13 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) 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 LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN 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.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN 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 ANY AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN 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 LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN 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 LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.2. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.14 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN 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 LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 Replacement of Non-Consenting Lenders.

If the Borrower is entitled to replace a Lender pursuant to the last proviso of Section 10.1, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.6), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.1 and 3.4) and obligations under this Agreement and the related Loan Documents to a Person eligible for an assignment in accordance with Section 10.1 that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts due pursuant to Section 3.5 or pursuant to the Fee Letter) from the assignee (to the extent of such outstanding principal and accrued interest) or the Borrower (in the case of fees and all other amounts);
- (b) such assignment does not conflict with applicable Laws; and
- (c) the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment cease to apply.

10.16 Subordination.

Each Loan Party (a "Subordinating Loan Party") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party's performance under the Guaranty, to the indefeasible payment in full in cash of all Secured Obligations. If the Secured Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to Intercompany Debt; provided, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section, such payment shall be held by such Loan Party in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request to, the Administrative Agent for distribution to the Lenders.

10.17 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Agents, the Lenders and the Affiliates of the foregoing Persons are arm's-length commercial transactions between the Borrower, each other Loan Party, on the one hand, and the Agents, the Lenders and their respective Affiliates, on the other hand, (ii) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) each of the Administrative Agent, the Lenders and their respective Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Borrower, any other Loan Party and (ii) neither the Administrative Agent, nor any Lender, nor any of their respective Affiliates has any obligation to the Borrower, any other Loan Party with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties, and neither the Administrative Agent, nor any Lender, nor any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against each Agent, each Lender or any of their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

10.18 Electronic Execution.

The words "delivery," "execute," "execution," "signed," "signature," and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, neither the Administrative Agent, nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided further without limiting the foregoing, upon the request of the Administrative Agent or any Lender, any electronic signature shall be promptly followed by such manually executed counterpart.

10.19 USA PATRIOT Act Notice.

Each Lender hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it may be required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Act. The Borrower and the Loan Parties agree to, promptly following a request by any Lender, provide all such other documentation and information that such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.20 Credit Bid Rights Preserved.

In the event of any bankruptcy proceeding involving a Loan Party in the United States, whether voluntary or otherwise, each Loan Party expressly agrees that each Agent and each Lender is hereby granted an irrevocable right to credit bid any or all amounts owed pursuant to this Agreement in any sales process as provided by Section 363(k) of the Bankruptcy Code, whether such sale is conducted pursuant to a plan of reorganization under Chapter 11 of the Bankruptcy Code or outside of a plan pursuant to Section 363 of the Bankruptcy Code. The right of each Agent and each Lender to credit bid as set forth herein is an express element of the consideration being offered by the Loan Parties to induce the Lenders to enter into this Agreement.

10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Solely to the extent any Lender is an EEA Financial Institution and is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of such Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender if it is an EEA 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 EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**ARTICLE XI
THE AGENTS**

11.1 Appointment; Powers.

Each of the Lenders hereby appoints Cantor Fitzgerald Securities as its Administrative Agent and its Collateral Agent. Each Lender authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms hereof and the other Loan Documents.

11.2 Duties and Obligations of the Agents.

The Agents shall have no duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (the use of the term “Administrative Agent”, “Collateral Agent” or “Agent” herein and in the other Loan Documents with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties), (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except as provided in Section 11.3, and (c) except as expressly set forth herein, no Agent shall have a duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. The Agents shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to a responsible officer of such Agent by the Borrower or a Lender, and 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 this Agreement or any other Loan Document,
- (b) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith,
- (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document,
- (d) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document,

(e) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or as to those conditions precedent expressly required to be to such Agent's satisfaction,

(f) the existence, value, perfection or priority of any collateral security or the financial or other condition of the Borrower and its Subsidiaries, or

(g) any failure by the Borrower, any Guarantor or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements or other terms or conditions set forth herein or therein.

11.3 Action by Agents.

Each Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1) and in all cases each Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability claims, losses, fees and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by an Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then an Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities satisfactory to it) described in this Section 11.3; provided that, unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the interests of the Lenders. In no event, however, shall an Agent be required to take any action which exposes such Agent to a risk of personal liability or which is contrary to this Agreement, the Loan Documents or applicable law. If a Default has occurred and is continuing, no Agent shall have any obligation to perform any act in respect thereof. Each Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.1), and otherwise such Agent shall not be liable for any action taken or not taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith including its own ordinary negligence, except for its own gross negligence or willful misconduct.

11.4 Reliance by Agents.

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon, except in the case of gross negligence or willful misconduct by such Agent and each of the Loan Parties and the Lenders hereby waives the right to dispute such Agent's record of such statement absent manifest error. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

11.5 Sub-Agents.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-Agents appointed by such Agent. Each Agent and any such sub-Agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of this Article XI and Section 10.4 shall apply to any such sub-Agent and to the Related Parties of such Agent and any such sub-Agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as such Agent. Each Agent shall have no responsibility for the conduct or negligence of any sub-agent appointed by it hereunder, except to the extent that such Agent acted with gross negligence or willful misconduct in the appointment of such sub-agent.

11.6 Resignation or Removal of Agents.

Subject to the appointment and acceptance of a successor Agent as provided in this Section 11.6, each Agent may resign at any time by notifying the Lenders and the Borrower, and such Agent may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders, and accepted such appointment, within thirty (30) days after the retiring Agent gives notice of its resignation or removal of the retiring Agent, then the retiring Agent may, on behalf of the Lenders and at the expense of the Borrower, appoint a successor Agent, or an Affiliate of any such Lender as approved by the Required Lenders or if no such successor shall be appointed by the retiring Agent as aforesaid, the Required Lenders shall thereafter perform all of the duties of the retiring Agent hereunder (and the retiring Agent shall be discharged from its duties and obligations hereunder) until such appointment by the Required Lenders is made and accepted. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article XI and Section 10.4 shall continue in effect for the benefit of such retiring 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 it was acting as Agent.

11.7 Agents as Lenders.

Each Lender serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of business with the Borrower or any of its Subsidiaries or other Affiliates as if it were not an Agent hereunder and without any duty to account therefor to the Lenders.

11.8 Funds Held by Agents.

The Agents shall have no responsibility for interest or income on any funds held by it hereunder.

11.9 No Reliance.

Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and each other Loan Document to which it is a party. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder. No Agent shall be required to keep itself informed as to the performance or observance by the Borrower or any of its Subsidiaries of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the property or books of the Borrower or its Subsidiaries. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by an Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of their Affiliates) which may come into the possession of such Agent or any of its Affiliates. Each party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

11.10 Agents May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower, the Guarantors or any of their Subsidiaries, each Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether an Agent shall have made any demand on the Borrower or the Guarantors) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file a proof-of-claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Indebtedness that are owing and unpaid and to file such other documents as may be necessary and directed by the Required Lenders in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 10.4) allowed in such judicial proceeding;

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized and directed by each Lender to make such payments to the Agents and, in the event that the Agents shall consent to the making of such payments directly to the Lenders, to pay to the Agents any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their agents and counsel, and any other amounts due the Agents under Section 10.4.

Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Indebtedness or the rights of any Lender or to authorize any Agent to vote in respect of the claim of any Lender in any such proceeding.

11.11 Authority of the Agents to Release Collateral and Liens.

(a) Each Lender hereby authorizes the Collateral Agent to release any Collateral or any Guarantor that is permitted to be sold or released pursuant to the terms of this Section 11.11 and the other Loan Documents. Each Lender hereby authorizes the Collateral Agent to execute and deliver to the Borrower, at the Borrower's sole cost and expense, any and all releases of Guarantors, releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrower in connection with (x) the termination of the Facility on the Facility Termination Date, (y) any Subsidiary becoming an Excluded Subsidiary or (z) any sale or other Disposition of property to the extent such sale or other Disposition is authorized by the terms of this Agreement and the other Loan Documents and complies with the Collateral Documents, as evidenced in a certificate delivered by a Responsible Officer to the Collateral Agent (which shall be promptly distributed to the Lenders); provided that, prior to the Facility Termination Date, the Liens on any Collateral securing the Secured Obligations shall not be released upon a sale, transfer or other Disposition of such Collateral to any Person that is, or that is required to be, in each case at the time of such sale, transfer or other Disposition, and after giving effect thereto, a Loan Party (but in each case disregarding the grace period provided for in Section 6.12). Upon the request of the Borrower, in connection with any transaction otherwise permitted by this Agreement and the other Loan Documents, the Administrative Agent and/or the Collateral Agent is authorized to release Collateral that is Disposed of to any Person (other than to a Person that is, or that is required to be, in each case at the time of such Disposition, and after giving effect thereto, a Loan Party (but in each case disregarding the grace period provided for in Section 6.12)), or to any Person that ceases to be a Subsidiary of the Borrower at the time of such Disposition, and after giving effect thereto.

(b) In respect of Qualifying Control Agreements over deposit accounts or securities accounts that constitute ABL Priority Collateral, each Lender hereby authorizes the Collateral Agent to execute and deliver to the Borrower, at the Borrower's sole cost and expense, terminations with respect to such Qualifying Control Agreements upon effectiveness of the ABL Facility.

11.12 Merger, Conversion or Consolidation of Agents.

Any corporation into which the Agents may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Agents shall be a party, or any corporation succeeding to the corporate trust and loan agency business of the Agents, shall be the successor of the Agents hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

11.13 ABL Intercreditor Agreement.

EACH LENDER AND EACH OTHER SECURED PARTY HEREUNDER (a) AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF ANY ABL INTERCREDITOR AGREEMENT ENTERED INTO BY THE ADMINISTRATIVE AGENT AND COLLATERAL AGENT, (b) AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT AND COLLATERAL AGENT TO ENTER INTO ANY ABL INTERCREDITOR AGREEMENT AS "FIRST LIEN AGENT" (OR EQUIVALENT) AND ON BEHALF OF SUCH LENDER OR SECURED PARTY AND (c) AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF ANY ABL INTERCREDITOR AGREEMENT TO THE EXTENT THEN IN EFFECT. THE PROVISIONS OF THIS SECTION 11.13 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY ABL INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO ANY ABL INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER AND EACH SECURED PARTY IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF ANY ABL INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER OR ANY SECURED PARTY AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY ABL INTERCREDITOR AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

BORROWER:

TELIGENT, INC.

By: _____
Name: _____
Title: _____

[Signature Page to Credit Agreement]

GUARANTORS:

IGEN, INC.

By: _____
Name: _____
Title: _____

TELIGENT PHARMA, INC.

By: _____
Name: _____
Title: _____

[Signature Page to Credit Agreement]

**ADMINISTRATIVE AGENT and
COLLATERAL AGENT:**

CANTOR FITZGERALD SECURITIES

By: _____
Name: _____
Title: _____

[Signature Page to Credit Agreement]

LENDERS:

1992 MSF INTERNATIONAL LTD.

By: Highbridge Capital Management, LLC, as Trading Manager and not in its individual capacity

By: _____
Name: _____
Title: _____

1992 TACTICAL CREDIT MASTER FUND, L.P.

By: Highbridge Capital Management, LLC, as Trading Manager and not in its individual capacity

By: _____
Name: _____
Title: _____

[Signature Page to Credit Agreement]

Schedule 1.1(a) to Credit Agreement – Commitments

Lender	Loan Commitment
1992 MSF INTERNATIONAL LTD.	\$ 14,400,000
1992 TACTICAL CREDIT MASTER FUND, L.P.	\$ 10,600,000
Total Commitments of the Lenders:	\$ 25,000,000

Schedule 1.1(b) to Credit Agreement – Certain Addresses for Notices /
Administrative Agent's Office

If to the Borrower:

Teligent, Inc.
33 South Wood Ave., Suite 730
Iselin, New Jersey, 08830
Email: mwilson@teligent.com
Attention: General Counsel

with a copy to:

K&L Gates LLP
599 Lexington Avenue
New York, NY 10022-6030
Email: Whitney.Smith@klgates.com
Attention: Whitney Smith, Esq.

and

K&L Gates LLP

214 North Tryon Street, Suite 4700
Charlotte, NC 28202
Email: Benay.Lizarazu@klgates.com
Attention: Benay Lizarazu, Esq.

If to any Initial Lender:

c/o Highbridge Capital Management, LLC
40 West 57th Street
32nd Floor
New York, NY 10019
Phone: 212-287-4700
Email: Damon.Meyer@highbridge.com
Attention: Damon Meyer

with a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Email: Kenneth.Steinberg@davispolk.com
Attention: Kenneth J. Steinberg

Administrative Agent's Office:

If to Cantor Fitzgerald Securities, as Administrative Agent and as Collateral Agent:

Cantor Fitzgerald Securities
Attn: Nils Horing (Legal)
1801 N. Military Trail, Suite 202
Boca Raton, FL 33431
Email: NHoring@cantor.com
Telephone Number: 212-829-4889
Fax Number: 646-219-1180

Attn: Jon Stapleton (Credit)
110 E. 59th St.
New York, NY 10022
Email: JStapleton@cantor.com

Schedule 6.17 to Credit Agreement – Post-Closing Obligations

(a) Control Agreements. The Loan Parties shall use commercially reasonable efforts to deliver to the Collateral Agent within 30 days after the Closing Date (or such later date agreed to by the Required Lenders), duly executed and delivered Qualifying Control Agreements (such Qualifying Control Agreements, which shall be in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders) with respect to the Loan Parties' deposit accounts and securities accounts to the extent required under Section 6.13(d).

(b) Insurance. Not later than 30 days following the Closing Date (or such later date agreed to by the Required Lenders), the Loan Parties shall provide to the Collateral Agent, for distribution to the Lenders, (i) insurance certificates evidencing the insurance required by Section 6.7 of this Agreement and (ii) loss payee endorsements with respect to the insurance policies of the Loan Parties to the extent required to be delivered pursuant to Section 6.7(b) (such certificates endorsements shall be in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders) and the Loan Parties shall use commercially reasonable efforts to obtain such certificates and endorsements as soon as available.

(c) Mortgages. Not later than 30 days following the Closing Date (or such later date agreed to by the Required Lenders), the Borrower, shall have delivered or caused to be delivered to the Collateral Agent, (a)(i) a counterpart of each Mortgage over Material Real Estate owned by a Loan Party and (ii) the Real Estate Collateral Requirements for such Material Real Estate owned by a Loan Party, in each case, in form and substance reasonably satisfactory to the Initial Lenders and (ii) such other documents reasonably requested by the Initial Lenders to comply with Section 6.13(b), each in form and substance reasonably satisfactory to the Initial Lenders and (b) prior to the execution and delivery of each Mortgage, the Flood Requirements.

(d) Intercompany Note. Not later than 30 days following the Closing Date (or such later date agreed to by the Required Lenders), the Loan Parties and their respective Subsidiaries, shall each have delivered to the Collateral Agent, (i) a counterpart or joinder to the Intercompany Note (as defined in the U.S. Security Agreement), together with allonges or assignments and (ii) all promissory notes and other instruments constituting Pledged Debt (as defined in the U.S. Security Agreement) with a value that exceeds, individually, or in the aggregate, \$500,000, in each case in form and substance reasonably satisfactory to the Initial Lenders.

(e) Pledged Equity. Not later than 7 days after the Closing Date (or such later date agreed to by the Required Lenders), the Collateral Agent shall have received all original share certificates and related stock transfer forms executed in blank relating to the Pledged Equity (as defined in the U.S. Security Agreement) of each Loan Party, each in form and substance reasonably satisfactory to the Initial Lenders.

(f) Perfection Certificate. Not later than 30 days after the Closing Date (or such later date agreed to by the Required Lenders), the Collateral Agent shall have received a complete, accurate and updated Schedule 1 (with respect to Foreign Subsidiaries), Schedule 6 and Schedule 9 to the Perfection Certificate, indicating any changes in such Schedules from the Schedules most recently delivered pursuant to the Credit Agreement.

EXHIBIT A

[Form of]
Compliance Certificate

Financial Statement Date: [_____, ____]

TO: Cantor Fitzgerald Securities, as administrative agent (the "Administrative Agent")

RE: Credit Agreement, dated as of June 1, 2018, by and among Teligent, Inc., a Delaware corporation (the "Borrower"), the Guarantors, Cantor Fitzgerald Securities, as Administrative Agent and the Lenders party thereto from time to time (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [____]

The undersigned Responsible Officer¹ hereby certifies as of the date hereof that [he/she] is the [_____] of the Borrower, and that, as such, [he/she] is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Borrower and the other Loan Parties, and that:

[Use following paragraph 1 for fiscal year-end financial statements]

1. The Borrower has delivered the year-end audited financial statements required by Section 6.1(a) of the Credit Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

[Use following paragraph 1 for fiscal quarter-end financial statements]

1. The Borrower has delivered the unaudited financial statements required by Section 6.1(b) of the Credit Agreement for the fiscal quarter of the Borrower ended as of the above date. Such consolidated financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under [his/her] supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrower and its Subsidiaries during the accounting period covered by such financial statements.

¹ This certificate should be from the chief executive officer, chief financial officer or treasurer of the Borrower.

3. A review of the activities of the Borrower and its Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower and each of the other Loan Parties performed and observed all its obligations under the Loan Documents, and

[select one:]

[to the knowledge of the undersigned, during such fiscal period each of the Loan Parties performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]

—or—

[to the knowledge of the undersigned, the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

[select one:]

4. [Attached as Schedule A hereto are complete, updated Schedules to the Perfection Certificate, indicating any changes in such Schedules from the Schedules most recently delivered pursuant to the Credit Agreement.]

—or—

[There has been no change in the information set forth in the Schedules to the Perfection Certificate most recently delivered pursuant to the Credit Agreement.]

5. The representations and warranties of the Borrower and each other Loan Party contained in Section 5.5 of the Credit Agreement are (i) with respect to representations and warranties that contain a materiality qualification, true and correct on and as of the date hereof and (ii) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects on and as of the date hereof, and except that for purposes of this Compliance Certificate, the representations and warranties contained in subsections (a) and (b) of Section 5.5 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.1 of the Credit Agreement, including the statements in connection with which this Compliance Certificate is delivered.

7. The financial covenant analyses and information set forth on Schedule B attached hereto are true and accurate on and as of the Statement Date.

Delivery of an executed counterpart of a signature page of this Certificate by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Certificate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

TELIGENT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Schedule A

[attach updated Schedules to Perfection Certificate]

Schedule B

Financial Statement Date: [_____, ____] ("Statement Date")

I further certify that (Please check and complete each of the following):

1. **Liquidity.** The Liquidity at all times after the Closing Date and prior to the Statement Date was not less than \$5,000,000.

EXHIBIT B

[Form of] Joinder Agreement

THIS JOINDER AGREEMENT (this "Agreement"), dated as of [_____, ____], is by and among [_____, a _____] (the "Subsidiary Guarantor"), Teligent Inc., a Delaware corporation (the "Borrower"), and Cantor Fitzgerald Securities, as Administrative Agent and Collateral Agent under that certain Credit Agreement, dated as of June 1, 2018 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"), by and among the Borrower, the Guarantors, Cantor Fitzgerald Securities, as Administrative Agent and the Lenders party thereto from time to time. Capitalized terms used herein but not otherwise defined shall have the meanings provided in the Credit Agreement.

The Subsidiary Guarantor is an additional Loan Party, and, consequently, the Loan Parties are required by Section 6.12 of the Credit Agreement to cause the Subsidiary Guarantor to become a "Guarantor" thereunder.

Accordingly, the Subsidiary Guarantor and the Borrower hereby agree as follows with the Administrative Agent, for the benefit of the Secured Parties:

1. The Subsidiary Guarantor hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Subsidiary Guarantor will be deemed to be a party to and a "Guarantor" under the Credit Agreement and shall have all of the obligations of a Guarantor thereunder as if it had executed the Credit Agreement and the other Loan Documents as a Guarantor. The Subsidiary Guarantor hereby makes all representations and warranties in Article V with respect to it and agrees to be bound by covenants and other terms, conditions and provisions of the Credit Agreement and the other applicable Loan Documents. Without limiting the generality of the foregoing terms of this Paragraph 1, the Subsidiary Guarantor hereby guarantees, jointly and severally together with the other Guarantors, the prompt payment of the Secured Obligations in accordance with Article IX of the Credit Agreement.

2. The Subsidiary Guarantor hereby agrees that all of the representations and warranties contained in Article V of the Credit Agreement and each other Loan Document are true and correct as of the date hereof with respect to it.

3. The Subsidiary Guarantor hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Subsidiary Guarantor will be deemed to be a party to the U.S. Security Agreement, and shall have all the rights and obligations of an "Grantor" (as such term is defined in the U.S. Security Agreement) thereunder as if it had executed the U.S. Security Agreement. The Subsidiary Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the U.S. Security Agreement. Without limiting the generality of the foregoing terms of this Paragraph 2, the Subsidiary Guarantor hereby grants, pledges and assigns to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right of set off, to the extent applicable, against any and all right, title and interest of the Subsidiary Guarantor in and to the Collateral (as such term is defined in the U.S. Security Agreement) of the Subsidiary Guarantor.

4. The Subsidiary Guarantor acknowledges and confirms that it has received a copy of the Credit Agreement and the schedules and exhibits thereto and each Loan Document and Collateral Document and the schedules and exhibits thereto. The information on the schedules to the Credit Agreement and the Collateral Documents are hereby supplemented (to the extent permitted under the Credit Agreement or Collateral Documents) to reflect the information shown on the attached Schedule A.

5. The Borrower confirms that the Credit Agreement is, and upon the Subsidiary Guarantor becoming a Guarantor, shall continue to be, in full force and effect. The parties hereto confirm and agree that immediately upon the Subsidiary Guarantor becoming a Guarantor the term "Obligations," as used in the Credit Agreement, shall include all obligations of the Subsidiary Guarantor under the Credit Agreement and under each other Loan Document.

6. Each of the Borrower and the Subsidiary Guarantor agrees that at any time and from time to time, upon the written request of the Administrative Agent and the Required Lenders, it will execute and deliver such further documents and do such further acts as such Persons may reasonably request in accordance with the terms and conditions of the Credit Agreement and the other Loan Documents in order to effect the purposes of this Agreement.

7. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

8. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York. The terms of Sections 10.13 and 10.14 of the Credit Agreement are incorporated herein by reference, mutatis mutandis, and the parties hereto agree to such terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the Borrower and the Subsidiary Guarantor has caused this Agreement to be duly executed by its authorized officer, and the Collateral Agent for the benefit of the Secured Parties, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

SUBSIDIARY GUARANTOR:

[SUBSIDIARY GUARANTOR]

By: _____
Name: _____
Title: _____

BORROWER:

TELIGENT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Acknowledged, accepted and agreed:

CANTOR FITZGERALD SECURITIES,
as Administrative Agent and as Collateral Agent

By: _____
Name: _____
Title: _____

Schedule A

Schedules to Credit Agreement, Perfection Certificate and Collateral Documents

[TO BE COMPLETED BY BORROWER]

EXHIBIT C

Solvency Certificate

TO: Cantor Fitzgerald Securities, as administrative agent (the "Administrative Agent") and each of the Initial Lenders

RE: Credit Agreement, dated as of June 1, 2018, by and among Teligent, Inc., a Delaware corporation (the "Borrower"), the Guarantors, Cantor Fitzgerald Securities, as Administrative Agent and the Lenders party thereto from time to time (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [___], 2018

The undersigned Responsible Officer of the Borrower is familiar with the properties, businesses, assets and liabilities of the Loan Parties and is duly authorized to execute this certificate on behalf of the Borrower and the other Loan Parties.

The undersigned certifies that [he/she] has made such investigation and inquiries as to the financial condition of the Loan Parties and their Subsidiaries as the undersigned deems necessary and prudent for the purpose of providing this Certificate. The undersigned acknowledges that the Administrative Agent is relying on the truth and accuracy of this Certificate in connection with the making of Credit Extensions and the other transactions contemplated under the Credit Agreement.

The undersigned certifies that the financial information, projections and assumptions which underlie and form the basis for the representations made in this Certificate were reasonable when made and were made in good faith and continue to be reasonable as of the date hereof.

BASED ON THE FOREGOING, the undersigned certifies that, after giving effect to the transactions contemplated by the Credit Agreement, as of the date hereof:

(a) The present fair saleable value of the assets of the Borrower, individually and together with its Subsidiaries on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of the Borrower, individually and together with its Subsidiaries on a consolidated basis.

(b) The present fair saleable value of the assets of the Borrower, individually and together with its Subsidiaries on a consolidated basis, is not less than the amount that will be required to pay the probable liability of the Borrower, individually and together with its Subsidiaries on a consolidated basis, on its debts as they become absolute and matured.

(c) The Borrower, individually and together with its Subsidiaries on a consolidated basis, does not intend to, and does not believe that it will, incur debts or liabilities beyond the Borrower's individual, and together with its Subsidiaries consolidated, ability to pay such debts and liabilities as they mature.

(d) The Borrower, individually and together with its Subsidiaries on a consolidated basis, will not have an unreasonably small amount of capital with which to conduct business.

(e) The Borrower, individually and together with its Subsidiaries on a consolidated basis, will be able to pay its debts when they mature.

(f) The amount of contingent liabilities at any time have been computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Delivery of an executed counterpart of a signature page of this Certificate by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Certificate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

TELIGENT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT D

[Form of]
Notice of Loan Prepayment

Date: [_____, _____]

TO: Cantor Fitzgerald Securities, as administrative agent (the "Administrative Agent")

RE: Credit Agreement, dated as of June 1, 2018, by and among Teligent, Inc., a Delaware corporation (the "Borrower"), the Guarantors, Cantor Fitzgerald Securities, as Administrative Agent and the Lenders party thereto from time to time (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement).

DATE: [Date]

The Borrower hereby notifies the Administrative Agent that on _____² pursuant to the terms of Section 2.5 (Prepayments) of the Credit Agreement, the Borrower intends to prepay/repay the following Loans as more specifically set forth below:

Optional prepayment of the Loans in the following amount(s):³

Eurodollar Rate Loans: \$ _____
Applicable Interest Period: _____

Base Rate Loans: \$ _____

The Prepayment Fee with respect to the amount prepaid is \$ _____.

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

² Specify date of such prepayment.

³ Any prepayment of shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or if less, the entire principal amount thereof outstanding).

TELIGENT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT E

[Form of]
Assignment and Assumption

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]⁴ Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]⁵ Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]⁶ hereunder are several and not joint.]⁷ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] as a Lender under the Credit Agreement identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transaction governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

⁴ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

⁵ For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

⁶ Select as appropriate.

⁷ Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____
2. Assignee[s]: _____
 [for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]
3. Borrower: TELIGENT, INC.
4. Administrative Agent: Cantor Fitzgerald Securities, as the administrative agent under the Credit Agreement
5. Credit Agreement: Credit Agreement, dated as of June 1, 2018, among the Borrower, the Guarantors party thereto from time to time, Cantor Fitzgerald Securities, as the Administrative Agent and the Lenders party thereto from time to time (as amended, modified, extended, restated, replaced, or supplemented from time to time)
6. Assigned Interest:

<u>Assignor[s]</u> ⁸	<u>Assignee[s]</u> ⁹	Aggregate Amount of Commitment/ Loans for all Lenders ¹⁰	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans ¹¹
		\$ _____ ¹²	\$ _____	_____ %

7. [Trade Date: _____]¹³
8. Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]¹⁴

⁸ List each Assignor, as appropriate.

⁹ List each Assignee, as appropriate.

¹⁰ Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

¹¹ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

¹² Subject to a minimum amount of \$1,000,000 unless an assignment (i) of the entire remaining amount of the assigning Lender's Loans at the time owing to it or (ii) to another Lender, an Affiliate of such assigning Lender or an Approved Fund).

¹³ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

¹⁴ To be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the register therefor.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Accepted:]¹⁵

CANTOR FITZGERALD SECURITIES, as
Administrative Agent

By: _____
Title:

¹⁵ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it obtained all such consents, if any, as may be required under Section 10.6(a) of the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest and (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT F

[Form of]
Notice of Borrowing

Date: _____, _____

To: Cantor Fitzgerald Securities, as Administrative Agent

CC: The Initial Lenders under the Credit Agreement referred to below.

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of June 1, 2018 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among Teligent, Inc., a Delaware corporation (the "Borrower"), the Guarantors party thereto from time to time, Cantor Fitzgerald Securities, as Administrative Agent and the Lenders party thereto from time to time.

The undersigned hereby requests the Borrowing of a Eurodollar Rate Loan as follows:

1. On _____ (a Business Day and the [Closing Date][Delayed Draw Date]).
2. In the amount of \$[_____].

Pursuant to Sections 2.2(a) and 2.3 of the Agreement, the Borrower hereby authorizes and directs the Administrative Agent and the Initial Lenders to disburse the proceeds of the Loan made to the Borrower on the Closing Date as set forth below in the Funds Flow Memorandum attached hereto as Annex 1.

[The representations and warranties of the Borrower and each other Loan Party contained in Article [____] of the Agreement or any other Loan Document are (i) with respect to representations and warranties that contain a materiality qualification, true and correct and (ii) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects.

No Default or Event of Default exists or will result from the making of the Loan or from the application of the proceeds thereof as contemplated by the Agreement.

As of the Delayed Draw Date, and after giving effect to the Loans, the Liquidity is not less than \$[_____] (provided that Liquidity shall be determined without regard to clause (a) of the definition thereof).¹⁶

¹⁶ To be included for Delayed Draw Date Loans.

TELIGENT, INC.

By: _____
Name:
Title:

ANNEX 1

(Funds Flow attached)

EXHIBIT G
[Form of]
Administrative Questionnaire

[LENDER NAME]

WIRE INSTRUCTIONS

Full Legal Name, Signature Block and Address:

Bank Name:

City, state:

ABA no:

Acct. name:

Acct. no.:

Reference:

Buyer or Seller / Full Legal Name:

Signature Block:

By: _____

Name: _____

Title: _____

Mailing Address:

Tax ID:

ADMINISTRATIVE CONTACTS

CREDIT CONTACTS

Name:

Title:

Address:

Phone:

Fax:

Email:

Name:

Title:

Address:

Phone:

Fax:

Email:

News From**Buena, NJ 08310****Release Date: June 5, 2018**

Contact: Damian Finio
Teligent, Inc.
(856) 336-9117
www.teligent.com

TELIGENT, INC. ANNOUNCES CLOSING OF \$25 MILLION SECURED CREDIT FACILITY

BUENA, N.J., June 5, 2018 (GLOBE NEWSWIRE) -- TELIGENT, Inc. (NASDAQ: TLGT)

Teligent, Inc. ("Teligent") announced today that it has entered into a Credit Agreement with certain funds managed by Highbridge Capital Management, LLC, an existing stakeholder, on June 1, 2018. Pursuant to the Credit Agreement, the lenders provided Teligent with a new senior-secured term loan credit facility in the principal amount of \$25 million with a maturity date of June 1, 2021. Teligent drew \$15 million of the facility on the closing date, with the remaining \$10 million available within 45 days of the closing date subject to the satisfaction of certain post-closing conditions. In addition to the \$25 million principal amount, the Credit Agreement provides that an incremental facility of up to an additional \$50 million may be made available to Teligent up until September 15, 2018, subject to the discretion of the lenders and the other terms of the Credit Agreement. The funds will be used by Teligent to pursue certain product launches as well as address its capital structure.

"Teligent has won a number of key approvals recently and the proceeds of this Credit Agreement will provide Teligent with the necessary working capital to fund the product launches related to these approvals while also putting Teligent in a position to improve its capital structure," commented Jason Grenfell-Gardner, Teligent's President and CEO. "That this facility was provided by existing stakeholders is a testament to their belief in our business and strategy."

About Teligent, Inc.

Teligent is a specialty generic pharmaceutical company. Teligent's mission is to be a leading player in the specialty generic prescription drug market. Under its own label, Teligent currently markets and sells generic topical and branded generic and generic injectable pharmaceutical products in the United States and Canada.

Forward-Looking Statements

This press release includes certain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, plans, objectives, expectations and intentions, and other statements contained in this press release that are not historical facts and statements identified by words such as "plan," "believe," "continue," "should" or words of similar meaning. Factors that could cause actual results to differ materially from these expectations include, but are not limited to: our inability to meet current or future regulatory requirements in connection with existing or future ANDAs; our inability to achieve profitability; our failure to obtain FDA approvals as anticipated; our inability to execute and implement our business plan and strategy; the potential lack of market acceptance of our products; our inability to protect our intellectual property rights; changes in global political, economic, business, competitive, market and regulatory factors; and our inability to complete successfully future product acquisitions. These statements are based on our current beliefs or expectations and are inherently subject to various risks and uncertainties, including those set forth under the caption "Risk Factors" in Teligent, Inc.'s most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and other periodic reports we file with the Securities and Exchange Commission. Teligent, Inc. does not undertake any obligation to update any forward-looking statements contained in this document as a result of new information, future events or otherwise, except as required by law.
